

**BURNISHED LAW JOURNAL****Aditya Kumar****4<sup>th</sup> year, 8<sup>th</sup> semester****ICFAI UNIVERSITY DEHRADUN****RISK AND COMPULSORY INSURANCE “A LEGAL ANALYSIS”****ABSTRACT**

*An insurance is a contract between the insurance company and insured person to indemnify the loss. In the growing world every factor is related to risk and requires policies to minimize effect of such risk. This paper talks about the comprehensive review of types of compulsory insurances implemented in India. It reviews and analyses effects of compulsory insurances on individuals and the society, based on theoretical studies and analytical evidence. The reports explore what all new adaptations can be inherent for developing the compulsory insurance policies. The paper explains the current model structure of the insurances policies that are presents in the society and the legal aid that is provided in such cases. The report further gives some measures for adaptation of new legal insurances that should also be made compulsory in its nature.*

**Keyword :- COMPULSORY INSURANCE, INDEMNIFY, INSURANCE RISK, LEGAL AID**

## TABLE OF CONTENT

SERIAL No.	CONTENT	PAGE No.
1.	ABSTRACT	1
2.	CHAPTER 1	3-5
3.	BACKGROUND	3
4.	RESEARCH PROBLEM	3
5.	RATIONALE OF STUDY	3
6.	SCOPE OF THE STUDY	3
7.	OBJECTIVE OF THE STUDY	3
8.	REVIEW OF LITERATURE	3
9.	RESEARCH QUESTIONS	4
10.	HYPOTHESIS	5
11.	RESEARCH METHODOLOGY	5
12.	TENTATIVE CHAPTER	5
13.	CHAPTER 2	6-7
14.	COMPULSORY INSURANCE	6-7
15.	NATURE OF COMPULSORY INSURANCE	7
16.	CHAPTER 3	8-10
17.	THIRD PARTY OR COMPULSORY INSURANCE OF MOTOR VEHICLES	8-10
18.	CHAPTER 4	11-12
19.	PUBLIC LIABILITY INSURANCE	11
20.	WORKMEN COMPENSATION ACT 1923	11-12
21.	CHAPTER 5	13-14
22.	BHOPAL GAS TRAGEDY	13-14
23.	CHAPTER 6	15-17
24.	REQUISITE IN COMPULSORY INSURANCES	15-17
25.	CHAPTER 7	18
26.	CONCLUSION	18
27.	BIBLIOGRAPHY	19

## **CHAPTER 1**

### **SYNOPSIS**

#### **BACKGROUND**

Risk is the inherent nature of all the aspects of the life. Risk means uncertainty. Risk is potential of loss or undesirable outcome resulting from a given action, activity and from an action. Potential losses themselves may also be called as 'risks'. Furthermore, the implementation of the insurance is to determine the insurable interest which is important in safeguarding certain interests of the insured and the insurer whereby the outcome is in the form of premium. Thereby, there is a necessity to understand the risk and its importance in the insurances procured and available in India.

#### **RESEARCH PROBLEM**

BURNISHED LAW JOURNAL

In the era of the evolution where technologies are getting updated every day whether the government policy of compulsory insurances is also updating. The difference between the existing and required policies and laws are inadequate. There is a need for more stringent rules to tackle the loopholes and hence, there exist the lack of updating the policies that lead to stagnant disputes. Thus, this is the main area of concern, which is dealt with and why there exists a need for such development.

#### **RATIONALE OF STUDY**

Risk cannot be forecast and controlled every time, some situations cause damage and it cannot be controlled but some part of such risk can be indemnified and for the same the government have to make it mandatory to deal with the damage.

#### **SCOPE OF THE STUDY**

To understand the nature of the risk that are covered under the purview of compulsory insurance and what all risks that are emerging in the developing arena which is not comprehended but requires legislation for providing social security.

#### **OBJECTIVE OF THE STUDY**

To understand the importance of compulsory insurance and to deal with the situations where there is no compulsory insurance present wherein it should have been present.

## REVIEW OF LITERATURE

An unexpected event such as a death, disability, or other personal loss, is certainly not something for which you can easily plan. Yet, the financial ramifications can be staggering not only to you, but to your family, as well. Therefore, it is important to create a risk management plan as part of your overall financial strategy.

Insurance, in all its varied forms, is simply a method for managing risk. In order to plan an effective insurance program, consider what risks you and your family are exposed to and how financial loss would affect you. For each risk exposure, the key elements to consider are the severity and possibility of loss.

**Crouhy Michel, Galai Dan, Mark Robert, “Risk capital attribution and risk-adjusted performance measurement”, Vol .1, 2005.**

The article highlights the purpose of risk capital and discusses the way in which risk capital can be attributed to business lines as part of risk adjusted performances measurement system.

**Damodaran Aswath, “A strategic risk taking, a framework for risk management” Pearson Education, Inc, 2008.**

The book deals with both risk hedging at the one end of the spectrum and strategic risk taking on the other. The book helps in understanding the separation between good risks and bad risks and explains the procedure to utilize the former while protecting the latter scenario of it. This books deal with the kind of insurances and the benefits or loss attached to it. The book gives a broader aspect of understanding risk and its management.

**IEdu Note, “Risk and management: definition, types” <https://iedunote.com/risk-managment> accessed on 25/09/2019**

The article gives a clear definition of risks in insurance .The link differentiates between risk and chance, explains probability and uncertainty. The author explains the types of risks which are objective risk and subjective risk.

**Ismail Mahmoud, “The concept of the Risk in the Insurance contract”, 2019, [http://www.researchgate.net/publication/334625244\\_The\\_Concept\\_of\\_Risk\\_in\\_the\\_Risk\\_Insurance\\_Contract](http://www.researchgate.net/publication/334625244_The_Concept_of_Risk_in_the_Risk_Insurance_Contract) accessed on 30/09/2019**

The article deals with the fact that the insurance against the risk is the basis of the insurance contact. The article focuses on the risk in the insurance contract bearing the financial burden necessitated by the event. The article consists of tables and judgments for insurance breach and liability.

**Bodle Singh Bhag, “Financial risk management in India - evidence from literature review”, Vol.1-, No.1 January, 2013, pp. 7-15**

The article focuses on the financial approach toward risk management involved in insurance sector. It puts light on globalization and internationalization of world market. Financial risk management is a process to deal with the uncertainties resulting from financial markets. It involves assessing the financial risks facing an organization and developing management strategies consistent with internal priorities and policies. The article emphasizes on financial safeguards of risk and other legal aspects related to it.

### **RESEARCH QUESTIONS**

1. Whether compulsory insurance have effect on people working under hazardous places?
2. Does the modern adaptations of compulsory insurance dealing with the safety?
3. Is there a need for new effective strategies for increasing safety to the individuals under the liability of others?

### **HYPOTHESIS**

The existing framework for compulsory insurance is not sufficient to address the societal needs and further there is a need of more compulsory laws in the society.

### **RESEARCH METHODOLOGY**

Research was primarily based upon descriptive, doctrinal and analytical as well as secondary methods were used for doing this seminar paper.

### **TENTATIVE CHAPTER**

Chapter 1- Synopsis

Chapter 2 - Compulsory Insurance

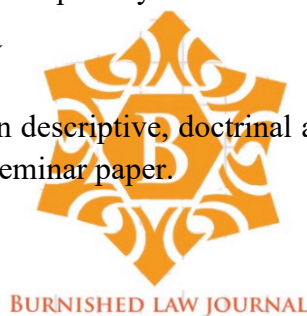
Chapter 3 - Third party or Compulsory Insurance of Motor Vehicle

Chapter 4 - Public Liability Insurance

Chapter 5 - Bhopal Gas Tragedy

Chapter 6 - Requisite In Compulsory Insurances

Chapter 7 - Conclusion



BURNISHED LAW JOURNAL

## CHAPTER 2

### COMPULSORY INSURANCE

An insurance contract is a contract under which the insurer undertakes to protect the insured from a specific loss if it occurs. The insured is the person who is afraid of certain loss or damage which is called the “**risk of loss**” and the insurer undertakes to indemnify the insured from that apprehended loss if it occurs for a consideration called the “**premium**”, which insured has to pay. A person may take out risk of loss caused by loss of life, that is death, or from any injury to his body, loss of property which may not be related to the act done by person himself but on the involvement of the others. Government in such cases for the social welfare legislation to protect the interest of the party suffering the loss on the negligence caused by the second party, in such cases government act as a insurer party to indemnify the loss suffered by the third party, caused by second party (the insured party), such contract in law are termed to be Compulsory Insurance contract.

A Compulsory Insurance contract is a contract in which government enters into a contract with the second party where government act as a insurer and the second party is the insured party, to indemnify the third party which is suffering the loss/damage caused due to the negligence performed by the second party (the insured party). A compulsory insurance is any such type of insurance an individual or businesses is legally required to buy. Compulsory insurances are mandatory for businesses and individuals which want to engage in certain financially risky activities, this activity may include operating an automobile or operating a business with employees. A compulsory insurance is supposed to protect the accident victims against the cost of recovering from an accident that is caused by someone else, such as another driver or an employer.

In India the most commonly known compulsory insurance is the third-party motor insurances and the public liability insurances. The third-party motor insurance contract is the insurance contract in which government act as the insurer along with the insurance companies to indemnify the third-party getting loss suffered due to the negligence act of the second party which is the insured party. The other compulsory insurance is the public liability insurance, in this insurance contract under Public Liability Act 1991, with consonance with the spirit of principle 13 of the Rio declaration<sup>1</sup>, to provide immediate relief to person affected by the

---

<sup>1</sup> Principle 13 of the UN declaration on Environment and Development proclaims that state shall develop national laws regarding liability and compensation for the victims of pollution and other environment damage.

accident occurring while handling any hazardous substance or matter connected therewith or incidental thereto.

The basic principle of the compulsory insurance or the mandatory insurance is to safeguard the person suffering loss due to the fault performed by the someone else. Government is the head of the state and is responsible for allowing the motor vehicles or any kind of business that may lead to damage to their employed workers, the damage may be to their body or on property. The government act as insurer in these insurances because there can be situation where the loss occurred to the third party or the worker in some factory is unaffordable for both the party that is second and as well as third party, so to indemnify occurred loss government takes the responsibility as the head of the domain to indemnify the loss suffered. If Mr. X meet with accident with Shahrukh khan where the fault completely lies with Mr. X and Mr. X is a small-scale businessman, there is no chance that he can indemnify the loss suffered to Shahrukh khan due to that accident.

### NATURE OF COMPULSORY INSURANCE

1. Compulsory insurances are the mandatory insurances under the statutes. The provisions of such insurances cannot be overridden by any clause in the insurance policy.
2. Compulsory insurances do not cover injuries to the insured himself but to the rest of the world who may get injured by the insured.
3. Beneficiary of the compulsory insurance is the injured person; the insured person is only the nominally beneficiary of the policy.
4. Compulsory insurances are the liability-based insurances. In this type of insurances when the event insured against happens, the insured would be exposed to some liability to third parties.
5. Government being the head of domain acts as the insurer along with the insurance agencies.
6. Compulsory insurances protect the social welfare legislation by indemnifying the loss.
7. To safeguard the third party from damage and loss on fault of the second party.
8. Compulsory insurances on one hand also safeguard the insured from the risks of liability imposed by the claims of the damaged person or the third party. If a person has a valid insurance than the liability imposed will be covered by the insurance agencies and not the insured person.

## **CHAPTER 3**

### **THIRD PARTY OR COMPULSORY INSURANCE OF MOTOR VEHICLES**

In terms of law of torts if a person drives his vehicle negligently and that causes injury or death to a third party, then the party whose negligence caused the damage is liable to the third party. The driver is a servant of the owner of the vehicle and the actual delinquent, the driver is often a person of no means and so common law recognized vicarious liability of the owner of the motor car. The master is liable for the tortious acts of the servant provided that the servant does such act in the course of his employment. In *Pushpabai sudershin v. Ranjit G and P co*<sup>2</sup>, it was held that the determining factors so far as the liability of the master for the act of his servant is concerned in whether the act was committed by the driver 'in the course of employment' or not that it does not depend on lawful or unlawful nature of his master or in violation of the rules framed under the statute. In *Imperial Chemical Industries v. Shotwell*, "the doctrine of vicarious liability has not grown from any very clear logical or legal principle, but from social convenience and rough justice"<sup>3</sup>.

A third-party insurance is a policy under which the insurance company agrees to indemnify the injured party which is the third party on behalf of the second party which is the insured party on his negligence. In India under the provisions of the motor vehicle act 1988, it is mandatory that every vehicle should have a valid insurance to drive on the road. Any vehicle used for social, domestic and pleasure and for the insurer's business motor purpose should be insured.

A third part insurance is an insurance policy purchased for the protection against the actions of the third party. This insurance is purchased to indemnify the third-party claims of damage that has been occurred. The owner of the motor vehicle is legally bound and is liable for any injury or damage to third party life or property caused by or arising out of the vehicle use in a public place.

#### **3.1 Ingredients of motor vehicle insurance**

- 1. Person governed-** It applies to all persons. It includes any company or association or body of individuals, whether incorporated or not. The duty imposed under the section is absolute and the only person exempted is the passengers.
- 2. He shall not use or allow any other person to use a motor vehicle** – under section 125 of the motor vehicle act it is clearly stated that no person should use the motor

---

<sup>2</sup> AIR 1977 SC 1735

<sup>3</sup> [1964] 2 All ER 999(HL)



vehicle of any other person and also shall not allow any other person to use or operate his/her vehicle. This is because the liability to indemnify lies upon the owner of the car.

3. **The vehicle must be a motor vehicle-** The act defines a motor vehicle as any mechanically propelled vehicle adopted for to be used upon roads whether the power or propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of special type adopted for use only in a factory or in any other enclosed premises<sup>4</sup>. The insurance only covers the damages caused by the motor vehicle that are explained under section 2(18) of Motor Vehicle Act.
4. **The use must be in public place –** Public place has been defining as a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage<sup>5</sup>. The Indian definition includes a bus-stand, a taxi-stand, and any place of such kind, whether they are private or public sites. It is the users that makes it a public place.
5. **A policy of insurance should be in force –** There must be a policy of insurance. Whether the policy was in force was not whether the insurance company considered itself on risk, but whether the insurance company was in law liable to indemnify the user if damage and injury has resulted from the vehicle at a time when no side car was permanently attached<sup>6</sup>. The insurance company is only bound to indemnify the loss if the operator or the owner of the motor vehicle has a valid insurance policy for the motor vehicle.

A third-party insurance is a protection policy in the interest of the third party who becomes the victim of accident and faces injuries caused by the fault of the insured. The compulsory nature of the third party is justifiable as it makes recovery of money easy for the injured from the insured party. The strongest point of the third-party insurance is that the defendant or the wrongdoer cannot be exempted on the ground that he/she has gone insolvent, the insurance policy clearly points that if a person owns a vehicle then he/she is liable to pay the injured directly or through insurance company.

Motor vehicles are ease to lifestyle, making life easy and comfortable but at the same time it also puts the life in danger of the person sitting inside and the person outside. Government allows the permission of ownership of motor vehicle but at the same time also applies an absolute liability to any damaged lead by that motor vehicle to any person or property. The compulsory third party insurance is a mandatory insurance in India as it safeguards the social welfare by government itself acting as an insurer to the insured in case where the insured will

---

<sup>4</sup> Motor vehicle act 1939, Section 2(18)

<sup>5</sup> Motor Vehicle Act 1939, section 2(24)

<sup>6</sup> *Carnill v. Roseland* [1953] 1 QBD 486

not be able to indemnify the loss suffered by the injured-on behalf of the negligence done by the insured. The Motor Vehicle Act makes third party insurance mandatory under section 146 of the Act, the nature of this insurance contains protection of third-party interest and safeguarding the society from the negligence of other party. In cases when the insured has no capital to indemnify the loss suffered the active insurance safeguards the insured interest also because it becomes the duty of the insurance company to pay the expenses of the loss suffered by the victim of the accident. Therefore, the third-party insurance secures both the side but the most important sharp end of the act is that it protects the victim first which makes it mandatory to buy such insurances.



## **CHAPTER 4**

### **PUBLIC LIABILITY INSURANCE**

‘Public Liability’ here does not imply the liability of the state or its agencies but means liability imposed by law as opposed to self-imposed liability as in contract. The Public Liability Insurance Act 1991, is intended to provide immediate relief to the person affected by accidents occurring while handling any hazardous substance and for matter therewith and incidental thereto. In the era of development, with the growth of hazardous industries, risks from accidents processes and operations, not only the persons employed in such undertaking but also to the public who can also be in vicinity. The people who get affected by accidents in hazardous installations are often from economically weaker sections of the society and thus suffers great hardships because of delay in reliefs and compensation for such accidents. The workers and employees of hazardous installations are thereto protected under certain laws but the members of the public are not assured of any relief except the legal long process. Therefore to ameliorate the sufferings of members of the public due to accidents which take place in the hazardous setups, it was considered to be essential to provide for Mandatory Public Liability Insurance. Public Liability Insurance covers the individual or the company in the event of an accident that takes place on their premises. Such insurances apart from safeguarding the interest of the victim of the accident it also provide cover and enable the industry or individual to discharge its liability to settle large claims arising out of a major accident. The major reason for enforcement of the Public Liability Act is the **BHOPAL GAS TRAGEDY**<sup>7</sup>, where due to leak of harmful gas thousands of person around the area of the industry died and also causing thousands of diseased person till date. The absolute liability was struck down and strict liability was introduced so that any such accident if takes place in future the industry should be held strictly liable.

The Act was made compulsory as the basic of the act is not to provide benefit to the person himself, such insurances providing personal benefits are explained under personal insurances but insurances where there is a loss suffered by the third party due to the negligence on the ground of the insured party makes the insurance a liability insurance and to protect the interest of the third party such insurances are covered under compulsory insurances. The Workmen Compensation Act is also a compulsory insurance under Public Liability Insurance Act.

### **WORKMEN COMPENSATION ACT 1923**

---

<sup>7</sup> 1990 AIR 273, 1989 SCC (2) 540

This enactment was issued by the trial court and then after was adopted by various state governments. This Act provides social security under the law to the workers who work. The Act was introduced after it was noted that the workers are getting more exposed to the danger with the use of advanced and sophisticated machinery. Under section 35 of the Workmen Compensation Act 1923, it implies that it is mandatory to indemnify the worker with the loss suffered in the work premises. This Act sets regulations for the company and industries which appoints workmen in their premises for work to compulsorily take insurance for the compensation of the workmen in cases if there is any accident. There are special inspector post officials appointed to keep check on the industries compensation insurances. This is necessary because workers usually belong to the weaker section of the society and are not rich enough to go through the long legal process for the compensation. The workers work in hazardous and dull places to earn their basic living and if they meet with any accident which causes injury or death to workers the industry owner is responsible and is liable to pay the compensation. To safeguard the interest of the worker the Workmen Compensation Act was enacted to provide immediate compensation to the workers. The Act includes compensation for death or injury<sup>8</sup> of the worker at the work premises during the course of employment. Here the insurance is not bought by the worker themselves but the owner buy the insurance from the state government (state workmen insurance), the insurance is done to protect the workers from the accidents that could take place in that hazardous place. The policy is made to protect the workers who faces the danger on behalf of their employee's who earn the profits on the work done by the workers, government looked into the matter and stated that any industry indulging in workmen appointment should buy the insurance for the workers to protect them from risks of future.



BURNISHED LAW JOURNAL

---

<sup>8</sup> Sec 2( e), "injury" includes permanent total or permanent partial disability or sickness out of an accident.

## **CHAPTER 5**

### **BHOPAL GAS TRAGEDY**

#### **Background**

The Bhopal gas tragedy is till date, the world's worst industrial disaster. It occurred on December of 1984 at Bhopal in Madhya Pradesh. The catastrophe was a result of the leak of the methyl isocyanate (MIC) gas from the Union Carbide India Ltd (UCIL) plant which manufactured pesticides. On the night of December 2<sup>nd</sup> and 3<sup>rd</sup> of 1984, there was a leak of the MIC gas which is considered to be the most toxic chemical in industrial use. All around the city of Bhopal, people were exposed to this gas and the immediate effects of inhaling the gas were coughing, vomiting, severe eye irritation and a feeling of suffocation causing trample across. Thousands of people died immediately and lakh of people sustained permanent injuries due to the negligent act of the corporation.

#### **Aftermath: The Legal Panacea**

In the February of 1985, the Indian government filed a case in the U.S Court for a claim of \$3.3 billion against the Union Carbide Corporation<sup>9</sup>. But by 1969 all of these litigation in the U.S District were transferred to India of the grounds of forum non convenience<sup>10</sup>. It means that the case should be transferred to a more convenient forum so that the trial proceeds accordingly. Meanwhile in March 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Act was passed which empowered the central government to become the sole representative of all the victims in all kinds of litigation so that interests of the victims of this catastrophe are fully protected and the claims for compensation are pursued speedily. Later, in the year 1987, cases were filed in the Bhopal District Court which ordered the Union Carbide Corporation to pay 350 crore as interim compensation. But the interim order could not be decreed and therefore the UCC refused to pay the amount. Later on, at the High Court, this interim compensation was reduced to 250 crore. Both the Union of India and the UCC preferred appeals by special leave against the High Court's order. But a major twist to these legal proceedings came through the settlement order which was stroked out between the Indian Government and the Union Carbide in an out of Court settlement in February 1989.

Through this deal the liability of the Union Carbide was fixed at \$470 million in full and final settlements of all claims, rights, and liabilities arising out of the disaster. The terms of the

---

<sup>9</sup> Legal India, "Legal Aspects of the Bhopal Gas Tragedy", 2019

<sup>10</sup> Upendra Baxi and Thomas Paul, "Mass Disasters and Multinational Liability: The Bhopal Case".

settlement were such that its limited liability under all future claims as well, whether they were civil or criminal. This would mean that henceforth, all kinds of liability arising out of the disaster could be fixed only upon the Government of India and Union Carbide would be held liable to the extent of \$470 million.

### **Legal Issues: Entangled with Bhopal Gas Tragedy**

One of the main issues which the Bhopal Gas tragedy raises is the issue of absolute liability. This issue is intertwined and elaborately discussed in the case of *M.C Mehta v Union of India*<sup>11</sup>. The principle of absolute liability states that when an enterprise is engaged in hazardous or inherently dangerous industry and if any harm results in account of such activity then the enterprise is absolutely liable to compensate for such harm and that it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Therefore, the principles of absolute liability and liability can be fixed even if there is no negligence on the part of the accused. In the case of absolute liability, even the defence available under strict liability would not apply. Thus, even if the accident is some freak incident, liability would still be fixed. Even if the company had taken extreme precautions to avoid and ensure that such events do not take place, responsibility onto the corporation would still be imposed.

The principle of absolute liability evolved primarily because of the awakening of the Bhopal Gas Disaster and the Oleum Gas Leak case in India. The advent was also responsible for the passing of the Public Liability Insurance Act, 1991<sup>12</sup> for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. Furthermore, this act was brought into existence after the Bhopal accident, to provide liability insurance to the public at large in case of any environmental disasters which were to take place in the future<sup>13</sup>.

The apex court had failed to properly elucidate upon such catastrophe events in the late 1990s, the assumption to the contemplation of the risk has always been entangled to the individuals working in conditions whereby there could be a threat to life emanating in their course of employment. Thus, the introduction of compulsory insurance is to mandate and consolidate risk which would compensate individuals in case of death and subsequently, control the degree of risk.

---

<sup>11</sup> AIR 965,1986 SCR (1) 312

<sup>12</sup> Public Liability Insurance Act, 1991[ Act No. 6 of 1991]

<sup>13</sup> "Bhopal gas tragedy case study - Development of Absolute Liability", 2019

## CHAPTER 6

### **REQUISITE IN COMPULSORY INSURANCES**

The scope of compulsory insurance is to present social welfare to both the insured party and also the third party which is suffering the loss on the insouciance of the insured party. The insurance contract is entered to indemnify the third party for the loss suffered in circumstances where the insured party accidentally injures the other party who is a random person, the insurance company indemnify on behalf of the insured party to protect the third party to get the compensation at the earliest without being queued up in the long legal line. There are two compulsory insurances India, the first one is the motor vehicle insurance and the second is the public liability act. Both the Act can be named as third party insurance because the scope of both the Act is to provide justice to the third-party suffering loss due to the act of second party. The Act are solid in their nature but as the world is changing there should be establishment of more such compulsory insurances in Indian legal system.

BURNISHED LAW JOURNAL

**Firearms Insurance :** Having a firearm for security of a person is allowed in India but there is danger attached with the fact that firearms are not a toy to play with and can cause grievous injuries. Just as in the case of a motor vehicle the government allows the ownership of firearms, having a firearm is not wrong but its usage can result in injury to the third party. Just imagine a person having the license for a pistol carries the same in a family function where he gets drunk and accidentally fires his pistol in air but that bullet hit one of the caterers in the party, he dies on spot. The person will be charged under Indian penal code for murder but that will be a time-consuming process and the compensation will reach the family after long duration of time. Government being the head of the state and allowing such licenses of instruments that are dangerous to third party if any negligence is performed also comes in the ambit of the compulsory insurance. There should be mandatory insurance attached to the buying of any firearm in India. Just as in the case of motor vehicle there should be a active insurance for the firearm ownership.

A 25 years old dancer was shot dead in a ‘celebratory firing’ in the town of Punjab, the state police charged the penal case against the accused but the dancer who got shot was given the compensation that she deserved<sup>14</sup>. There are many more such cases where there are negligence

---

<sup>14</sup> Maur Mandi dancer shot down case, 3<sup>rd</sup> December (2016) Bhatinda, Punjab

on the part of the owners of firearm causing injury to third party. The government should make a policy of compulsory insurance on licensing go firearms and that should be a strict liability and punishment for not carrying one. Mandating firearms insurance will be a hugely a powerful gun control play<sup>15</sup>. The defendant owes a duty to the injured person as the injury happened due to negligence of the defendant.

**Insurances for unsound mind person :** Under the constitution of India Article 41 gives specific right to person who are of unsound mind<sup>16</sup>. A person with unsound mind is considered to be incompetent to go to trial. The Indian Penal Code, 1860 provides scheme protection for persons with insanity. Section 84 provide “Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law”. The Indian legal system safeguards the person with the disorder of the mind or unsoundness of any individual but the protection is incomplete as that person is not only who can be harmed due to his unsoundness there are other people the random people who also has equal chances of getting damage on behalf of the unsound person. The government should make a policy of insurances for people diagnosed with unsound mind and that insurance should be of mandatory nature so that if there is any damage caused on behalf of the person who is unsound mind he be incompetent to go to trail but at least the person who suffers the damage could claim his/her compensation. The insurance contract should be between the insurance company and the relative or the guardian of the unsound person. Just imagine a situation where a person who is of unsound mind runs towards the road, there is an oil truck passing by the road which distracted due to the person’s sudden movement on the road and rolled over causing damage to 10 persons. Who is responsible in this case as the person with unsound mind cannot go under trail?

There may not be trail but a strict liability should be imposed for such cases and there should be given the compensation to the person suffering the loss on behalf of the negligence done by the unsound person also as everyone is equal before the law.

**PET INSURANCE :** In a order stated by Haryana High Court it was made a history by declaring that all animals are ‘living person’, stating that animals can not be treated as “objects” and “property”. India is a country of religion and culture where animals are connected to the Gods in a way or the other. Animals are living thing but are mute and cannot be understood, this makes them to fall in the list of compulsory insurance because a animal can harm the society in many ways. It can cause injury to persons and also damage property of the others. Indian society is adopting the pet policy at a increased rate and having a pet has become more of status symbol in the society which was earlier a hobby. Pets like ferocious dogs, bears, snakes, and others are fun to keep but that brings the concept of risk in the picture that will

---

<sup>15</sup> Why mandatory firearms could be a hugely powerful gun control play – Garson Robert

<sup>16</sup> Unsound mind is a term that denotes lunacy and insanity.



happen if a ferocious dog does not keep its cool and attack the outsiders resulting in multiple injuries. Who is responsible for the loss and damage that will be caused? In General Liability in Tort give a explanation to this it says that the owner or the keeper of an animal becomes liable under the general principle of Tort law. But the question than arises is that what if the person who keep the dog is from a weaker section and the person who was bitten by the dog is a big businessman who will not be able to go to work for two weeks costing him a big fortune loss, the owner of the pet will never be able to compensate the amount so does that mean that owner is free from the liability of the loss occurred?

The ingredients of the compulsory insurance are that there should be a loss suffered by the third party who was not involved in the process but got damage on behalf of the insured party (second party) which will get indemnified by the insurance agencies. To avoid the incompetency of the second party in indemnifying the third-party loss such insurances are made compulsory insurances. In the Indian insurances for pets the picture is the personal insurance in which the insurance company insures the dog for its expenditures but not for the loss or damage it does to another person. Just as in the case of Motor vehicle Insurance where the government in allowing the persons to drive a motor vehicle on road which can cause injuries to other person or property, the same case can be related to the pet insurance because here also the government is allowing persons to pet the animals for their entertainment and purposes which can cause harm and injuries to other person or property. Imagine a situation where dogs are pet only to scare people from entering the houses, if any person tries to enter that dog will not let that happen and will hurt that person. The government should make it a mandatory insurance for the persons who are interested in the process of taming pets should buy so that the damage should be compensated immediately without going through any legal trail. Animals can be beast, brute, invertebrate and can cause grievous injuries to any person of the society.

BURNISHED LAW JOURNAL

In Haryana district Panipat, a Rottweiler case was captured in video where the dog ate the body of the caretaker who was a employer of the employee who owned the dog. The concept of Public Liability is also questioned in the picture, as the employer being from the weaker section does not mean will become food for the dog. Keeping a pet is not a illegal act but there should be implementation of compulsory insurance which is the third party insurance, so in case if the pet is causing any injury or damage to the third party or the property of the third party the required compensation should be achieved without knocking the doors of the legal courts.

## CHAPTER 7

### CONCLUSION

Risk is a unforeseen calamity which can neither be predicted nor can be stopped but can be expected. Risk causes damages and losses to the person, property, society and economy in whatever way that risk connects to any of this entity. Loss suffering is uncontrollable but the effect can be minimized through the policies of insurances. Insurances plays vital role by indemnifying the maximum of the loss that has been suffered. The risk is unpredictable but in certain areas the risk can be predicted for example in the case of workmen conditions, where the workers are working under hazardous conditions may it be dangerous gas installation or it be heavy machinery installation. Risks in such situation can be predicted to some extent and for the same the government after the Bhopal gas Tragedy has made it compulsory for such situation to have compulsory insurances for the third-party protection who can get the damage. The compulsory insurance is not only for the person who opt for the insurances but is for the whole society that whosoever gets affected by the work of the insured will be compensated for the loss he/she suffers. The current legal statutes for compulsory insurances are strict enough may it be the Third-party motor insurance or the Public Liability insurance, both are regulated and changed with time to time. But the research of the paper deals with the shortage of the policies in the legal system, insurances that are present in the society but their implementation should me compulsory and not on optional basis, insurances which has the same nature of resulting in the loss of the third party on the negligence or whatever act of the second or the insured party should have a valid compulsory insurance so that the third party can easily get the compensation for the loss and for the same that person do not have to go to the legal courts.

## BIBLIOGRAPHY

### Legality:

Employees' State Insurance Act, 1948

The Motor Vehicles Act, 1988

Workmen Compensation Act, 1923 (ACT 22 OF 1984)

Public Liability Insurance Act, 1991 (22<sup>nd</sup> JANUARY 1991)

### Articles:

Crouhy M. et al, "Risk capital attribution and risk-adjusted performance measurement", Vol .1, 2005

<[https://www.google.com/amp/s/www.researchgate.net/publication/292181471\\_Risk\\_Capital\\_and\\_Risk\\_Adjustment\\_Performance\\_Measurement/amp](https://www.google.com/amp/s/www.researchgate.net/publication/292181471_Risk_Capital_and_Risk_Adjustment_Performance_Measurement/amp)> accessed on 30/09/19.

Damodaran A, "A strategic risk taking", a framework for risk management, Pearson Education, Inc, 2008. <http://www.google.com/search?q=damodran+A+on+strat&aqs=chrome.2.69i57j013.13583j0j4&client=ms-android-motorola&sourcedid=chrome-mobile&ie=UTF-8> accessed on 30/09/19

Bodla S, "Financial risk management in India –evidence from literature review", Vol.1-, No.1 January, 2013, pp. 7-15.

Damodaran A, "A framework for risk management", 2010  
<http://www.google.com/search?q=damodran+A+on+strat&aqs=chrome.2.69i57j013.13583j0j4&client=ms-android-motorola&sourcedid=chrome-mobile&ie=UTF-8> accessed on 30/09/19

iEduNote, "Risk and management: definition, types" <https://iedunote.com/risk-managment> accessed on 25/09/2019

Ismail M "The concept of the Risk in the Insurance contract"  
[http://www.researchgate.net/publication/334625244\\_The\\_Concept\\_of\\_Risk\\_in\\_the\\_Risk\\_Insurance\\_Contract](http://www.researchgate.net/publication/334625244_The_Concept_of_Risk_in_the_Risk_Insurance_Contract) accessed on 30/09/2019

### Books:

Insurance law by Gaurav Varshaney.

Modern Law of Insurance in India by Dr. K V S Sarma



BURNISHED LAW JOURNAL