MONEYLIFE FOUNDATION
THE RIGHT THING TO DO

Presents

PUBLIC LIABILITY INSURANCE IN INDIA

A Report Prepared by

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Introduction

In most developed nations, accidents or injury in public places such as a bank, cinema, mall or a restaurant creates a liability on the part of the establishment, which is usually covered by a public liability or general liability insurance. The idea of public accountability and fair compensation for accidents have not come about overnight. Since this is covered by the Law of Torts, a series of lawsuits resulting in punitive damages have helped the victims and governments have chipped in by making it mandatory in some countries.

In India, the public liability act itself came into being in 1991, after the horrific Bhopal gas tragedy of 1984. But it is mandatory only for those dealing with hazardous substances and the claims process remains tortuous. General liability cover is also availed by all large organizations, especially those that have international operations or client. Here again, there is no mechanism to ensure that it reaches actual victims.

At Moneylife Foundation, we discovered this through the experience of one of our members, a retired government officer, who was badly injured when a ladder that was used to access security lockers in Indian's largest public sector bank broke. Bank officials would not even call an ambulance until he agreed to pay for it. All appeal to compensate him for expensive hospitalization fell on deaf years. Ironically, the Reserve Bank of India's (RBI) Banking Ombudsman also rejected his complaint. We further discovered the bank has a proper general liability cover, which ought to have been used to compensate victims, like in the case above. But there is no mechanism, compulsion or public pressure to do so.

Soon, we realized that this is also the plight of victims of accidents or fires caused by faulty equipment or improper maintenance at all public places such as restaurants, cinemas, malls, theatres or roads. We embarked on this study, on the realisation that the public liability Act is also inadequate and functionally inoperative. Conflicts between the working of the National Green Tribunal and insurance policies have further rendered liability insurance ineffective.

All this required deeper examination and a study before we could push for change. Moneylife Foundation has been fortunate to work with insurance industry stalwarts who were able to explain the lacuna and guide us on the way forward. We were introduced to Ms Uttara Vaid,

a well know liability expert who was gracious enough to undertake the study through her firm Uttara Vaid Advisory LLP and her team comprising Ms Soumya Shukla and Ms Prachi Vaid.

Since Moneylife Foundation is a not-for-profit organisation, the research was made possible with the support of Softcell Technologies Global Pvt. Ltd. under its Corporate Social Responsibility (CSR) initiative.

The completed report is a 360-degree perspective on the laws that govern public liability insurance in India, and how it has functioned - both for massive public tragedies such as Bhopal Gas (which led to the enactment of the Public Liability Insurance Act) and the subsequent evolution of commercial liability products in line with contractual mandates of global commercial organistaions.

The report provides a detailed commentary on public liability insurance for commonplace public premises, and covers the rules and regulations that define it in India, while also examining similar legislation in other countries. Drawing on the perspective of multiple stakeholders, it also looks at the types of public liability insurance presently available in India and the causes for their low penetration.

Valuable contributions to the report were made by industry veterans who graciously participated in the preliminary discussions and also provided suggestions to improve the efficacy and awareness of public liability insurance in India.

We request readers to help us spread awareness about the sad state of liability insurance in India and to help us work for an effective Act that protects ordinary people.

Sucheta Dalal & Debashis Basu
Founder Trustees
Moneylife Foundation

About Moneylife Foundation

Moneylife Foundation, launched on 6 February 2010, is a non-profit organisation registered with the charity commissioner of Mumbai. The Foundation is engaged in spreading financial literacy, consumer awareness and advocacy for safe and fair market practices. To this end, it organises workshops, round table meetings and awareness campaigns for grievance redressal. It undertakes research and publishes white papers. It also has regular counselling sessions on consumer protection and files petitions on public interest cases. It is one of the fastest-growing and foremost NGOs for consumers and investors. Recognising its contribution it was awarded the 10th MR Pai Memorial Award in September 2014 for outstanding work.

The Foundation's mission is to make savers & investors financially aware, empower consumers to fight for their rights and enable citizens to think and act responsibly. It represents the voice of those of us who work hard, earn and save but do not have a say in the decisions that affect us. The Foundation's specific objectives are:

• To create interest in financial markets and enhance financial literacy.

• To protect investors and consumers of insurance, banking and other financial services through information, counselling and grievance redressal.

• To hold regular workshops and expert talks on financial issues.

• To provide a forum of networking among organisations involved in similar work and also support voluntary organisations working in this area.

• To collaborate with /assist/support organisations/ NGOs/ civil society groups that engage in public intervention to create a just, fair and a corruption-free society.

• To educate the public about their legal rights in areas of investor protection and financial products and services.

• To help prevent corruption and malpractices at all levels of the financial markets.

• To undertake qualitative and quantitative research and analysis in areas of finance, economics, politics, public policies, environment, business and all other allied fields.

• To provide a forum for committed volunteers and experts to involve themselves in a meaningful way for improvement in financial literacy and consumer protection.

To create and promote enlightened public opinion on various issues affecting citizens, investors and consumers.

• To encourage, support and assist research and studies in financial, economic, social and related areas that affect individuals.

• To litigate and take any other lawful measures to safeguard the rights and interests of the investors and consumers.

Moneylife Foundation's work encompasses the following areas:

1. **Awareness Sessions:** Spreading financial literacy and awareness about the rights of consumers and citizens through workshops, lectures, articles and awareness campaigns. Sessions have been conducted on banking, Aadhaar, real estate, consumer awareness, right to information, food & health, senior citizens' issues, taxation and documentation, and many others.

2. **Daily Counselling Sessions:** As direct solutions to the problems that savers, consumers and citizens face, guidance is provided to them through one-on-one counselling.

3. **Helplines:** The Foundation runs two free helplines with the help of our voluntary advisers and experts. The Legal Helpline offers guidance on a vast variety of legal issues and real estate matters, especially those pertaining to cooperative housing societies. The Credit Helpline guides people in financial distress on dealing with loan defaults, credit scores and so on.

4. **RTI Centre:** A Right to Information Centre was launched in September 2017 to create awareness on the Right to Information Act. With the RTI Centre, the Foundation undertakes various activities with the aim to promote transparency through the RTI Act. A smartphone app – 'RTI Advice', has also been designed and published to assist users with their RTI applications, with advice from experts who are former information commissioners or activists.

5. **Research Projects:** A focus area f for the Foundation has been to influence policy changes through in-depth research and recommendations, specific issues that affect a large number of people. Research studies have been undertaken and their recommendations have been published for the benefit of a large section of people whose voice does not reach the policy-makers. The Foundation has published research reports on "Retirement Homes in India", on "Reverse Mortgage Loans in India", on "Efficacy of RERA from a Consumer's Perspective", on "Rental Housing in India", on "A Review of Insider Trading Cases", on "An Analysis of the Orders Passed By SEBI and SAT, and Their Impact on Investor Confidence".

6. **Representations:** The Foundation does advocacy for safe and fair market practices through workshops, round table meetings, research and presenting memorandums to regulators and policy-makers.

7. **Legal Action:** At times, the Foundation has also filed public interest litigations (PILs) on matters that have affected our members and has taken up the issues with the Supreme Court. Recent PILs have been on LIC's Jeevan Saral and egregious bank charges that consumers are paying.

Although among the smallest, Moneylife is the only media company to have undertaken such a non-profit initiative.

Board of Trustees: TS Krishnamurthy (former Chief Election Commissioner of India); Walter Vieira (a well-known management consultant); Sucheta Dalal (Journalist and Padma Shri awardee); and Debashis Basu (Journalist and author).

Foreword

This report is the brainchild of Ms Sucheta Dalal who happened to be privy to the suffering of ordinary citizens who had suffered from grievous injuries in Public Premises such as Banks, Restaurants and the cavalier attitude meted out to these unfortunate victims by the same business enterprises who coveted their patronage. This led her (after much knocking on the right doors at the very top echelons of the companies and their Regulators) to not only get compensation for such aggrieved citizens but also on a quest of whether such insurance is available and whether this has been bought by such businesses.

On a reference from mutual friends, she contacted Uttara Vaid of Uttara Vaid Advisory Services LLP (hereinafter called UVA LLP) who revealed that indeed such insurances were available and though you could always wish for deeper penetration of Public Liability Insurance, India had no dearth of specialist liability insurers or products. This piqued her interest and she commissioned UVA LLP to author a report providing a 360^0 view on Public Liability Insurance in India. What started out as a commentary on Public Liability Insurance for ubiquitous public premises, soon developed into an assignment that would delve deep into:

- The law in India, both statutory enactments and through important judgements - indeed no report on Public Liability insurance can be complete without a necessary background commentary on legal principles and practice governing such insurance.
- A limited view on global benchmarking of similar legislations in other countries and jurisdictions,
- The types of public liability insurances available in India,
- Causes of their low penetration,
- What are the systemic legal and insurance changes needed so that both victims and Insureds (Buyers of such insurance) derive the maximum efficacy from such insurance?

It has been the endeavour of the authors to not only shed light on the Public Liability Insurance but also make insightful, relevant and practical recommendations to give the desired fillip to the practice thereof in India. We trust that this report achieves its stated objectives, and no doubt will invite more comment and discussion from its readers. The

authors would welcome such an opportunity to deliberate further and revise it, if need be, to incorporate any new thoughts, new dimensions which may be necessitated through intense brainstorming and discussions.

Acknowledgements

The research project was made possible with the support of Softcell Technologies Global Pvt. Ltd. under the Corporate Social Responsibility (CSR) initiative. Uttara Vaid Advisory would like to express gratitude to Moneylife Foundation for this opportunity to collaborate on this report about public liability insurance in India. With India emerging as one of the leading economies in the world, commercial activities are at an all-time high. Commercial spaces like banks, malls, cinema halls are seeing more and more footfall making public liability insurance extremely important for risks emanating from non-industrial spaces and also to review the lacuna in the statutory liability under the Public Liability Insurance Act of 1991. This would however require a concerted effort from not just the Regulator, but also other stakeholders like Administrative Officers, Insurers, Licensing Authorities and so on.

The research itself was made possible due to the support of the industry veterans who graciously participated in the discussions that gave direction to this report.

We thank:

Mr. K.K Mishra- Ex MD and CEO of TATA AIG General Insurance Company

Mrs. Anamika Roy- Ex MD & CEO IFFCO TOKIO General Insurance

Dr. Sandeep Dadia- Principal Officer and CEO, Aditya Birla Insurance Brokers Ltd.

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Ms. Samata Parab- Deputy Vice President Claims, HDFC Ergo General Insurance Company

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Mr. Sanjay Dutta- Chief- Underwriting, Reinsurance and Claims, ICICI Lombard GIC

Mr. SK Rustagi- MD, Beacon Insurance Pvt Ltd.

Mr. P Chandrasekar – An insurance industry veteran

for sharing their valuable thoughts on the issues surrounding public liability insurance. Their feedback gave us a practical insight into the matter.

We are most obliged to Ms. Sucheta Dalal and Mr. Akshay Naik from the Moneylife foundation for their constant support and encouragement. Their support with RTI queries, their patience with timelines, their guidance on the report has been invaluable.

The Uttara Vaid Advisory team comprising Uttara Vaid, Soumya Shukla and Prachi Vaid have persevered to carry out detailed research, gathered information, and incorporated their thought after much debate and discussion between themselves to arrive at the findings contained in this report.

Mumbai

Date: 14th January 2023

Uttara Vaid Advisory Services LLP

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Chapter 1: Executive Summary

1.1 The awareness with respect to Public Liability law and Insurance remains abysmally low in India despite the unfortunate occurrence of many industrial and non-industrial multi-casualty accidents. They spark outrage for a few days and are soon forgotten thereafter, but the lives of the hapless victims or their families have forever changed adversely in the aftermath without any succour or hope thereof.

1.2 The Bhopal Gas tragedy in 1984 and the Oleum Gas leak soon thereafter in 1985 together brought about an undeniable harsh reality that an appropriate legislative framework needs to be put in place, which ensures that victims of industrial disasters ***at least get immediate relief*** from the industry that was responsible for the accidents. Such was the outrage that going a step further in legal stringency, Absolute Liability replaced Strict Liability in the Indian law books, by introducing Public Liability Insurance Act 1991, a beautiful example of social legislation ***which made both compensation and insurance thereof statutory*** for owners of units handling hazardous substances. (Refer Paras 3.3 to 3.5). The Act went through intense debates and discussions between the lawmakers and the Insurers and not only was Statutory Public Liability Insurance put in place, but a reinstatement of the limit under such Public Liability Insurance was also put in place through the Environment Relief Fund (ERF).

1.3 30 years down the line, this Act itself needs to be reviewed with respect to whether it has achieved its lofty objectives and even as this report was being prepared, the authors have come across a Cabinet Note putting up an amendment Draft of the Act (refer to Appendix I) and we are extremely saddened to note that the recommendations are not thought through from the view point of the victims, only from the point of view of the Industry – decriminalisation of the penal provisions and stipulating very small penalties for the offences under the Act and the only seeming objective that seems to be aimed at is increasing the ease of doing business – but at whose cost and are we actually doing justice to the cause of victims of industrial calamities?

1.4 In order for this Act to work as envisioned, our recommendations as reproduced in Para 8.3 include inter alia:

- Training of the District Collectors w.r.t important provisions of this Act,

- Adding accountability and self-reporting from the District Collectors,
- Digitalising the entire process of listing the rightful applicants for compensation to its disbursement to them, and most importantly;
- All authorities such as the National Green Tribunal and all State Machinery including Factory Inspectorate, the State Pollution Control Boards, the District Collector work together with the Insurers synergistically in the aftermath of an adverse public liability event.

1.5 So far we have addressed just the Statutory aspect of Public Liability Insurance, however we must look at the common law and we are hampered here by the fact that Law of Torts is not codified in India unlike in other countries such as UK, China, Australia etc. This is compounded by the fact that even the judgements which define judicial thinking in this area have so far concentrated only on Industrial accidents. So the victims of non-industrial accidents such as the recent Morbi Bridge collapse or the Uphaar Cinema tragedy (refer Para 6.5.1) still have nowhere to go for relief. Depending on the politicisation of the accident, there may be compensation declared from the National Exchequer, but this is arbitrary and sporadic. Victims of accidents in restaurants, malls, schools have had to wait interminably for justice and there has been a near unanimous opinion that legislation is the only route by which these lacunae can be addressed on a long term basis. While many measures have been suggested in this report, the overwhelming view that resonated with the authors and the experts consulted for the report was in favour of the following essential initiatives.

- Mandating Public Liability Insurance through expanding the **purview of the PLIA to encompass all business owners** and not just confining it to owners of Units handling hazardous substances. (refer para 8.3.1)
- Since this is likely to be long term, as a short term initiative**, making it mandatory through the licensing protocols** of certain economic business activities such as Restaurants, Schools, Hotels, Malls, Multiplexes, Cinema halls, Amusement Parks so that they are easily able to discharge their compensatory duties towards victims who have been injured on their premises. (refer Para 8.3.3)
- Setting up a separate judicial forum for victims of non-industrial mass casualties so that their plea for justice and compensations can be fast tracked. (refer Para 8.3.4)

- Paving the way for a Plaintiff's Bar or introducing the Contingency Fee system for lawyers prevailing in many western countries, so that there is some incentive at the legal professional's end to facilitate deliverance of justice. (refer Para 7.8)

1.6 However, Insurance, thereof, must be an essential pillar of this entire exercise, because merely imposing liability without facilitating insurance thereof will render it ineffective and a massive burden on industry and commerce. How can insurance step up to not only protect the rights of victims of industrial/non-industrial mishaps but also ensure that businesses can depend upon their insurance to bail them out legally and financially if things take an ugly turn? This definitely calls for a dual approach;

- on one hand the Non-Life Insurers must concentrate on improving their product coverage, terms and conditions and
- simultaneously they must look at improving the claims conditions and scenario within the country

so that no hapless Insured is ever forced to withdraw his claim because either his policy won't pay or the claims conditions are too onerous to comply with.

1.7 Among other things, one thing that the Insurance sector can immediately do is to introduce **seamlessness between the Statutory and the Common Law policies** which does not exist currently and modifying the coverage under the Public Liability covers to meet the practical requirements of the buyers of Insurance in terms of coverage and at the time of an unfortunate claim. (refer to paras 9.7 and 9.8). **Introduction of Mitigation Costs, Fines and Penalties coverage, Emergency costs and Personal Liberty covers for Directors and Officers** of the Insured company in the Public Liability Insurance will make the current policies very relevant and meaningful in the current judicial and legislative environment.

1.8 On the claims front, we recommend that Insurers make provisions in the current wording to also **pay deposits often demanded by NGT** (Refer para 9.7.3.2)soon after an industrial disaster, and also **allow relocation expenses of affected populations** (Refer para 9.7.3.1) (and not just Bodily Injury and Property damage) which trends have been observed lately in the judgements of a few recent industrial disasters will add to the utility

and general acceptability of such insurance. In order to be fair to the Insurers we recommend that

- A transparent system of adjudging the final compensation on a more rational basis.
- Eventual disbursement of such compensation from such deposits and
- A refund of the remaining amount of unused deposit to the Insurer on a time-bound basis.

1.9 As far as the claims handling issues are concerned, there can be no better suggestion **than making the entire claims process owner independent and in fact replicating the Motor Accidents Claims handling which is currently practised in the country suitably adapted for Public Liability claims** (refer 10.2.5 and 10.2.6). In liability insurance parlance, we would couch it as mandating issuance of all Common Law Public Liability policies on a Duty to Defend claims handling basis (refer Para 10.2.2 for a detailed analysis of Duty To Defend basis of Claims Handling).

Chapter 2: Legal concepts governing Public Liability Law

2.1 Public Liability traces its roots to that branch of the Law of Torts which recognises that if anybody causes bodily harm, property damage or financial loss to any other person on account of his premises or operations, he is liable in law to provide financial compensation to the victim who has suffered such untoward consequences. This is rooted in the theory of Negligence and one of the earliest judgements surrounding the right to compensation was under May v. Burdett (1846) where the important verdict was *"a person who keeps a wild animal with knowledge of its propensities is bound to keep it secure at his peril.*[1]*"*This was quickly followed by Rylands vs Fletcher which was a masterpiece judgement delivered by Sir Colin J Blackburn in 1866[2] and further cemented the theory propounded in May Vs Burdett. Justice Blackburn's judgement stands unchallenged and relevant even after 160 years down the road and we think that the verdict will remain unchallenged for time immemorial. In any case the judgement pronounced in Rylands Vs Fletcher still holds true and forms the crux of the Public Liability Insurance worldwide.

2.2 The landmark judgement has been so skilfully drafted that Sir Colin J Blackburn alludes to the word "mischief"[3] and not limited to bodily injury, property damage or financial loss. It is one of the best examples of Strict Liability[4] recognised by law because it encapsulates the responsibility of a man acting on his own volition to be held liable for all the direct consequences arising from any harm that his actions may cause[5]. The case of Rylands v Fletcher was around a reservoir being constructed by John Rylands and Jehu Horrocks (the defendants) on their land to supply water to their mill. At the construction site there was a decommissioned shaft of an old coal mine which was linked to the adjoining mine of the plaintiff (Fletcher). Due to the negligence of the defendant's sub-contractors and engineers, the above disused shaft

[1] 9 Q.B. 101(1846)
[2] Rylands v. Fletcher (1868) L.R. 3 HL 330
[3] Rylands v. Fletcher (1868) L.R. 3 HL 330
[4] The Myth of Absolute Liability 1926 – pg 313 of Law of Torts by Salmond and Heuston
[5] Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd – Pg. 314-315

remained undiscovered, therefore, when the reservoir was filled with water, it escaped to the plaintiff's mine causing damage estimated at £937[6].

2.3 Although the defendant themselves were not negligent, they were still held responsible by Sir Colin J Blackburn in his historic judgement by stating[7]:

"We think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do ***mischief*** *if it* ***escapes****, must keep it in at his peril, and if he does not do* ***so is prima facie answerable for all the damage*** *which is the natural consequence of its escape. He can excuse himself by showing that the escape was owning to the plaintiff's default; or perhaps, the escape was the consequence of vis major or the Act of God; but as nothing of the sort exists here, it is unnecessary to inquire what excuses would be sufficient"*

2.4 Now let us concentrate on the second statement made by Blackburn J. which is of importance as he recognises that liability may be strict however not absolute as few exceptions can be made to this general rule[8]. These are allowed as defences that may be pleaded by the defendant in any action of public liability damages filled by the plaintiff as listed below:

i. Things Naturally Occurring on Land – If rainwater had naturally seeped through to the plaintiff's property (mine underground) after falling on the defendant's property due to gravitational forces then this would not suggest strict liability under Rylands v. Fletcher for elements naturally occurring on land. Please note that this defence only holds true if the phenomenon leading to damage is ordinary and reasonable, distinct from any artificial, deliberate action taken by an entity and reasonable care has been taken by the defendant to prevent the phenomenon from occurring.

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[6] Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd – Pg. 315

[7] Rylands v. Fletcher (1868) L.R. 3 HL 330

[8] Significance of this sentence: "it shows that Blackburn J. himself recognizes possible exceptions to his general rule, so that liability can be strict but not absolute" stated in Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd citing Att. Gen v. Cory Bros. & Co. (1921) 1 AC 521, 539 – Pg. 314 – citing "the Myth of Absolute Liability" by Winfield (1926) L.Q.R 37, 51. Suggesting that "strict was a better term than absolute in view of the admitted exceptions to the rule and this was now recognized as the appropriate term in English law" – Read v.J. Lyons & Co. (1946) K.B. 216, 226.

ii. Where the plaintiff consents to actions taken by the defendant for mutual benefit – If the plaintiff has agreed upon artificial structures/ things to be brought to the defendant's land which escape, and damage is caused to the plaintiff's premises then liability is not established under Rylands v. Fletcher, unless it is proved that the defendant has not taken reasonable care and has been negligent in discharging his duty[9].

iii. Where the plaintiff defaults – If the plaintiff purposely, without paying attention to warning goes to encounter danger, the defendant shall not be liable.[10]

iv. Actions of a stranger – If a trespasser with malicious intent causes an event to occur on the defendant's property which leads to damage to the plaintiff's property, then the defendant cannot be held responsible for the malicious actions of a trespasser (stranger) that lead to the damage. For instance, if a trespasser lights a fire on the defendants land and the plaintiff suffers damage, then the defendant cannot be held liable[11]. In this case still, the onus of proof lies with the defendant to elucidate irrevocably that damage or harm was caused by the deliberate, unforeseeable acts of a stranger, which he had no control over and could not be held responsible for[12]. Another scenario under this defence is outlined in the judgement passed in Box v. Jubb[13] (1879), where the defendants were not held responsible for the damage caused due to overflow from their reservoir. This is because a third person had deliberately emptied the water from their reservoir that had fed into the stream of the defendant. Although in this case there was no malicious intent, a stranger had consciously acted, and this in turn impacted the actions of the defendant which had held to the plaintiff suffering damages. Since the defendant had no control over such actions, he was not held liable.

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[9] Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd citing Att. Gen v. Cory Bros. & Co. (1921) 1 AC 521, 539 – Pg. 326.
[10] Ponting v. Noakes (1849) 2 Q.B. 281
[11] Balfour v. Barty-king (1957) 1 Q.B. 496, 504
[12] Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd citing Northwestern Utilities v. London Guarantee Co. (1936) A.C. 108, 120: Prosser (A.) & Sons Ltd. v. Levy (1955) 1 W.L.R. 1224. – Pg. 327.
[13] (1879) 4 Ex. D. 76.

v. Act of God Perils – The exception of Acts of God from Rylands v. Fletcher, although rare, was recognised by Sir Colin J Blackburn himself in his judgement[14]. This was the decision adjudicated in Madras Railway Co. v. Zamindar of Carvetinagarum (1884)[15], where overhead tanks with huge storage capacities were used as a primary source of water; for agricultural purposes, enjoyment of the land and that supported the livelihood of ryots living in those mountainous regions since time immemorial. These overhead water tanks were lawfully governed and maintained by the zamindars (defendant) of the region and a case was brought against the defendant when the tanks overflowed and carried away causing injuries occasioned to the railways and workers by Madras Railways Co. (plaintiff). On inspection of the tanks to establish the defendant's negligence, it was discovered that; the tanks were kept in repair on a regular basis and properly attended to, sluices and outlets to avoid overflowing were of standard specification and had proved sufficient over the past 20 years to avoid overflowing, there was unprecedented rainfall as suggested by the Deputy Inspector of the railways during his residency of 13 years and there were other tanks situated above the defendant's tanks which also overflowed that resulted in extraordinary flooding thus damaging the plaintiff's property. Under these circumstances, the Act of God exception was cited under the Rylands v. Fletcher and the defendant was held not liable.

vi. Statutory Authority – Acts performed in discharging public duty as authorised by law are often an exception to the rule in Rylands and Fletcher (for instance sewage treatment and disposal)[16], as was the case in Green v. Chelsea Waterworks Co.[17] (1894). A waterway belonging to the Company burst resulting in flooding of the plaintiff's premises, however, the Court of Appeals adjudicated that since the defendant was authorised by the Act of Parliament to lay the main, therefore has a statutory duty to

[14] Rylands v. Fletcher (1868) L.R. 3 HL 330
[15] Madras Railway Co. v. Zamindar of Carverangarum, 1 I.A. 364 (1874).
[16] Salmond and Hueston on the Law of Torts – 12th Edition, 8th Indian Reprint by R.F.V. Heuston and R.A. Buckley 2004 – Universal Law Publishing Co. Pvt. Ltd citing Denning L.J. in Pride of Derby and Derbyshire Angling Association v. British Celansese (1953) Ch. 149, 189. Contra Evershed M.R. at 176. – Pg. 329.
[17] (1894) 70 L.T. 547.

maintain continuous water supply and was not negligent in discharging his duty, he would not be held liable to pay damages due to the flooding.

2.5 As we see above, the concept of strict liability lends itself to numerous exceptions, an important question to ask here is should there be exceptions made to liability when there is an introduction of substances due to technological advancements that can do harm on a catastrophic level. Breaking new ground in environmental jurisprudence, the concept of absolute liability was introduced in India via judgements made under M.C. Mehta v. Union of India (1987)[18] and Union Carbide Corporation vs Union of India (1987)[19] , following two such horrifying man-made disasters; the Bhopal Gas tragedy in 1984 and the Oleum Gas Leak 1985.

2.6 From these accidents and the aftermath thereof, it was soon realised that without appropriate legislative and judicial intervention, victims of large industrial accidents can remain uncompensated for long or forever, and thus evolved the concept of Absolute Liability in India which is a paradigm shift from the Strict Liability theory that was still followed around the world.

2.7 The Bhopal Gas tragedy coupled with the Oleum Gas Leak resulted in a public outcry demanding adequate responsibility be shouldered by entities who manufactured or handled[20] hazardous substances[21] that could result in apocalyptic accidents as the ones described above[22]. This was recognised by the judiciary, in the historic judgement of M.C. Mehta v. Union of India, the Supreme Court disregarded the rule of strict liability as laid down by Rylands v. Fletcher and introduced the rule of "**Absolute Liability**" [23]. The rationale behind doing so, following a writ petition via a PIL under Article 32 of the Constitution, observed by Bhagwati C.J. is as follows:

[18] M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086.
[19] Union Carbide Corporation vs Union of India Etc., 1990 AIR 273, 1989 SCC (2) 540
[20] Under Public Liability Act, 1991 (PLIA 1991) "handling" is 'in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance'
[21] Under PLIA 1991, "hazardous substance" means 'any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity 2 as may be specified, by notification, by the Central Government'
[22] No-fault Principle in the Public Liability Insurance Act, 1991: Legislative History, Implementation and Present-day Relevance of Compensation Structure by Gazal Sancheti published in the International Journal of Law Management and Humanities (ISSN 2581 – 5369), Volume 3, Issue 4 (2020) – Pg. 555-570.
[23] M.C. Mehta & Anr. Etc. vs Union of India & Ors. Etc. 1987 AIR 965, 1986 SCR (1) 312

"This rule (Ryland v. Fletcher), evolved in the 19th century at a time when all these developments of science and technology had not taken place, cannot afford any guidance in evolving any standard of liability consistent with the constitutional norm and the needs of the present-day economy and social structure. We do not feel inhibited by this rule which was evolved in the context of a different kind of economy. Law must grow to satisfy the needs of the fast-changing society and keep abreast of the economic developments, taking place in this country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot allow our judicial thinking to be constrained by reference to the law as it prevails in England or for the matter of that in other foreign legal order."[24]

2.8 Following the above statement issued by Bhagwati C.J., the Supreme Court propounded the rule of Absolute Liability as follows:

"We are of the view that an enterprise, which is engaged in the hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an Absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken…."[25]

The Court also stated that magnitude of damages to be paid by an enterprise should directly linked to the magnitude and capacity of the enterprise:

"……The large and more prosperous the enterprise, greater must be the amount of the compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the enterprise" [26]

[24] AIR 1987 SC 1086
[25] AIR 1987 SC 1086
[26] AIR 1987 SC 1086

2.9 The concept of Absolute Liability holds enterprises totally and absolutely accountable for damage or injury caused due to manufacturing or handling hazardous substances[27], allowing for no exceptions to be made. This principle has been reiterated by the Supreme Court in judgement passed in the case of Indian Council for Enviro-Legal Action v. Union of India[28] stating that

"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate and binding."[29]

This suggests that an enterprise cannot escape liability if it proves that it was not negligent in handling hazardous substances that can cause harm to human life. A thought of relevance, germane to the rule of absolute liability emerging from the Bhopal Gas tragedy and the Oleum Gas leak was the urgency to provide financial aid people who have suffered bodily injury. The above understanding became the driving force behind introducing a legislative corollary to the rule of absolute liability, the Public Liability Insurance Act in 1991[30].

2.10. Concurrently there was a lot of judicial debate around the duties of an "Occupier" under the Factories' Act. Finally, the Supreme Court's judgement under JK Industries v/s Chief Inspector of Factories and Boilers[31] laid all contemplation to rest by pronouncing a landmark judgement which squarely placed the responsibility on ensuring the safe operation of a company's plant on the Board of Directors.

2.11. The Supreme Court observed that by the **Factories** (**Amendment**) **Act, 1987 (**Amending Act), the legislature wanted to bring in a sense of responsibility in the minds of those who have the **ultimate control** over the affairs of the factory so that they take proper care for maintenance of the factories and the safety measures therein. The fear of penalty and punishment is bound to make the board of directors of the company more vigilant and

[27] Under PLIA 1991, "hazardous substance" means 'any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity 2 as may be specified, by notification, by the Central Government'
[28] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.
[29] Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446.
[30] Public Liability Insurance Act, 1991.
[31] under JK Industries v/s Chief Inspector of Factories and Boilers (1996) 6 SCC 665

responsive to the need to carry out various obligations and duties under the Act, particularly in regard to the safety and welfare of the workers and people in the vicinity.

2.12. Proviso (ii) was introduced by the Amending Act couched in a mandatory form - **any one of the directors shall be deemed to be the Occupier** keeping in view the experience gained over the years as to how the directors of a company managed to escape their liability for various breaches and defaults committed in the factory by putting up another employee as a shield and nominating him as the Occupier who would willingly suffer penalty and punishment.

2.13. It was held that where the company owns or runs a factory, it is the company which is in the ultimate control of the affairs of the factory through its directors. Even where the resolution of the board says that an officer or employee other than one of the directors shall have ultimate control over the affairs of the factory, it would only be a camouflage or an artful circumvention because the ultimate control cannot be transferred from that of the company to one of its employees or officers, except where there is a complete transfer of the control of the affairs of the factory.

2.14. An Occupier of the factory in the case of a company must necessarily be any of its directors who shall be so notified for the purposes of the Factories Act[32]. Such an Occupier cannot be any other employee of the company or the factory. The Supreme Court further held that there is nothing unreasonable in fixing the liability on a director of a company and making him responsible for compliance with the provisions of the Factories Act and the rules made there under and laying down that if there is contravention under the provisions of the Factories Act or an offence is committed under the Factories Act, the notified director and, in the absence of the notification, **any one of the directors of the company shall be prosecuted and shall be liable to be punished as the deemed Occupier.**

[32] Factories Act 1948

Chapter 3: Statutory Public Liability Insurance in India, Enactment of the Public Liability Insurance Act 1991.

3.1 December 3rd, 1984, will forever be recorded in the annals of history as the blackest day ever when it comes to industrial accidents. On that fateful day December 3, 1984, just after midnight, about 45 tons of the dangerous gas Methyl Isocyanate escaped from an insecticide plant that was owned by the Indian subsidiary of the American firm Union Carbide Corporation. The gas drifted over the densely populated neighbourhoods around the plant, killing approximately 3000 people immediately and more than 15,000 in the next few days, creating panic as tens of thousands of others attempted to flee Bhopal.

3.2 The final death toll was estimated to be between 15,000 and 20,000. Some half a million survivors suffered respiratory problems, eye irritation or blindness, and other maladies resulting from exposure to the toxic gas; but worse was to follow. According to published reports, new data collected over the past nine years by the Sambhavna Trust suggests that even after three decades, the mortality rate for gas-exposed victims is still 28% higher than average. They are twice as likely to die of cancers, diseases of the lungs and tuberculosis, three times as likely to die from kidney diseases and 63% more likely to have illnesses. The Trust's data also highlights the fact that over the past three years, almost a quarter of gas exposed victims were diagnosed with an under-active thyroid, which can have devastating long term health impacts. Yet it is the lasting impact on the second and third generation, and on those yet unborn that exacerbates the issue the most[33]. The Chingari Children's Centre, established for those born with disabilities as a consequence of the disaster, has registered over 1,000 children, with most affected by cerebral palsy, muscular dystrophy, autism, intellectual disabilities and severe learning difficulties[34].

[33] https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on
[34] https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on

3.3 Of such severe magnitude was the overall impact of this industrial disaster, that it was decided to enact statutory legislation that provided immediate relief to the victims from the industry owners using the state machinery already in place. From such noble intention was the Public Liability Insurance Act (PLIA) passed in 1991 after much deliberation between the lawmakers and the General Insurance Industry.

3.4 At its crux, lay the basic tenet of risk management – you cannot devolve liability to pay compensation on anybody without ensuring financial ability to pay and this can be guaranteed only when strong financial insurers with government backing come into the fray. At that time remember, all General Insurance companies were government owned, General Insurance having been nationalised in 1972. So the PLIA in its drafting followed the basic principles of contractual/ statutory risk transfer, make compensation mandatory but also ensure financial wherewithal of industry to pay such claims by making insurance thereof compulsory.

3.5 This is also how the PLIA differs from the Employees' Compensation Act[35] (EC Act) (formerly known as the Workmens' Compensation Act) in that EC Act mandates compensation to be paid by the Insurance Industry but does not mandate insurance thereof, whereas the PLIA mandates both the compensation as well as insurance thereof. The only notable exception here is the exemption given to Government companies who are mandated to pay compensation but may choose to self-insure the same liability by creating an internal fund which will operate in the same manner as the PLIA insurance policy in the event of an industrial accident.

3.6 We reproduce Sec 3 and Sec 4 of the Act as under:

- Sec 3 (1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall-be liable to give such relief as is specified in Schedule for such death, injury or damage.
- (2) In any claim for relief under sub-section (I) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

[35] The Employee's Compensation Act,1923 [as amended through EC(Amendment)Act,2017]

- Sec 4. Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance thereby he is insured against liability to give relief under sub-section (1) of section 3;

3.7 Further provisions ensure that the *owner*[36] shall continue such insurance for the entire duration of his *handling*[37] *hazardous substances*[38]. The compensation limits stipulated under the PLIA were as follows:

(i) Reimbursement of medical expenses incurred up to a maximum of Rs12,500 in each case.

(ii) For fatal accidents the relief will be Rs25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs12,500.

(iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be

(a) reimbursement of medical expenses incurred, if any, up to a maximum of Rs12,500 in each case and

(b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs25,000.

(iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs1,000 per month up to a maximum of 3 months: provided the victim has been hospitalised for a period of exceeding 3 days and is above 16 years of age.[39]

3.8 Now here it is of utmost importance to understand that these compensations were by no means intended to extinguish the entire liability that the tortfeasor corporate entity had towards the victims. Even the objective to the PLIA states that this is "An Act to provide for public liability- insurance for the purpose of providing **immediate** relief to the persons affected by accident occurring while handling any hazardous

[36] Section 2(g) PLIA 1991
[37] Section 2 (c) PLIA 1991
[38] Section 2 (d) PLIA 1991
[39] The Schedule (S 3 (1)) PLIA 1991

substance"[40]. Also, because this is intended to be "No fault" liability (liability where the rights of the victims or the scale of compensation is not dependent on proving the negligence of a tortfeasor in law), compensation amounts necessarily tend to be low. Having said that 30 years down the line, the amounts frozen way back in 1991, urgently need a revision so that even as immediate relief they are found to be meaningful and not pitiable.

3.9 Immediate relief in such circumstances can achieve two important objectives:

- The average Indian, even in his grief, tends to be fatalistic and a believer in *Karma*, rather than fight for his rights and demand that rightful compensation be promptly and graciously disbursed. Compensation does not lessen the grief, misery but is a kind of monetary apology from the enterprise where the accident occurred and often helps mitigate basic financial needs, loss of pay or in many cases the consequences of losing a bread earner.
- Secondly, since the District Collector has already listed the victims and disbursed some compensation to them at least a prima facie case has been established – this gives the victim or his family some reassurance that if they were to pursue a legal remedy under common law, there would be some justice at the end of long hard tunnel.

3.10 Indeed, the fact that the PLIA is only limited to providing immediate relief was quite accepted within the General Insurance Industry and it was evidenced through the following practices:

a) There was a stated discount allowed in the computation of annual premium if the Insured also had a PLIA Policy (Act policy).
b) In order to give effect to the above, the Proposal form solicited information on whether the Insured was bound to incept the Act policy.
c) If after collecting the statutory compensation, the victim chooses to proceed under Common Law for higher awards of compensation than available under PLIA, the final payment of compensation awarded under the court verdict would still be paid only after deducting the amount already claimed under the PLIA. This is reproduced in Sec 8 (2) which states as follows:

[40] Statement of objective PLIA 1991

> "Notwithstanding anything contained in sub-section (1), where in respect of death of, or injury to, any person or damage to any property, the owner, liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid under this Act."

3.11 The limits of insurance prescribed under PLIA were no lesser than the amount of the paid-up capital of the undertaking handling any hazardous substance, no more than fifty crore rupees. PLIA further clarified that if the *owner*[41] of the unit handling[42] *hazardous substance*[43] (hereinafter called the Owner) was not a company then the market value of all assets and stocks of the undertaking on the date of contract of insurance shall be considered as the limit in lieu of the paid-up capital.

3.12 As usual the lawmakers left it to the Rules[44] under the PLIA to shed more light on the implementation of the provisions of PLIA. Post discussion between the lawmakers and insurers, the Rules to PLIA laid down that the maximum limits allowed in the above policy per accident would be Rs5 crores per accident but the policy would have the provision of extending the cover for three such accidents during any one policy period of 12 months, so maximum limits permitted by the insurers would be Rs5 crores per accident and Rs15 crores per year. These were the maximum limits so any entity which fell under the purview of PLIA but had a paid-up capital of less than Rs5 crores could incept insurance for their paid-up capital as their limit per accident and avail of three times that amount in the policy (to accommodate up to 3 accidents in any given policy period) as its annual limit.

3.13 Going however by the magnitude of the Bhopal Disaster, which was anyway the raison d'être of PLIA, even a back-of-the-envelope calculation will bring out the fact that had this Act been in the law books at the time Bhopal happened, the per accident limit of Rs5 crores would not have been adequate. Even assuming that approximately 20,000 people died, and 5,50,000 victims suffered injuries, then a cursory calculation worked out as follows will peg the total compensation at Rs725 crores.

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[41] Section 2(g) PLIA 1991
[42] Section 2 (c) PLIA, 1991
[43] Section 2 (d) PLIA 1991
[44] The Public Liability Insurance Rules 1991

Death compensation – Rs25,000 x 20,000	Rs50, 00,00,000
Medical Expenses Compensation – Rs12,500 x 500000	Rs675,00,00,000
Total Compensation payable under the Act	Rs725, 00,00,000

3.14 It was therefore quickly realised that Excess Protection (similar to Top-up Insurance in Health Insurance, where when the base limits are exhausted the Top-up policy pays up to its own limits) will be needed over every PLIA policy so that even in a worst-case scenario like Bhopal, the victims would still get the compensation stipulated under law. Now it would not be feasible to mandate every Owner to incept both primary and excess insurance. It was therefore proposed that a common fund be created which would come to the rescue of the beleaguered Owner if his PLIA policy was completely depleted in the event of an unfortunate accident. Thus, was created the Environment Relief Fund (ERF), and on its drawing board, it was intended that whenever the limits of an individual Owner's policy were exhausted, the Collector could dip into the ERF and pay the balance out of the same. Further thinking on this intention soon brought out the inherent flaws of this thought process, if unlimited access was given to any individual Owner to meet the balance of his compensation liability, out of ERF which was contributed to by all the Owners, it would give rise to the following adverse outcomes:

(i) If the entire ERF was wiped out because of an unfortunate accident, where would the subsequent Owner go, who had contributed significantly over the years to the building up of ERF, if his accident compensation also exceeded his policy limits?

(ii) How would it encourage Owners to implement a higher commitment to industrial safety, if the Owners were technically let off with just one annual premium payment, regardless of the magnitude or severity of the accident caused on account of their hazardous operations?

Therefore, while the principle of establishing an ERF was maintained important changes were introduced *viz*:

a) The ERF would be created by asking every Owner to pay an equivalent premium amount as a contribution to the ERF and he would be then given one reinstatement on the limits of his PLIA Policy.

b) If the compensation payable under PLIA Policy exceeded both; *viz* the policy limit per accident and the reinstatement allowed under ERF, then the balance liability would revert to the Owner, now payable from his end.

Continuing the same computation as mentioned earlier, this translated into practical terms meant that of the Rs725 crores, Rs5 crores would be disbursed from the PLIA, the next Rs5 crores would be disbursed from the ERF and the next Rs715 crores would come from the Owner.

3.15 However, at the centre of the entire implementation and the disbursement of the proceeds to needy victims lay the District Collector who was empowered with making the wheels of this entire machinery move within stipulated time frames. PLIA laid out a framework whereby the District Collectors can initiate *suo motu* action in case of industrial accidents in their jurisdiction. They are empowered to invite applications for relief from affected parties, draw up a list of such applicants and other victims and disburse compensations within a stipulated period which technically and cumulatively would not exceed 120 days from the date of the accident, by asking the enterprise/ his Insurer or industrial unit responsible for the problem to deposit the money.

3.16 Today in the aftermath of any disaster, we hear of NGT awards, or deposit money for compensation being demanded or even payments from the National Exchequer to the unfortunate victims of industrial disasters but not enough about the role performed by the District Collector as was envisaged under the Act. There is very little published information on this crucial piece of information and leaves various questions unanswered regarding whether the District Collectors are indeed according enough importance to the practical implications of PLIA.

3.17 This year they have proposed revising the Act and the Cabinet note incorporating the draft amendments called Public Liability Insurance Bill 2022 has been attached as Annexure 1 to this report. Sadly, whilst this also suggests amendments that concentrate on ease of doing business, decriminalisation of penal provisions under the Act, there seems to be very little attention given to the victims of Industrial accidents.

3.18 This chapter would be incomplete without some discussion on the management of ERF. During our research we stumbled upon an article by Debadityo Sinha in which he gave the following figures. Till March 2019, the fund had grown to a staggering Rs810 Crores. The cumulative contribution by different general insurance companies till 2018-19 stood at Rs3,74,89,95,487[45]. In 2019, as per Debadityo Sinha, the top five cumulative contributors to the ERF were New India Assurance (26.8%) followed by United India Insurance (22.5%), Oriental Insurance (18.3%), National Insurance (16.7%) and Tata AIG (3.3%). Moneylife Foundation had also raised a query through the RTI process, and we reproduce the response received from the administrator of the ERF- United India Insurance Company Ltd. The total amount that has been received as contributions from the general insurers as on 26th October 2022 is Rs407.83 crores and awards from NGT have added another Rs44.96 crores to this kitty.

3.19 The corpus is invested in fixed deposits in 13 different banks, which explains the growth of the fund to Rs881 crores, as per another article in the Hindu which reported the plea moved by Gyan Prakash a former Central Government employee for hearing addressed to the Principal Bench of the National Green Tribunal[46] for unutilised funds collected in the ERF since the passage of PLIA.

3.20 Responding to this plea the Bench stated that there was an urgent need to bridge the existing gap and enforcement of the law, the Bench added: "The MoEF being nodal Ministry may look into this aspect and take necessary action. Industrial chemical accidents lead to injury to workers and fatalities. State pollution control boards and pollution control committees may ensure that industries required to take policies under the PLIA are not granted consents [under relevant environmental law] till such policy is obtained."

3.21 The green panel also asked the National Legal Service Authority and the State Legal Services Authorities to assist "victims of injustice to access justice" and take appropriate action.

3.22 Apart from the above, as per the article of Debaditya Sinha, there have been several irregularities observed with the contribution and administration of ERF as follows:

[45] https://vidhilegalpolicy.in/research/tracking-funds-to-provide-relief-to-victims-of-environmental-hazards/
[46] Gyan Prakash v. Ministry of Environment, Forest and Climate Change, Original Application No. 86/2020.

- Contributions pursuant to compensation or relief awarded by the National Green Tribunal are not maintained properly and are merely shown in the statement of accounts of the fund under the head "Others" since the year 2012-13.
- There is also ambiguity regarding the legal status and tax status of the fund, which was first highlighted in the audit report for the year 2008-09 and reiterated every year since.
- The Fund Manager has expressed its difficulty in applying for PAN, TAN, exemption from TDS and meeting compliance with service tax requirements because of this ambiguity.
- Several insurance companies are not submitting Form-III to the Fund Manager as mandated by ERF scheme notification, because of which the fund manager is not able to maintain comprehensive, up-to-date records of ERF.
- There were many irregularities observed in the manner in which Form-III is filled, with very few insurers providing complete information.
- The Advisory Committee constituted under Section 21 of the PLIA has met only twice between January 2015 and August 2019. The manner and circumstance in which important decisions were taken by the committee in its last meeting is a matter of concern."[47]

3.23 Going by the provisions of PLIA, though, compensation money can be demanded only by the District Collector who is empowered to seek money from ERF, if he is satisfied that the rightful claimants who have either made the application for relief or have presented themselves to him pursuant to any suo motu power exercised by him in the aftermath of an industrial accident, has exceeded the Rs5 crore per accident limit of their PLIA policy. In any case the maximum that can be taken out by the District Collector per accident is another Rs5 crores, and in an RTI query seeking information regarding the number of accidents where compensation amounts from the ERF have reached or exceeded the Rs5 crore accident limit, the reply has been stated to be NIL.

[47] https://vidhilegalpolicy.in/research/tracking-funds-to-provide-relief-to-victims-of-environmental-hazards/

Chapter 4: Evolution of Public Liability Insurance

4.1 By 1988 after numerous such judgements, the Indian Industry was feeling the need for such insurance and on 1.1.1988, the General Insurance Corporation (GIC) introduced the Market Agreements on Industrial and Non-Industrial Public Liability policies governing the entire underwriting protocols *viz*, the wording, the rating, the proposal forms, the endorsements, the claim forms etc. Basically, a Public Liability Insurance promises to indemnify the insured for all damages awarded against him in a claim from a third party who has suffered "Bodily Injury or Property Damage" (BI/PD) and for all defence expenses incidental thereto. Prior to liberalisation of the Non-Life Insurance sector, it had 4 General Insurance Public Sector companies in the market *viz* New India Assurance Ltd. headquartered out of Mumbai, United India Insurance Company Ltd out of Chennai, National Insurance Company Ltd. out of Kolkata and Oriental Insurance Company Ltd. out of New Delhi and GIC was their apex body. The direct underwriting was done as per the terms and conditions of the erstwhile Market Agreement which governed the entire Public Liability Insurance bought and sold in the country through two major policy forms such as Public Liability, Industrial and Non-Industrial wording.

4.2 Since the first introduction of Public Liability Industrial and Non-Industrial policies, today the Non-Life Insurance Industry has many forms in which Public Liability Policies are sold to the insureds as listed below:

- Public Liability Industrial – Introduced on 1st January '88
- Public Liability Non-Industrial - Introduced on 1st January '88
- Public Liability Insurance Act Policies – Introduced by 1st April 1994
- Commercial General Liability Policies – Introduced in January 2001 by Tata AIG General Insurance Company.

Apart from these, public liability coverage was often bundled under:

- Modular Policies given to SME sectors such as Offices Package Policies, Householders' Package Policies etc.
- Contractors' All Risks (CAR) Policies/ Erection All Risks (EAR) Policies given to projects under Section II of the policy, Section 1 always covering Material Damage.

- Policies which were customised for various sectors such as for Events Insurance, Drone Insurance etc.

4.3 Let us discuss these in detail. The construct of the General Public Liability Policy for Industrial and Non-Industrial Risks is as follows, and this is still sold across Tier II and Tier III cities and to pure domestic companies who have no mandates to incept the world's favourite liability policy the Commercial General Liability policy.

4.4 The **Public Liability (PL) Industrial Policy** aims to indemnify the insured for BI/PD claims arising out of accidents to innocent third-parties, arising out of and in connection with manufacturing industries, warehouses, factories or working premises of the insured. Defence Costs incurred in connection to such accidents are also covered under the PL Industrial Policy. Whilst this policy caters to the needs of the Industrial Units, the **Public Liability Non-industrial policy** aims to provide the same cover and is limited by the same exclusions as the industrial policy except that it offers cover to other types of establishments such as hotels, motels, theatres, cinema halls, pandals, residential premises, office/ administrative premises, medical establishments, schools, public libraries, amusement parks, etc. These were essentially policies which covered liabilities devolving on the insured which were claimed through the use of negligence theory under Civil Law and completely excluded Statutory Liabilities.

4.5 In addition to the above quintessential features highlighted above, a few coverage enhancement endorsements can be added to the general PL Policy (Market Agreement) for both industrial and non-industrial policies, some of the significant ones have been outlined below:

- **Acts of God Perils**– the policy aims to pay the insured all sums, which the Insured shall become legally liable to pay, arising from or attributable to Acts of God perils causing BI/PD within the premises of the insured covered under this policy. Acts of God Perils are usually defined as perils meaning earthquake, earth-tremor, volcanic eruption, flood, storm, tempest, tsunami, typhoon, hurricane, tornado, cyclone or other similar convulsions of nature and atmospheric disturbance.

- **Food and Beverages cover** – the extension aims to provide all sums that the insured is legally liable to pay arising due to claims attributable to BI/PD caused by foreign or deleterious matter in food, beverages and/or any other edible items supplied by the insured, given that the insured has taken reasonable care in the supply of such food or beverage items.
- **Transportation Cover** – the extension aims to cover legal liability of the insured for any claims arising from BI/PD attributable to an accident occurring directly because of the transportation of materials via rail, road or pipeline that are dangerous or hazardous in nature, given other terms and conditions in the policy.
- **Sudden and Accidental Pollution Cover –** the extension aims to cover legal liability of the insured for BI/PD directly or indirectly caused by Pollution. Some public liability policy wordings also allow for clean-up costs which are incurred to nullify or clear-out the pollutants that the insured may need to incur due to a government order. It is important to note that the policy only provides cover for sudden and unforeseeable pollution incidents and not for slow and gradual pollution phenomena, the latter is an absolute exclusion in the policy.
- **Cover for additional facilities extension** – this includes providing cover for any additional facilities such as swimming pools, recreational clubs, sports facilities that form part of the insured's premises which could lead to claims of BI/PD.

4.6 We have highlighted the popular endorsements that could be added to the standard Public Liability (PL) Market Agreement. Kindly note, this is not an exhaustive list, insurers offer many more extensions in the Indian jurisdiction to the insureds often taking the wording from CGL and Appendix II to this report contains an exhaustive Broking slip which enumerates most coverage enhancing endorsements sought by Brokers and discerning buyers on the base forms. It would also be necessary to study the common PL Policy exclusions as follows:

a. **Liabilities that arise under the PLIA** - any liability under the PLIA, any amendment thereto, or any other statute or law which attaches liability on a no- fault basis.
b. **War, terrorism and radioactivity**
c. **Consequential Losses** - Insured's consequential losses of any kind including loss of profit, loss of opportunity, business interruption, market loss or

otherwise, or any claims arising out of loss of a pure financial nature such as loss of goodwill, market or arising out of insured's internet operations, etc.

d. **Fines, penalties, exemplary or punitive damages**
e. **IPR Infringement claims**
f. **Absolute Asbestos Exclusion**
g. **Any Motor, Aircraft, Mobile Equipment or Hovercraft Liability**

4.7 The next Public Liability policy chronologically introduced in India was the Public Liability Insurance Act Policy ("PLIA Policy") which was introduced to cover the liability imposed on owners of units handling hazardous substances by the enactment of the PLIA 1991.

4.8 This policy only catered to statutory liability, which was absolute in nature, so there was no provision of defence expenses and it only provided for payment of compensation under the PLIA (please see Chapter 2 for a full discussion on PLIA 1991) and it would be germane to explore the differences between the Common Law Public Liability Industrial and Non-Industrial Policy and the PLIA Policy which are listed in the following table.

Table 1 – Differences between PLIA 1991 and PL Industrial & Non-industrial Policy

Terms of Difference	Statutory Insurance under PLIA 1991	General Insurance under PL Industrial/Non-Industrial Policy (Market Agreement)
Activation of Cover	Application for relief to be made to the Collector	Action to be initiated in the Court of Law
What does the Policy Cover?	Public Liability arising out of Statue	Public Liability arising out of Tort
Who is covered?	Cover granted to Owners of Units Handling Hazardous Substances as notified under EPA[48]	Any Business Enterprise whether in manufacturing, services, retail or any other sector.
Premium	Two payments have to be made: 1.To the Insurer 2. The Environmental Relief Fund	Only one premium payment needs to be made to the Insurer
Monetary Relief	Per person liability is fixed as per the Schedule under the PLIA	Per person liability depends on the compensation awarded to the third-party claimant by the

[48] The Environment (Protection) Act 1986

		Court or on out-of-court settlement mutually agreed between the parties.
Limit of Indemnity	Maximum Sum Insured as per the PLIA: AOA- Rs5 Cr AOY - Rs15 Cr	No such maximum limits fixed. The indemnity limits depends solely on the insured's perception of risk.
Territorial and Judicial Scope	Limited to the territory and jurisdiction of India	Can be extended to Worldwide territory and jurisdiction
Pollution and Transport covers under the Policy	Covered as per the Definition of "handling" (S. 2(c)) under the Act	Excluded unless pollution and transportation covers are added to the policy as endorsements by paying additional premium

4.9 Post the introduction of the PLIA, the next big innovation came when AIG from America joined hands with Tatas to form Tata AIG General Insurance Company and introduced the world's favourite liability policy - the Commercial General Liability (CGL) Policy in India in the year 2001.

4.10 The CGL, very popular in USA combined Public Liability (in CGL it is termed as Premises and Operations Liability), Product liability and other supplementary covers in its standard wording. The CGL hit the liability insurance market like a breath of fresh air. Given that the wording was an import from USA, one of the most litigious jurisdictions in the world, it had a lot more coverage than the old fashioned Industrial and Non-Industrial Public Liability Insurance. A few of its innovative features are:

- It introduced the Duty to Defend wording which stood in sharp contrast to Reimbursement basis of claims handling
- Another major improvement that it brought in the Indian market was that it offered insurance on the Occurrence based form as well, a significant change from the Claims-made form which was the only type available in India until then.
- It allowed for Personal and Advertising Injury coverage as distinct from only bodily injury/ property damage which was available till then.
- It also provided for No-fault based Medical Expenses to be given to third parties who may suffer bodily injury as a form of first aid expenditure without prior approval from the insurer.

4.11 Most of all, it helped the Indian insured satisfy contractual mandates that were imposed on them by American/ European/ Australian business associates and today is the preferred form of Public Liability insurance with discerning buyers of Liability Insurance.

4.12 There are of course standard exclusions under the CGL as well in keeping with the spirit and essential features of Public Liability Insurance, the most glaring being Clean-up costs in Sudden and Accidental 72 hours Pollution coverage, which was never an issue with Public Liability market agreement forms, though some insurers do not exclude the same even under the CGL form.

Chapter 5: Global Benchmarking

5.1 At this juncture let us also take a look at the Public Liability Insurance perspective as it stands across major jurisdictions and legal systems of the global major economies. Obviously, the need, demand, and the stature of Public Liability Insurance will depend upon the legal systems and the legal awareness in each country.

5.2 **United States of America:**

5.2.1 Arguably one of the most significant statutes governing Liability Insurance in USA is The Federal Torts Claim Act (FTCA)- Under the FTCA, the federal government acts as a self-insurer, and recognises liability for the negligent or wrongful acts or omissions of its employees acting within the scope of their official duties.

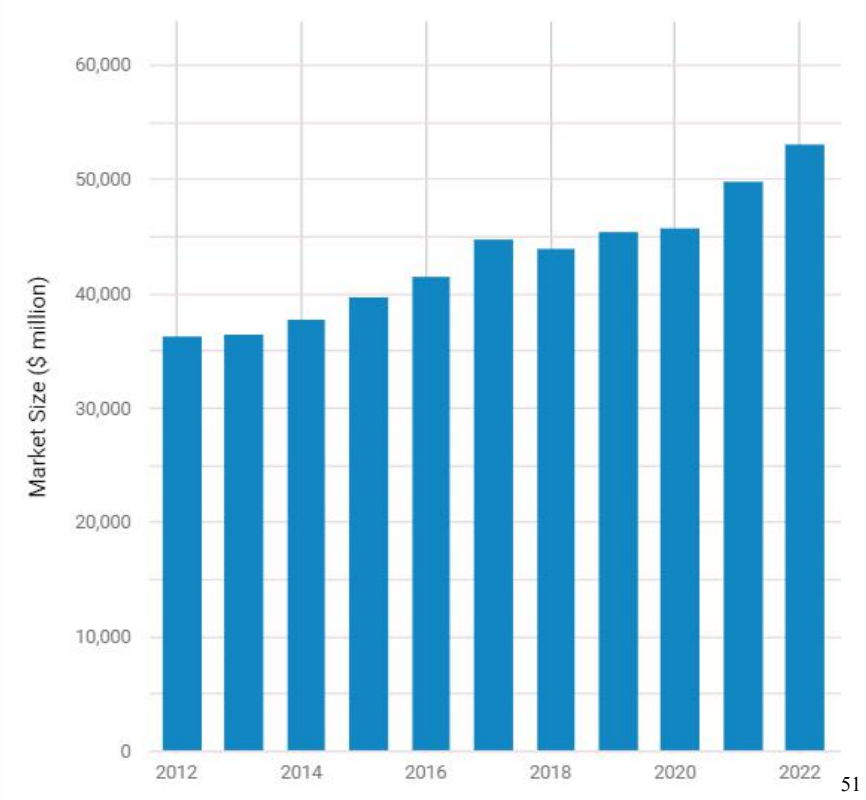
5.2.2 Individuals who are injured or whose property is damaged by the wrongful or negligent act of a federal employee acting in the scope of his or her official duties may file a claim with the government for reimbursement for that injury or damage. In order to state a valid claim, the claimant must demonstrate that (1) he was injured, or his property was damaged by a federal government employee; (2) the employee was acting within the scope of his official duties; (3) the employee was acting negligently or wrongfully; and (4) the negligent or wrongful act proximately caused the injury or damage of which he complains[49].

5.2.3 By this Act, the State can be made liable like an individual for any property damage or bodily injury caused by a federal employee during the course of their duty.

5.2.4 **For private businesses, there is no compulsion of buying public liability insurance.** However, the following figures surely provide impetus to the business owners to ensure they have adequate insurance cover:

[49] https://www.house.gov/doing-business-with-the-house/leases/federal-tort-claims-act

- The Personal Injury Lawyers and Attorneys industry in the US is worth about $53.1bn in 2022[50].



[51]

- Premises liability litigation lasted 24 months on average.
- Unintentional injuries are the most common cause of death in the US, affecting about 58.5 thousand people annually[52]
- As per the Bureau of Justice Statistics:
  - about 3 to 4 percent of personal injury cases go to trial.
  - In premises liability trials, the success rate for plaintiffs stands at 39%.
  - People with a personal injury lawyer end up with pay-outs nearly three times higher than those with representation[53].

5.3 Australia

[50] IBIS World
[51] Image source- https://www.ibisworld.com/industry-statistics/market-size/personal-injury-lawyers-attorneys-united-states
[52] https://www.cdc.gov/injury/wisqars/animated-leading-causes.html

[53] https://www.nolo.com/legal-encyclopedia/how-much-can-i-get-for-my-personal-injury-case-and-how-long-will-it-take-new.html

5.3.1 In Australia, The Civil Liability Act[54] was enacted in 2002 to ensure that people who were injured had the ability to seek redress through the courts. The Act applies to a number of circumstances where negligence forms part of the claim. In section 3B however, there are a number of exclusions. These are:

- intentional conduct
- dust diseases claims
- tobacco related claims
- motor accidents
- public transport accidents
- workers' compensation
- victims of crime
- sporting injuries compensation
- compensation under the Anti-Discrimination Act

5.3.2 As with all common law negligence, to establish that negligence did occur, the claimant will need to prove:

- the duty of care was owed
- the duty of care was breached
- the breach caused damage, such as injury and loss of work.

5.3.3 This Act also has directions for computation of compensation payable to a victim. The Civil Liabilities Act has been applied by most states across Australia.

5.3.4 Public Liability Insurance is not required by law in Australia, however, the Australian Government through www.business.gov.au explains "If you own a business, you may be liable for damages or injuries to another person or property. Though liability insurance is optional in most cases, it is strongly recommended for businesses in all industries as the likelihood of being sued is unpredictable and potentially very costly. Public liability insurance protects

[54] Civil Liability Act 2002 No 22

you and your business against the financial risk of being found liable for negligence. Negligence is causing reasonably foreseeable harm".

5.3.5 Some states in Australia mandate public liability insurance for occupations license. Thus, Public Liability insurance is generally a mandatory requirement for some trades when they operate under a state issued license, for example builders, plumbers or electricians. For small businesses and other commercial spaces like restaurants, banks etc, it is not compulsory to buy public liability insurance, but it is highly recommended.

5.3.6 Like America, Australia also has an extensive network of personal injury lawyers which support the victims of injury at public spaces on a "no win no fee" basis. Thus, claims against business owners for injuries are easier to pursue. Public liability compensation pay-outs have the potential to be extremely high, depending on the specifics of the case. In 2016 alone, Australians received $1.26 billion in public and product liability claims[55]. This provides enough motivation to the business owners to buy appropriate public liability insurance to protect themselves from such claims from third parties.

5.4 United Kingdom

5.4.1 In UK, tort law is fairly developed, leading to a fair number of statutes finding their genesis in the Law of Tort. Most relevant for this report is the Occupiers' Liability.

5.4.2 Occupiers' Liability is currently governed by the two Occupier's Liability Acts, 1957 and 1984. Under these rules, an occupier, such as a shopkeeper, a homeowner or a public authority, who invites others onto their land, or has trespassers, owes a minimum duty of care for people's safety.

5.5 Africa- Ghana

5.5.1 The new Insurance Act 2021, Act 1061, section 214 and 215 makes it compulsory for businesses to have an insurance contract that shall provide indemnity for the insured person against the liability of the person to another

[55] https://www.gerardmaloufpartners.com.au/services/public-liability-slip-and-fall-claims/

person for bodily injury or property damage that occurs during the policy term that arises out of or in connection with the business activity or operations of the insured: and the legal and other costs connected with investigating, defending and settling a claim in relation to the liability.

5.5.2 Under the Second Schedule of this act, commercial buildings like office spaces, banks, shopping malls, factories, hospitals etc. are required to take public liability insurance[56].

5.6 South Africa

5.6.1 Slip and trip cases are a branch of Personal Injury law, which itself forms a part of the law of delict. However, the law in South Africa is generally not codified in a single comprehensive legislation and thus there is no dedicated legislation with respect to public liability claims, nor any requirement for any mandatory public liability insurance.

5.7 India

5.7.1 India has on its law books the, the PLIA which mandates that all owners[57] of units handling[58] hazardous substances[59] must incept Public Liability Insurance as per PLIA provisions and must continue it for the entire duration of such handling. This has been discussed in considerable detail in Chapter 2 of the report and you are requested to refer to the same.

[56] https://www.a2ii.org/sites/default/files/2021-10/ghana_insurance_act_2021.pdf

[57] Section 2(g) PLIA 1991
[58] Section 2 (c) PLIA 1991
[59] Section 2 (d) PLIA 1991

Chapter 6: Examples of Uninsured Losses and Insured Claims

6.1 Let us start with some gut-wrenching case studies here which resulted in major loss of lives and were not insured. Without insurance, it will be very difficult for those business owners to compensate the victims who have suffered bodily injury on their premises where they (victims) were invited for their patronage. Financial compensation for loss of lives is not meant to measure lives by the yardstick of money, human life is and will remain irreplaceable, but it is a form of a monetary apology and a means of ensuring that dependants who are the survivors can continue to come to grips with the tragedy by assuring them a life of dignity.

6.2 All of these cases are culled out from those premises which are necessary for everyday living, which ordinary citizens cannot avoid in their daily lives such as hospitals, schools where they can and should be reassured with respect to their safety.

6.3 **Schools –** As per the Law of Torts, even in the Negligence Theory a higher standard of duty of care is applied towards children because of their limited ability to care for themselves, and a much higher duty of care is owed to an infant than to a school going child because of the differences in their ability to look after themselves and attend to some of their own needs. Therefore, it must be necessary for Schools, Day-care Centres, and all Educational Institutions to not only be extremely diligent in discharging this duty of care, but also incept adequate insurance so that quick relief can be given to the unfortunate victims in the event of a mishap on the school premises.

6.3.1 **The Dabwali fire accident:** The incident occurred on 23 December 1995 at Mandi Dabwali, in Haryana, during the local DAV Public School's annual prize distribution function. A synthetic tent, which had been set up inside the building, caught alight when an electric generator short-circuited. At least 400 people died in the fire, and another 160 were injured, half of them with serious

burns. Some sources estimate that up to 540 people were killed, 170 of them being children and the rest adults[60].

After almost 8 years, in 2003, a one-man commission was set up to investigate the incident, and to calculate the amount of compensation owed to the families of the victims. The commission demanded numerous extensions and took over six years to conclude its report. Compensation was eventually set at Rs18 Cr. (USD 3.9 million in 2003), although in November 2009 the Punjab and Haryana High Court increased the amount to Rs34 Cr (USD 7.4 million in 2003), and added an extra 6% interest to make up for the delay. The money was to be jointly supplied by the DAV trust and the Haryana government and shared among the families of 446 victims[61].

6.3.2 **Kumbakonam Fire Incident:** A similar school fire claiming the lives of 92 students broke out in Kumbakonam in 2004. A compensation of Rs500,000 was provided to the next of the kin of the deceased, Rs50,000 to the injured.[62].

6.4 **Hospitals –** Again here a very high duty of care is owed by a Medical Establishment to their in-patients, because they are generally immobile either because of their inherent health conditions or because they are plugged to various emergency equipment. Whilst in other incidents, a victim may be able to flee the site of the accident, in the case of a hospital, this recourse is not open to the ill-fated patients who may be taking treatment there.

6.4.1 **AMRI Fire, Kolkata:** On December 9, 2011, a fire started in the basement of AMRI Hospitals claiming 92 innocent lives. 400 witnesses, 10 years, multiple violation of fire norms but till date no hope of justice for the kin of the victims. The State Government had announced compensation of Rs5 lakh to the kin of deceased. The Central government also announced Rs2 lakh each to the kin of

[60] https://en.wikipedia.org/wiki/Dabwali_fire_accident
[61] https://en.wikipedia.org/wiki/Dabwali_fire_accident
[62] https://www.thehindu.com/news/national/tamil-nadu/Kin-of-Kumbakonam-fire-victimsto-get-compensation-in-four-weeks/article15620921.ece

the deceased and Rs50,000 to the injured from the Prime Minister's Relief Fund[63]

6.4.2 **Ahmednagar Hospital Fire:** The death toll in Ahmednagar's hospital fire incident on 6th November 2021 in Maharashtra had risen to 11 after a victim succumbed to his injuries. The government announced an ex-gratia amount of Rs5 lakhs each to the kin of the deceased. The district collector later informed that there were 17 patients admitted with coronavirus disease (Covid-19) when the fire broke out at around 11 am. A short circuit seems to be the primary cause of the incident[64].

6.5 Cinema Halls and Restaurants

6.5.1 **The Uphaar Cinema Tragedy:** The Uphaar Cinema tragedy and the unending struggle that victims or their kin had to go through still remains a blot on the judicial process in India. The Uphaar Cinema fire was one of the worst fires tragedies in recent Indian history. The fire started on Friday, 13 June 1997 at Uphaar Cinema in Green Park, Delhi during the three o'clock screening of the movie Border. Fifty-nine people were trapped inside and died of asphyxiation, while 103 were seriously injured in the resulting stampede (suffocation)[65].

6.5.2 **Kamala Mills Fire:** On 29 December 2017, a fire broke out at Kamala Mills, a commercial complex in Lower Parel, Mumbai, at 00:22 IST. The fire resulted in the deaths of 14 people, and injuries to 55 more. The fire began in a bar, 1 Above, and spread to an adjacent pub, Mojo's Bistro, before spreading through the rest of the building in which they were housed[66].

[63] https://timesofindia.indiatimes.com/city/kolkata/amri-hospital-fire-in-kolkata-rs-10-lakh-compensation-package-for-kin-of-deceased/articleshow/11053397.cms
[64] https://www.hindustantimes.com/cities/mumbai-news/maharashtra-10-dead-after-fire-breaks-out-at-ahmednagar-district-hospital-101636185733810.html

[65] https://en.wikipedia.org/wiki/Uphaar_Cinema_fire
[66] https://www.hindustantimes.com/cities/mumbai-news/4-years-later-kamala-mills-fire-victims-still-await-justice-101642871383768.html

6.6 One thing that was clear that in all cases the Owners/ Managers were clearly in dereliction of their Occupiers' duties in:

- Complying with fire safety norms;
- Holding the appropriate licences,
- Having functional or effective fire detection and extinguishing systems and
- Keeping fire emergency exit routes clear for their guests/ customers on premises.

6.7 In sharing the above examples, the intent is not to say that the pain and suffering from these incidents can be reduced by having insurance. Rather the idea is to provoke a thought process in the minds of the legislators that if we have a streamlined and mandatory insurance regime for such places which are visited by third parties like malls, hospitals, schools etc., some immediate monetary relief can be made available to the victims. This was the exact idea behind mandating the PLIA for industrial risks. The delay and the unpredictability of the legal system adds insult to the injury of the suffering victim. If in their fight for justice, this financial relief made available through insurance can be of some aid, the purpose of public liability insurance would be truly served. The other advantage which can be achieved through effective Public Liability Insurance is that it would not be necessary to dip into the National Exchequer and declare ex-gratia compensations to victims or their kin just to avoid political hostility.

6.8 Let us pause here and look at some examples where **Public Liability Insurance was taken** and how the insurance industry had responded in each case. This segment covers a wide range of incidents triggered cover under the Public Liability /CGL policy and claim settlement to victims of non-industrial accidents.

6.8.1 A guest at the cinema theatre, met with an accident. Her right foot was twisted due to the broken surface hidden underneath the carpet at the exit gate. The theatre had to pay her INR 3.5 lakhs and the same was fully paid by the Public Liability policy incepted by the theatre owners and management.

6.8.2 This is a claim for compensation for the death of a third-party bystander against a reputed Indian hotel (Insured). The maintenance team was oiling the gate of the hotel. When the gate was rolled out to test it, the gate fell on a bystander, a private taxi driver. The hotel's team immediately rushed him to the hospital where he succumbed to his injuries. The legal heirs of the

deceased approached the Insured seeking compensation. Based on the deceased's monthly income of approximately Rs13,000 and his age (65 years), the claim was settled for Rs20,00,000.

6.8.3 A light fitting fell on the head of the customer in a restaurant. This incident was notified to the insurer as a circumstance of claim. However, the victim did not pursue the matter and thus the claim was closed.

6.8.4 The hotel's valet parking attendant was bringing a car (a Mercedes Benz) from the basement car parking area to hand it over to the claimant, the attendant mistook the functioning of the handbrake of the car, which required the car to be put in parking mode. Another hotel associate tried to help the attendant park the car by releasing the handbrake without realising that the car is still in driving mode and the Mercedes hit a Toyota Innova. By this time, the second associate pressed the accelerator by mistake and caused the Mercedes to hit another vehicle, a Tata Tigor, which hit a fourth vehicle a Swift Dzire. The resultant damage to the four cars caused a claim of Rs14.5 lakhs, which was settled by the insurer. (A claim where Property Damage was claimed rather than Bodily Injury).

6.8.5 Insured is a retailer of garments. While 9 customers were using the lift at the insured's retail store to ascend from the ground floor to the third floor, the lift cables snapped, and the lift crashed to the ground floor. 7 people were severely injured, and the lift was completely damaged. All the injured people were shifted to a nearby hospital immediately. The policy's medical expense limit of Rs67,000 per person was utilised. Based on the medical documents provided, a total amount of Rs407,000 was paid for the 7 injured persons.

6.9 Let us now take a look at **Industrial Accidents** and how they fared under Public Liability Insurance.

6.9.1 **Chemical Manufacturing Company:** The insured company is in the business of chemical manufacturing in Gujarat. During the nationwide lockdown, they were operating as their sector came under essential services. As a matter of practice and in compliance with industrial standards, the insured had designated separate tanks at the factory for storage of Nitric Acid and Dimethyl Sulphate ("DMS"). Considering that Nitric Acid is incompatible with steel and there is likelihood of leakage and release of toxic gases if Nitric

Acid is stored in steel tanks, glass lined storage tanks were used for the storage of Nitric Acid (Tank 8 & 9 more specifically). DMS, on the other hand, was stored in tanks constructed from mild steel, specifically Tanks 5 & 6.

On a fateful day, due to an inadvertent human error, DMS was unloaded in Tank 8 instead of the designated Tank 5 and Nitric Acid, in turn, was partially unloaded in Tank 5 instead of the designated Tank 8. Upon realisation of the error the issue was immediately escalated to the senior officials in the factory and remedial actions were taken. However, almost after 20 hours, next day all of a sudden at around 12:15 PM there was a blast/explosion in one of the tanks storing the mixture.

6.9.1.1 **Aftermath of the incident:**

On account of the said blast, eight workers were killed and at least 50 workers were injured. Further, about 4800 inhabitants of the nearby villages had to be moved to a safer place.

An NGO filed an application before the Hon'ble NGT and the Hon'ble NGT assessed interim compensation for death to be Rs15 lakh each, for grievous injury Rs5 lakhs per person, for other injuries of persons hospitalised Rs2.5 lakh per person and for displacement at Rs25,000 per person. The Hon'ble NGT also directed the insured to make an interim deposit of Rs25 Crores excluding the deposit / payment already made in pursuance of order of the Gujarat Pollution Control Board (hereinafter referred to as "the GPCB") or otherwise under the Workmen's Compensation Act, 1923 or any other statutory provisions or ex gratia in relation to the said incident. [67]

6.9.1.2 **The Insurance Claim:**

The insured informed the claim for compensation under their CGL policy to the insurer of around Rs10 crores, which included claims for compensation and for defence costs. However, the insurer raised concerns about the tenability of the claim under the policy due to certain portions of the order of the NGT. Throughout the order, NGT has drawn reference to various statues to prove that the incident was an

[67] Aryavart Foundation through its President Applicant(s) Versus Yashyashvi Rasayan Pvt. Ltd. & Anr. Respondent(s), Original Application No. 85/2020 (Earlier O.A.No.22/2020 (WZ)) (I.A. No. 364/2020)

"accident", thereby making the insured liable to pay compensation. **Unfortunately, at one place, the order, in a reprimanding tone mentions that because the insured had been in chemical manufacturing for many years and knew of the inherent hazardous nature of the chemicals – this incident could not be termed as an "accident".** This led to the objection by the insurer on the ground that the CGL policy in question only covers accidents.

After many discussions, deliberation and legal opinions, the insured was able to convince the insurer about the validity of the claim and the claim was admitted by the insurer and the claim was settled upwards of Rs6 crores.

6.9.1.3 **Key Takeaways**

- The most important takeaway is the financial support that the CGL policy provided to the insured. The PLIA Policy in such case would have only paid the statutory liability up to Rs25,000 per death claim, Rs12,500 for Medical Expenses and Rs6000 for Property Damage. Therefore, had the insured not incepted an appropriate CGL policy, they would have had to bear the entire burden of the liability that accrued under the common law. Such respite gave them some confidence to deal with the financial repercussions in the aftermath of the unfortunate accident.
- The insured was directed to make an interim deposit of Rs25 Cr. However, none of the common law public liability policies available in the Indian Market consider such deposits as an insurable component.
- Another takeaway from the claim was that in the absence of alignment between the adjudicating authority and the terms of the insurance policy, just one **offhand** remark had the ability to render the claim untenable. If the adjudicating authorities are made aware of the basic coverages offered by the insurance policies, they may be more careful in choice of words in their orders and the genuine claims may be resolved without much difficulty.
- The liability policies generally do not have provision for on-account payment. In the present example, the claim settlement took almost 3 years for settlement. In such long-drawn-out settlement, an on-account

payment would go a long way in easing the burden of the insured. It will also indirectly help the victims by enabling a quicker pay-out of compensation.

6.9.2 **Oil Exploration and Production PSU:** Oil India Limited (OIL) - the insured company is a Navratna company. It is the second largest hydrocarbon exploration and production Indian public sector company in India. In May 2020, one of the wells started releasing natural gas in an uncontrolled manner. To control the situation, the insured hired the services of a Singapore based firm who sent three experts to the site. The experts arrived at site on 7th June 2020 and started working to stop the gas leak and cap the well safely.

However, in June 2020, a major fire outbreak at the well, as a result of the gas that leaked uncontrollably. The blaze at the well resulted in the surrounding area to be engulfed in thick black smoke, endangering local biodiversity and became a cause of concern for the local inhabitants. The well was spouting gas and condensate droplets for 14 days that spread across a vast area, as a result of which the fire burnt almost everything in a radius of one km from the site.

6.9.2.1 **Aftermath of the Incident:** Owing to the timely precautionary steps taken by the insured, no loss of life or injury to third parties was reported, although expenses associated with relocation along with food and accommodation were incurred to mitigate the exposure and safeguard life.

As per NGT order four points were taken up for consideration by them:

a) Compensation to the victims of the incidents for the damage to the houses, trauma, loss of earning and health cost incurred etc.

b) Accountability for the failure of the PSU to follow safety protocols in preventing the incident and remedial steps to prevent such incidents in future.

c) Accountability for non-compliance of statutory norms under the Water, Air and Environment laws and remedial action.

d) Assessment of damage to the Environment and restoration measures, including measures for restoration of Dibru-Saikhowa National Park and the Maguri-Motapung Wetland.

Responding to the compensation matter above, NGT responded as follows:

"The statistics furnished by the OIL itself are that 3000 families were affected and 9000 persons were displaced from their houses and accommodated in 12 relief camps. 10 relief camps were set up as a result of first incident dated 27.05.2020 and two more camps after the incident dated 09.06.2020. Each camp had 750 persons. Though number of claims were put forward, major part of the issue stands resolved in terms of tri-partite arrangement between the victims, the OIL and the Deputy Commissioner, as per letter of the Deputy Commissioner dated 25.9.2020 and letter of the OIL dated 2.12.2020. The OIL has admitted its liability to 600 families to the extent of Rs15 lakhs each for 161 families and Rs10 lakhs each to the 439 families which runs to about Rs68 crores. It has already paid Rs30,000 each to 3000 persons i.e. Rs9 crores and Rs12 lakhs each to 11 families i.e. Rs2.2 crores. Further, Rs50000 each has been paid to the families who have left the camps to meet the cost of rent, food etc. According to the OIL, it has spent about Rs. 11 crores on the camps and also incurred expenditure on managing the blowout which is said to be about Rs151 cores.

In view of substantial number of victims having been compensated up to a reasonable level, the issue will have to be taken as concluded as far as the present proceedings are concerned. This Tribunal cannot enter into further adjudication in absence of the victims and authentic data. While floor level compensation can be directed to be paid even on some guesswork, higher compensation claims require adjudication, based on evidence of loss. As already observed, in absence of relevant

data, we are unable to determine the claims for higher compensation, beyond the amounts already paid or conceded by the OIL."[68]

They also brought on record that "A sum of Rs90.796 crores stands deposited by the OIL with the District Collector" [69]

6.9.2.2 **Insurance Claim:** Upon intimation of the claim under the liability policies, both the PLIA insurer and the Industrial Public Liability insurer, appointed a single loss assessor who verified the claims against the applicable coverage under the liability policies. In this context, it may be noted that, the Common law policy limit would be exhausted (yet to be disbursed), however, the policy limit under the PLIA Policy has not been exhausted.

6.9.2.3 **Key takeaways:**

- Being a PSU, the insured was exempt from buying a PLIA policy. However, the company acted prudently and availed both a PLIA and a Public Liability (Industrial) policy covering common law liability. The policy proved its deep-rooted benefits by providing compensation for third party property damage without burdening the exchequer.
- If the award under this claim is to be compared with award granted under Case 1 discussed in Para 6.9.1, the compensation given for death was Rs15 lakhs in the previous claim, and in this case the compensation given for houses burnt in fire was Rs15 lakhs. This is concerning as the loss of property can never be ascribed an equivalent value to loss of life. However, as there is no standardisation of arriving at compensation, this subjectivity creeps in. This also leads to a lot of uncertainty for the insurers also as they cannot arrive at any certain basis to underwrite the policy and charge appropriate premium.

[68] NGT Original Application No. 43/2020(EZ) Bonani Kakkar Vs. Oil India Limited & Ors.
[69] NGT Original Application No. 43/2020(EZ) Bonani Kakkar Vs. Oil India Limited & Ors

6.9.3 Ropeway Operators: Three people lost their lives in the ropeway accident in Jharkhand. The private firm in-charge of operation and maintenance announced a compensation of Rs25 lakhs to the kin of the deceased who lost their lives during the mishap. The insured had in place a Public Liability (non-industrial) Policy with a public sector insurer. However, we understand from sources (that do not wish to be named) that the insured despite having an appropriate policy, did not pursue the claim due to the numerous concerns regarding the claim process. To share a few:

- The insured was under serious pressure from the authorities to declare compensation for the victims. Any delay in doing so would have resulted in an aggravated adverse action from the authorities as well as general public.
- The insured was bound by the terms of the insurance contract. Which meant that till the matter is sub-judice, they cannot admit liability (even if the matter is straight forward). The Insurer did not express a willingness to come to the table and did not respond to oversee the settlement which would have helped the Insured access his policy for a valid claim in due course.
- Any compensation awarded by the insured without approval from his insurer would be excluded under the policy.

Due to these concerns, inter alia, we have been informed through sources, which did not wish to be identified, that the insured did not pursue the claim actively under their common law industrial public liability policy.

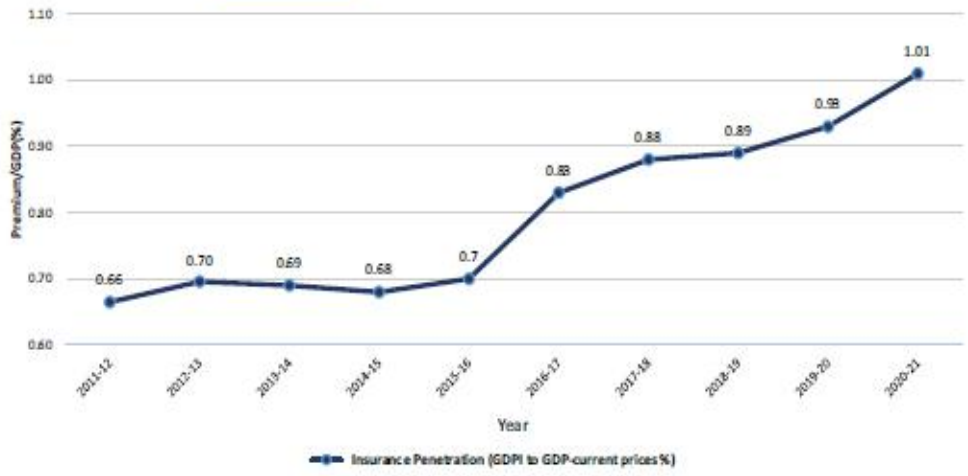
Chapter 7: Low penetration of Public Liability Insurance in India and its causes

7.1 It is universally acknowledged that overall, insurance penetration in India is very low and as compared by Shabbir Ansari, Senior Insurance Analyst at GlobalData, "India's general insurance penetration of 1.01% in 2021 is very low compared to the top five countries in the region – South Korea (5.1%), Australia (3.5%), New Zealand (2.1%), Japan (1.8%) and Hong Kong (1.6%)."

Insurance Penetration

Insurance Penetration, expressed as a percentage of GDP (at Current Prices), has increased from 0.66% in 2011-12 to 1.01% in 2020-21. (Economic figures were revised using 2011-12 as the base year which has led to a recalibration of Insurance Penetration figures.)

Chart 1.2.1 Insurance Penetration

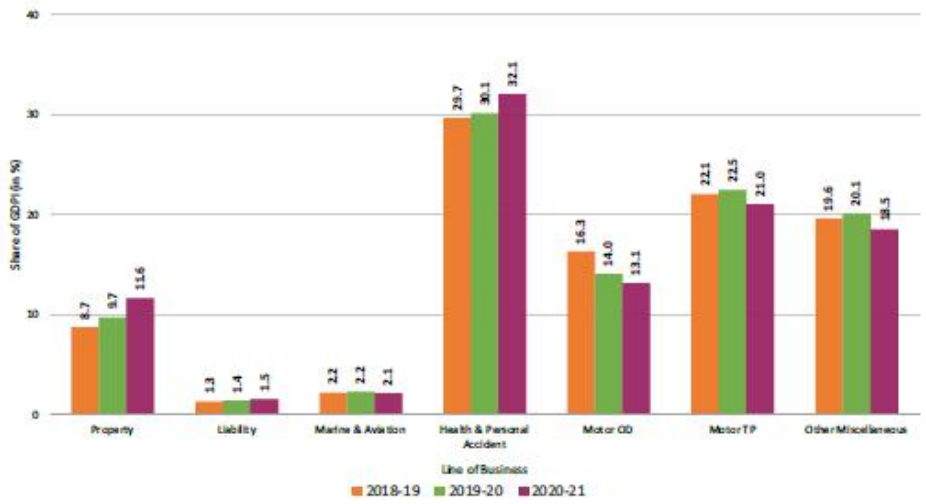


***Source:** RBI: Gross Domestic Product (current prices)*
***Council Compilation:** Gross Domestic Premium Income*

7.2 Of the total Non-Life Gross Direct Premium Income (GDPI) in the country, GDPI written for **the Liability lines of Business is abysmally low at only 1.52%** of the total GDPI in the country. See the graph below. Our RTI enquiry met with little success for Public Liability premiums within the overall Liability class of business and the reply from IRDA was that this data has not been maintained by IRDA. Let us analyse some of the statistics made available from the published data by GIC.

Gross Direct Premium income (in and outside India) written by non-life Insurance Industry increased from ₹ 1,92,193 Crores in 2019-20 to ₹ 2,02,094 Crores in 2020-21. Personal lines of business namely Motor and Health & Personal Accident insurance constituted close to two-thirds of the Non-Life Insurance premium. Crop insurance as an emerging segment comprises majority premium in Other Misc.

Chart 4.1.1 Segment-wise share of GDPI



Source: *Form I of I to X and Council Compilation*

The number of policies issued increased from 24.16 Crores in 2019-20 to 25.06 Crores in 2020-21. Proportion of number of policies issued in Overall Motor has increased from 53.3% in 2019-20 to 53.8% in 2020-21 and Other Miscellaneous classes has increased from 21.3% in 2019-20 to 23.4% in 2020-21.

7.3 This is in stark contrast to US and many European Economies. "The total amount of gross written premiums in the liability insurance in the US is valued at US$154.28 billion in 2016, which is an increase of 25.69% from 2012. The category has recorded a CAGR of 5.88% during the review period (2012-2016)"[70] . This itself is one of the most telling statistics of the stunted growth and development of Liability Insurance in India. In this chapter, an attempt has been made to summarise some of the causes for low growth of public liability insurance in India mentioned below.

7.4 Insufficient growth of the Law of Tort in India

7.4.1 Tort law is a body of law which relates to civil wrongs. Under tort law, the tortfeasor (or the wrongdoer) is often made to pay damages to the victim of the wrong. Unlike the UK, US, China and Australia, India does not have a codified law of torts. Tort law in India remains scattered over various legislations and much of this law comes from precedents. Thus, so far in India,

[70] https://www.researchandmarkets.com/reports/4458853/liability-insurance-in-united-states-to-2021

the law of tort is still in the process of development majorly through case laws drawn from the British precedents & judgments**.**

7.4.2 Most of the areas of the law relating to crimes, contracts, property, trusts, etc., have been codified, but there is yet no code for torts in India. The earliest known attempt to codify the Law of Torts was made in 1886 by Sir F Pollack[71], however, it is surprising to note that no further attempts to codify Tort Law have succeeded.

7.4.3 In the case of Rajkot Municipal Corporation vs Manjulben Jayantilal Nakum (SC, 1997), a Bill was introduced in the Parliament in 1965 that sought to codify the law of torts. However, this Bill lapsed in 1967 and no statutory law regulating tortious liability was introduced. Later in 2010, the then Union Law Minister Veerappa Moily expressed the need to codify tort law in India, especially in order to ensure adequate compensation and pinning of responsibility in cases of mass disasters such as the Bhopal Gas leak.

7.4.4 This is a view vocalised by insurance industry experts as well and in fact, Mr. Bipul Khanduri has strongly opined:

> ***"….. keeping the existing deficiencies of the Indian judicial system in mind, legislation is an important instrument in ensuring timely justice and compensation to the public (especially those from weaker sections).***
>
> ***Legislature can start by codifying tort laws, especially those related to operations of businesses and public utilities, in terms of damage and injury to individuals. Codification will help spread awareness about the legal rights of individuals in society. Codification will also help in the quicker dispensation of justice as it will make the litigation process in the field of tort quicker. Codification will create wider awareness of rights and duties which in turn will boost insurance spread. Compensation could have been quicker in the case of the recent Morbi bridge incident if there was a specific act for Bridges and Public Utilities"***

7.4.5 Due to scattered remedies available for tortious wrongs under various statutes, litigation for tort claims is less favoured in India. Tort, in spite of being one of

[71] The Indian Civil Wrongs Bill of 1886

the most effective laws to provide remedies for individual injuries, is less used and developed law in India as compared to other advanced countries[72].

7.5 Demographics of the Insurance Purchasers

7.5.1 Like most developing insurance economies, Indians will always buy more retail insurances like vehicle insurance, health insurance and in fact as per the chart reproduced in para 6.2 above, Motor (both Own Damage and Third Party Liability) and Health constitute 66% of the total Non-life Direct Premium Income, it is therefore, quite obvious that most insurers will concentrate on those lines of business. Liability is often seen as accommodation business to be done to cater to demand from large buyers of Property insurance or to establish the insurer as a full service provider with the widest range of corporate products.

7.5.2 During a talk with most Insurers *viz*; Mr. Sanjay Datta of ICICI Lombard, Mr. Gunasekhar of ITGI and Mrs. Kasturi Sengupta of National Insurance there was a general view that Liability Insurance which is only 1.52% of the total Direct Premium Income (DPI) of the country does not get the required attention at the top echelons of the Insurance Company. In a country where the demographics favour a large shift towards Retail Insurance, the Insurance companies often concentrate on Retail Insurances like Health and Motor Insurance and all innovation from Product Development, Underwriting and Distribution are often seen only in these lines of Business.

7.5.3 The Joint venture companies, such as Tata AIG, HDFC Ergo, ICICI Lombard, Bajaj Allianz, Raheja QBE, who have had their partners headquartered in legally aware countries, where significant contribution to the country's DPI comes from the Liability Lines of Business, they have concentrated on Liability Lines of Business in this country as well; and it is to their credit that Liability Insurance has seen even the little development that it has seen in the country. Truth of the matter is that prior to liberalisation of the Insurance sector at the turn of the century, the PSU Insurers *viz*, Oriental, National, New India and United, did not have a Liability Department, and to date; do Liability Insurance very half-heartedly. In fact, Liability Insurance is still done

[72] Need of Codified Tort Law in India by Manisha Banik, IJLRS Volume 3, Issue 1, January - March 2018

by the Miscellaneous departments, there has never been any focused training, targets in the Liability Lines and often the Heads of the Department have responsibility for many lines of business such as Health and even Specialty at times. In any case, as has been evidenced in the RTI queries, Non-life Indian Insurance data is maintained by Property and Casualty Insurers for its non-retail lines in only three segments *viz*; Property, Marine and Miscellaneous. All Liability is clubbed under Miscellaneous section which also maintains disparate data of Crop Insurance, Trade Credit Insurance and what would be termed internationally as Specialty Business.

7.6 **Very little legal awareness and a reluctance to seek redressal for wrongs using the judicial process.**

7.6.1 Vast sections of the majority Hindu population of India are big believers of two theories which make them very averse to litigation to enforce their rights.

7.6.2 Keep your distance from lawyers and doctors – Both these professionals are seen to be running up enormous bills (there is no Contingency Fees system in India, refer to our paragraph 7.8 for detailed comments on the same), once the litigation (or the disease sets in) the only respite therefrom is death! The average Indian is aware of the long length of litigation in this country and as a result keeps away from litigation unless absolutely necessary.

7.6.3 There are winds of change observed in the Tier I cities where foreign education and stay has influenced the above thought process but this is few and far between and is not observed across the length and breadth of the country.

7.6.4 The Karma theory has been so deeply ingrained through the Hindu scriptures in the DNA of the average Hindu. The Hindu is brought up to believe that any misfortune that befalls on him has been ordained in his destiny for the sins committed by him in his past births, and suffering through them in their current birth will alleviate or set off any further suffering in the next birth cycles. This is in complete contrast to the "Name, shame, blame and claim" culture in many western countries, where bringing a tortfeasor to book and asking him to compensate for his wrong-doings is seen as furthering the cause of justice. So much is the awareness that even Indian hotels complain that the maximum Public Liability claims are made by foreign tourists, (also

substantiated by Indian Insurance companies) very few of which are genuine, and most just out to give them back the money they spent on the Indian holiday in the first place. This is quite rampant in Goa, and in fact the hotel owners are between a rock and a hard place, because they dare not contradict or not pay when a foreign tourist demands compensation for actual or imagined injuries, since it affects their future business with the Charterer who brings regular charter loads of foreign tourists every season. Having paid the money claimed rightly or wrongly or settled the issue at their end, they suffer a double whammy because they are denied insurance claims on account of their non-compliance with an essential policy condition reproduced below.

"It is a **condition precedent** to the Company's liability hereunder that the Insured **shall not admit liability for or settle or compromise or make or promise any payment in respect of any Claim which may be the subject of an indemnity hereunder or incur any costs or expenses in connection therewith without the prior written consent of the Company**."

See Chapter 9 of the same report which identifies the problem areas in insurance claims and measures to be taken by the General Insurance Industry to improve the current scenario.

7.6.5 Thus, even when the Indian citizen is wronged, he looks more towards the government to declare compensation for his misery, rather than demand his compensation from the wrongdoer. An interesting perspective was shared by Mr. Avya Kapoor where he mentioned that it is not like there is complete lack of awareness. There is awareness that ***"somebody can be held liable".*** Awareness may be restricted to a very distinct section of the society, which can be percolated to all sections provided the right tools like demands for compensation, recovery, etc. are implemented effectively acting like an "economic uplifter" for the society at large.

7.6.6 Obviously when the average citizen is so unaware about his rights under law, he is also unaware about the fact that Liability insurance may have been purchased by the Tortfeasor entity which should be inuring to his benefit in such circumstances. In fact, many business owners who have bought Public

Liability insurance go to great pains to hide this fact from third parties, ironically the same section who is likely to benefit from the same.

7.6.7 A case in point is the Comprehensive Liability insurance taken by dealers and the petroleum companies indemnifying any LPG cylinder customer for any Bodily Injury, Property Damage suffered by it[73]. However, the petroleum companies and the dealers avoid educating people and though cylinder blasts are quite common, claims filed by such consumers against the dealers and the petroleum companies are quite rare.[74]

7.6.8 Unfortunately, even highly educated sections who are otherwise well informed suffer from ignorance of liability insurance. This is demonstrated in the stark difference in the number of liability claims against hotels by foreigners as compared to Indians.

7.7 Undermining the importance and financial compensation from Public Liability Insurance:

7.7.1 In the event of any mass casualty resulting in loss to public like collapse of a bridge or building, there is an unprecedented rush to either dip into the national exchequer and declare compensation amounts or raise a demand for ex-gratia payment. These demands are mostly conceded by the Government as well. Such commitments of compensation are paid "without acknowledging any obligation or entitlement". However, such ex-gratia payments adversely impact the importance of a tort litigation ultimately eclipsing the need for liability insurance. The moment a tortfeasor pays an ex-gratia amount, without following the due process of law, the cover under the liability insurance is vitiated; for which essential pre-requisites are establishment of a legal liability and claims from third parties for compensation.

7.7.2 This requirement of the insurance policy is meant to naturally weed out such voluntary payments (also known as hush money) which may have been made just for appeasing the authorities and reducing public hostility following any such event. Unfortunately, this gap between the policy requirement and practical scenario dilutes the importance of a public liability policy. After all,

[73] https://www.financialexpress.com/money/insurance/insurance-policy-for-gas-cylinder-blast-check-coverage-process-to-file-claim-other-details/2132939/

[74] As reported in Lokmat News Network Nagpur, March 10

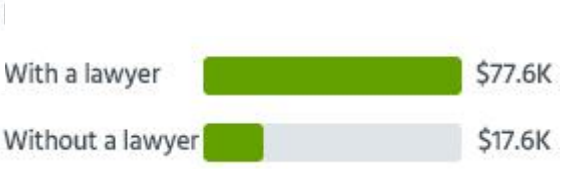
why would a business owner risk getting stuck in the long winded legal claim process as opposed to a quick settlement!

7.8 **Absence of a Contingency fee based Legal System**:

7.8.1 The term "contingency fee" also known as "No win, no fee" refers to a type of fee arrangement in a case in which an attorney or firm agrees that the payment of legal fees will be contingent upon the successful outcome of the case. This ensures a very active Plaintiff's Bar, which studies the case and finances litigation and has a pre-agreed legal fee built in to be paid out of the damages awarded to the plaintiff in civil litigation. Contingency fee arrangement has been one of the distinguishing features of litigation in the United States and has significantly contributed to jurisprudence relating to compensation/ liability. 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 to 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.

7.8.2 Let us see the impact of Contingency fee system in America.

After deducting the average 32% contingency fee, represented claimants ended up with net pay-outs that were nearly three times higher, on average, than what unrepresented received[75]. This only affirms that lawyers know what it takes to build a solid personal injury claim, gather evidence, and deal with insurance adjusters.



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Nothing drives home this point more than the McDonald Hot Coffee case of USA. In 1992, 79-year-old Stella Liebeck spilled a cup of McDonald's coffee on her lap and suffered third-degree burns on her legs and her groin area. The

[75] https://www.nolo.com/legal-encyclopedia/how-much-can-i-get-for-my-personal-injury-case-and-how-long-will-it-take-new.html
[76] https://www.nolo.com/legal-encyclopedia/how-much-can-i-get-for-my-personal-injury-case-and-how-long-will-it-take-new.html

burns required extensive skin grafts and eight hospital stays and resulted in $18,000 worth of lost income and medical bills. She sued McDonald's for the $20,000 but the company came back with an insulting offer of just $800. Liebeck hired an attorney and ended up winning $160,000 in compensatory damages and $480,000 in punitive damages[77].

7.8.3 However, in India, the Bar Council of India prohibits advocates from accepting contingency fees. Rule 20 of Section II, Part VI of the Bar Council Rules lays down that 'An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.'.

7.9 **Long and Cumbersome process of Law**:

7.9.1 The delayed dispensation of justice in India often brings to mind the oft quoted adage – Justice delayed is justice denied. Blame it on overburdened judiciary, *red-tapism* or any other cause, the fact remains that judicial recourse is neither swift nor easy in India.

7.9.2 A case in point is the Uphaar Fire Tragedy. The victims of the Uphaar tragedy had to wait for 19 years, before the Ansals were finally convicted.

"The Uphaar trial has stretched on for nineteen years and in these years, the country has witnessed many man-made disasters, where hundreds of lives have been lost. When we began this case, we had hoped that the courts would take up such cases on a priority basis to avoid similar tragedies. But neither the government nor the judiciary took any cognisance of such case. For the government, it was enough to announce a pitiful sum as ex-gratia compensation and shy away" – Trial by fire, Pg. 245

7.9.3 The book Trial by Fire recounts the horror of the Uphaar Fire Tragedy and narrates the struggles of the Krishnamurthys who fought for their children and other victims of the tragedy. After a long wait of 19 years, Mrs. Neelam Krishnamurthy said:

[77] https://www.gjel.com/blog/10-biggest-personal-injury-settlements.html

"I felt traumatised, let down by the system. I lost faith in the very system I had faith in from 1997 till 2015…"

7.9.4 The case was long, unwinding and riddled with complications. Had Senior Advocate KTS Tulsi not fought the case pro bono on behalf of the victims, the simple middle class victims would have never been able to meet the expensive litigation that stretched for so many years. One can also not ignore that these families were pitched against a big corporate house with deep pockets and access to the best legal representation and ability to influence the government machinery. The accusations of evidence tampering etc. in the case were rampant and form part of public domain. In India, neither contingency fee based legal services are permitted nor are the lawyers permitted to advertise their expertise to contest any particular kind of cases.

7.10 **No "incentive" to purchase Public Liability Insurance**

Frankly a lot of Property Insurance is bought in this country, because banks who finance asset purchase demand that those assets be insured against major perils at least to the extent and for the duration of the loans. And yet those instances are not uncommon when unscrupulous insurance buyers often look at "ways" to recover from the Property insurances at least to the extent of the annual premiums paid. Premiums which are paid just to protect against contingencies which may or may not arise during policy periods are often seen as "waste' of money by many businessmen. Since Liability Insurances almost always depend upon a third party claim and resolution of legal proceedings, it is not possible to "recover" claims-proceeds which impacts their purchase on a large scale in this country.

7.11 **Substitution of Liability policies by other insurance options**

The author has had first-hand experience of trying to unsuccessfully sell Public Liability insurance policies to schools and educational institutions, even though they have very high risk exposure and there have been many publicised incidents where innocent school children have suffered grievous injuries on school premises. These attempts have been thwarted by General Insurance Companies themselves who have suggested to the Insureds that they are better off buying Group Personal Accident (GPA) Insurance policies than Liability policies. The reasons cited are that since GPA

policies do not necessitate a legal process, they are easier to administer and claim from; thus enabling a school to pay off a potential claimant quicker than a Liability policy ever would. Let's say that a school has had an unfortunate incident of a child suffering a grievous injury on school premises – if the school opts for a Personal Accident policy for all its students whilst on School premises, all it has to do is to prove that the accident did occur and claim from the GPA policy and pay off an irate parent who may have threatened the school with legal consequences for the injury suffered by his child. The school also is reasonably confident that in the face of a quick offer of compensation, the parents are quite likely to accept the offer rather than wait for years till Courts gave them justice.

In contrast, a Public Liability policy would require that due process of law be followed, negligence and legal liability of the School be established which could take years, in any case the school would be barred from calling the claimants to the table and effecting a quick out-of-court settlement without the approval from their Insureds, (as per the terms and conditions of the policy and thus their hands would be tied during this entire process. Is it any wonder that a zealous insurance salesman is very easily able to convince the school to buy a GPA policy for its students, which suits him as well given that there is every chance that he has sold a more expensive product to the Insured at the same time? The fact that GPA policy will never pick up legal costs nor will ever pay to parents and other visitors (Refer to The Dabwali fire accident recounted in para 6.3.1 of the Report where the fire erupted in the annual day of the school, injuring many third parties apart from the students) has been conveniently overlooked or not highlighted by the general insurance sales persons!

This brings us to the undeniable fact that unless Liability Insurers streamline the claims process so that meaningful cover is provided to the buyer of liability insurance when he needs it, it will be very difficult indeed to popularise such insurance. Kindly also refer to Chapter 10 which discusses in detail the initiatives that can be taken by the Non-Life Insurance companies to establish a hassle free claims process even in Public Liability Insurance.

7.12 **A natural corollary to the Long drawn litigation is the delayed and complex Insurance claims settling process:**

The nature of public liability is such that the life cycle of the insurance claims becomes entwined with the legal claim. Prolonged litigation in courts is thus one of the real deterrents for pursuing legal action for damages. Any Insurance buyer expects some certainty in claims settlement, in terms of time frame and outcome, from the contract of insurance. When the response of the insurance policy has to depend on the court judgments, this proves to be a dampener on the demand side.

Insurance industry in India is generally infamous as “Slow paying, Low paying or No paying” Insurance Industry. If such is the case for simple property and machinery claims, where the wording is standardised and number of precedents set for major claims scenarios, then for Public Liability claims where every insurer has a separate wording leading to different interpretations, sadly the complexity and the difficulty of recovering is taken many notches above! And as recounted in Para 6.9 in the Ropeway case, despite having a Liability Insurance policy, the insured preferred not to pursue the claim because of the above and many other concomitant issues.

Chapter 8: Suggested legislative and socio-political changes to facilitate ease of claiming compensation by victims.

8.1 Having discussed the lacunae that the current legal system suffers from, it is also necessary to shine a spotlight on what are the necessary legislative or socio-political changes that are needed so that victims at both ends of the spectrum – those who have suffered either minor accidents causing bodily injury or property damage from their patronage of certain businesses or from severe catastrophic industrial accidents get prompt and empathetic assistance, not just monetary, from business owners, senior industry managers and civic authorities who must necessarily swing into action to provide the same. This chapter is split into:

- Changes needed to make the current Act - Public Liability Insurance Act (PLIA) policy more responsive
- In the absence of any governing statutes for victims of Non-Industrial accidents, how do we improve the common law machinery to serve the interest of most victims.

8.2 **Changes needed to make the PLIA more responsive**

8.2.1 **Training of the District Collectors in the substantive and procedural aspects of PLIA:** The implementation of this beautiful piece of social legislation has not seen the desired results because it is concentrated solely in the hands of the District Collectors who are mostly unaware of the same. So in fact, basic though the suggestion may sound, the ease of achieving a smooth and hassle free claims process actually starts with the training of the District Collectors in both the substantive and procedural parts of the PLIA.

The District Collectors, must be so well trained in the provisions of this Act that without delay they immediately adhere to the Process laid down which necessitates them entertaining the applications from the victims and make a list thereof (they are also empowered to suo motu invite applications for relief from the affected third parties), demand a deposit from the Insurers, activate the ERF and also send a notice to the Owner if the amount of Liability exceeds

both the above limits. It would be pertinent to draw attention here to Section 5 of the PLI Act, which states:

"5. Verification and publication of accident by Collector. —Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity".

The law intends that the Collector must take steps to *publicise the remedy* available to any victim of an industrial accident and if implemented diligently and strictly, would go a long way in increasing awareness among the citizenry of the country.

In fact, since the PLIA intended to provide for immediate relief, it lays down time frames within which such claims must be disposed-off by the District Collector, which unbelievably is only 90 days from the date of the receipt of application for relief as per Sec 7(7) of the PLIA.

A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within **three months** of the receipt of the application for relief under sub-section (I) of section 6.

8.2.2 Making the District Collector accountable for such disbursement of Relief in the event of an Industrial Disaster in his District.

As per the Rules under Sec 7[78]:

(1). The Collector shall maintain a register of the application for relief or claim petitions, and, a register of awards and payment made thereunder.

(2). These Registers shall be kept open to Public inspection from 11.00 AM to 1 PM and 2 PM to 5 PM on every working day.

As per the Rules[79], there are certain categories of Officers who can exercise authority under the Act to ensure compliance with Sec 13 (1) and Sec 18 of the Policy. The same officers must be given powers to ensure that the District Collectors also have effectively discharged their duties under the Act so that

[78] Section 7 in The Public Liability Insurance Rules, 1991
[79] The Public Liability Insurance Rules, 1991

there is some accountability w.r.t the District Collectors' role in ensuring that the unfortunate victims get their due.

Another route could be mandating a self-declaration by the District Collector at the end of every calendar or financial year that in the previous year, there were no industrial disasters in his district which could have warranted the invoking of the PLIA. And if there were, what were the processes followed by him with their time frames to ensure that the compensation reached the last mile**. Let us not forget it is not the job of the Insurers to ensure that even if the entire claim is settled by the Public Liability Insurer, they are only required to deposit the lump-sum compensation amount with the District Collector, but the responsibility of the final payment to the victims rests with the District Collector – and if this duty is not discharged and documented well, it will fail the purpose of making the common man aware that apart from being entitled to immediate compensation, he is entitled to damages under civil law.**

8.2.3 **Removing the Exemption available to Government owned Enterprises under PLIA:** Under Sec 4 (3) the Act provides for exemption as follows to certain Government owned Enterprises:

(3) The Central Government may, by notification, exempt from the operation of sub-section (1) any owner, namely: -
(a) the Central Government;
(b) any State Government,
(c) any corporation owned or controlled by the Central Government or a State Government; or
(d) any local authority:
Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (I) of section 3.

Whilst it is appreciated that the Government Companies do not lack financial wherewithal to discharge their liabilities under the Act, it would be necessary to enquire that of such PSUs (Public Sector Units) who fall under the purview of the exemption granted, how many of them have established such funds so far.

Another thing that needs to be noted is that because these enterprises are exempt from incepting PLIA policy, they are also exempt from depositing a premium equivalent amount in the ERF! In any case PSU enterprises have seen more cases which should have activated both the Public Liability Act and the ERF, and two cases in point are as follows:

- The huge fire that broke out at Indian Oil's petroleum terminal at Jaipur in Rajasthan on 29th October, 2009
- Blowout of the Baghjan Oil Well of Oil India Limited(OIL) on 27th May 2020 and the consequent fire on 9th June 2020 (also discussed in detail under Para 6.9.2 of the report)

At least for the latter we know that OIL had both the Public Liability Insurance Act Policy and the Common Law Public Liability Industrial Policy and please refer to our comments in Para 6.9.2.2 with regard to the Insurance claims status under both policies.

8.2.4 **An immediate need is felt with regard to increasing the limits of compensation under the PLIA.** There is a need for an urgent revision in the initial compensation stipulated under the Act. Today it is Rs25,000 for death claims, Rs12,500 for medical expenses reimbursement, and Rs6,000 for property damage. These amounts were fixed way back in 1991, and were not intended to extinguish all liability claims, but provide **immediate** relief. Unfortunately, there is little understanding of the intent behind these amounts even among insurance experts. It is often assumed that this is the total compensation. It is time for minimum compensation under PLIA to be brought on par with that for motor and railway accidents. In fact, Avya Kapoor has cited various instances where compensation guidelines have been framed in other classes of business for Bodily Injury or death claims based on earning

capacity and age of the victims and those who can make a case for a higher entitlement under the law must be permitted to do so.

8.2.5 **All authorities to work synergistically in the aftermath of a Public Liability Event.**

It would be ideal if all the authorities likely to be involved in the aftermath of an Industrial accident such as the District Collector, the Factory Inspectorate, the State Pollution Control Board, the Green Tribunal work synergistically to ensure that the provisions of the Act are implemented in favour of the unfortunate victim and he is also suitably compensated in terms of Common law for his injury.

It may perhaps help in the implementation of the PLIA better if the District Collector can enlist the help of the Factory Inspector and the State Pollution Control Boards to facilitate the performance of his duties better under the Act.

8.2.6 **Digitalising the Entire Claims Process.**

Given the extensive use of technology in every sphere of business and commerce today, digitalisation must also be used here, by the State machinery in:

- Maintaining the records of the PLIA policy taken by every owner of unit handling hazardous substances along with its limits and its insurer, so that the Collector has that information handy at the time of an Industrial Disaster
- Maintaining the records and lists of all applications for relief received and compensated
- Maintaining records of all compensations disbursed under the PLIA, the NGT awards, the Common Law awards etc.
- All matters incidental to the above

8.3 **In the absence of any governing statutes for victims of Non-Industrial accidents, how do we serve the interest of those victims?**

8.3.1 **Expanding the purview of the Public Liability Insurance Act (PLIA) to apply to all businesses, establishments, public places, tourist attractions**

Refer to Para 6.6 of the report where we have sought the reader's attention to many unfortunate accidents in public places which are no less calamitous than industrial accidents in the number of lives lost and other concomitant consequences. India is one of the few countries where there is a Statutory Public Liability Insurance Act which not only mandates owners of units handling hazardous chemicals to compensate their victims, but also to incept and continue insurance until the owner continues to handle such hazardous chemicals. **There really seems to be no reason why the scope of this legislation shouldn't be widened to apply to all businesses who have a public face rather than it be restricted only to units handling hazardous substances. In fact, there are a number of compelling reasons how this one change can bring about a thought revolution in this space.**

Among the insurance industry experts consulted for this report, many, to name a few Anamika Roy Rashtrawar, Bipul Khanduri, Kaushal Mishra were quite emphatic in their view that this is a step in the right direction and very necessary in a country like ours, where the next disaster is round the corner and indeed, how many more tragedies are needed before we wake up to the need to mandate comprehensive public liability insurance for large infrastructure, construction and industrial projects as well as smaller establishments such as banks, restaurants, public gatherings, tourist attractions as well as hotels and malls?

This has found so much favour because it brings with itself so many concomitant advantages, a few of which are listed below.

- All victims who have suffered Bodily Injury or Property damage know that they can get compensation by knocking at the right doors.
- All businessmen /owners of public places, facilities know that they have a duty of care towards third parties and will have to compensate them.
- All lawyers know it will be worth their while to assist such unfortunate victims in getting such compensation.
- All General Insurers are not only mandated to provide Public Liability Insurance, but are assured of enough business to dedicate efforts and finances towards setting up robust underwriting and claims protocols.

8.3.2 **Mandating Public Liability Insurance through licensing protocols:**

Enacting legislation is a long term option, however, a more immediate route, is to make Public Liability Insurance mandatory through the licensing protocols of industry, for e.g. all restaurants in order to get a permit for starting business operations must be asked to evidence a Public Liability insurance across all its outlets. This was vocalised by Mr. Gunasekhar of ITGI who suggested roping in licensing and certifying bodies which should be primed into not granting a license until the applicants or business owners evidence Public Liability Insurance.

This is an idea worth exploring because this route has been favoured in Australia as well, refer to our comments in Para 5.3.5 of this report. Mandating this through licensing authorities will definitely impress upon the Insureds that they owe a responsibility to their patrons to ensure their safety during access, egress, and duration of stay on their premises similar to Occupiers' Liability referred to in Chapter 2 which applies to Industrial Premises.

This will also help in customising the Public Liability policy to suit sectoral needs, for e.g., a restaurant would need a small option to cover Takeaway Food and Beverages cover more than a School or an Office premise, and though the main Food and Beverages cover is available to most Insureds under even a standard Public Liability cover, covering the take-away option, would be small nuance necessitated only for restaurants.

Even schools, when they apply for certifications from National /International Boards, must be asked to evidence appropriate Public Liability Insurance as a pre-requisite. Such rules may be extended to Shops and Establishments, all Finance Companies which have a customer interface etc.

8.3.3 **Reducing the disparity between awards granted by the NGT across the country.** Let us analyse the awards given by the NGT across the three incidents mentioned in this Report itself under Para 6.9

In the Gujarat Chemical Industry blast reported under Para 6.7.1, NGT assessed interim compensation for death to be Rs15 lakh each, for grievous injury Rs5 lakh per person, for other injuries of persons hospitalised Rs2.5 lakh per person and for displacement at Rs25,000 per person.

In the fire resulting from an Oil well blow out reproduced in Para 6.9.2 the compensation awarded by NGT has been as follows:

The OIL has admitted its liability to 600 families to the extent of Rs15 lakhs each for 161 families and Rs10 lakhs each to the 439 families which runs to about Rs68 crores. It has already paid Rs30,000 each to 3000 persons i.e. Rs9 crores and Rs12 lakhs each to 11 families i.e. Rs2.2 crores. Further, Rs50,000 each has been paid to the families who have left the camps to meet the cost of rent, food etc. According to the OIL, it has spent about Rs11 crores on the camps and also incurred expenditure on managing the blowout which is said to be about Rs151 cores.

Now even as we analyse the awards, the NGT in one accident grants a death compensation of Rs15 lakhs per victim and in the other grants Property damage of Rs15 lakhs for houses totally gutted in fire. In the same country, isn't it incongruous to find Property Damage compensations to be higher or equal to the death compensations to nearest of kin? Also in the same case, if Rs15 lakhs are awarded to a house completely gutted, then the compensation of Rs10 lakhs seem inadequate for a house severely damaged, given that an owner of a severely damaged house may also need to demolish the old structure and rebuild his house from scratch.

There needs to be some uniformity at the end of the judicial authorities while granting compensation and more such disparity may come out in more extensive research on NGT awards.

It would be very relevant here to bring out the experience of the author while handling a liability claim in Nigeria Africa. Extra hazardous cargo was being transported by a local Nigerian company after complying with all due safety norms, and a little past midnight, the engine of the truck carrying the cargo caught fire and the entire truck exploded, the resultant explosion was so severe, that nearly 300 buildings in the vicinity were severely to moderately damaged, fortunately there was no loss of life only property damage. There was a public

outcry, media coverage and immense political pressure from the state authorities on the corporate entity, the owner of the extra hazardous cargo to compensate the owner/occupants of the damaged buildings.

But throughout it all, a very systematic scientific approach was followed in arriving at the determination of the compensation to be awarded to the victims, an expert structural surveyor was appointed, under a strict time frame to evaluate the structural damage to each house and negotiate a settlement with the house owner as to the compensation necessary to repair the house sufficiently so that he is in the same position as he was before the loss.

All this was accomplished within a strict time frame, interim reports were shared with the Insurer as well as the local authorities, and the negotiated compensations were paid during the agreed time frames. Unfortunately, in India, we do not see such a well-reasoned out process – there is always too much of a broad brush approach, and often it is suspected that the compensation swings between two extreme ends of the pendulum – some deserving victims do not get just and fair compensation and yet others may have profiteered from the tragedy.

Bringing a process and parity to such claims will not only ensure justice to all victims but will also reassure the insurers that the principle of indemnity was upheld at least with respect to Property Damage claims.

8.3.4 **Setting up a separate judicial forum for victims of mass casualties so that their plea for justice and compensations can be fast tracked.**

The victims of Uphaar cinema had to wait 19 long years to get justice and the victims of the Carlton Tower Fire in Bangalore, which claimed the lives of nine people and injured over 70 people are waiting for past 11 years for the trial to start.[80] Just as a separate NCLT was set up to fast track Company law litigation, there is an urgent need to establish a separate judicial forum for people willing to pursue the route of civil law for higher compensation amounts than those announced by the government authorities from the national exchequer or granted by the NGT.

[80] https://www.deccanherald.com/metrolife/metrolife-your-bond-with-bengaluru/carlton-towers-fire-no-trial-in-11-years-1033572.html

Chapter 9: Initiatives to be taken by the Insurance Industry to popularise the purchase of Public Liability Insurance in India.

9.1 In the earlier chapter we concentrated on changes that need to be brought about to create a more legally aware society from a socio-political perspective, but all the lofty objectives of such initiatives can remain unserved if insurance of public liabilities do not step up to come to the aid of industry when it needs it the most. Having said that, where the tortfeasor has no sense of obligation or responsibility to indemnify a victim who has either suffered Bodily Injury/Property Damage on account of his premises and operations and the victim also is equally unaware of his rights or unwilling to exercise the same, popularising Public Liability Insurance is truly a challenge.

9.2 In India, all insurance by itself is considered an intangible proposition, it is a promise to pay in the event of a certain contingency. But with asset insurances, the Insured sees the asset which is tangible, if he has taken a loan to finance the purchase of the asset, the financial institution mandates the insurance thereof at least up to the amount and duration of the loan, but in case of Liability Insurance, it is an intangible protection for an intangible liability! Now this insurance can be popularised only when the industry turns one of the above intangibles into tangibles – there needs to be a tangible benefit emanating out of insurance for corporate India to expend moneys for the purchase thereof.

9.3 We have considered mandating it through appropriate legislation, i.e., by imposing a statutory obligation to incept Public Liability Insurance for all Business Enterprises similar to PLIA for Owners of Units handling hazardous substances, or through licensing protocols and we request you to refer to Chapter 8. Since the legislative route is a very long-drawn-out process here are some other softer measures which may help in having the desired outcome:

- Emphasising Public Liability Insurance as a good business practice, as an essential tenet of good corporate governance through Public awareness campaigns.

- Training all the customer facing staff of the Insured in Public Liability Insurance and its practical application especially those who may need to demonstrate empathy at the time of any Public Liability event.
- Just as IRDA mandates that all Insurers must book at least 5% of their total GPW through rural business, a decent percentage must be made mandatory for Public Liability Insurance.
- Giving seamless covers across Act Only and Common Law Liability Covers
- Giving higher percentage discounts for optional Purchase of Public Liability Insurance across all modular policies.
- Publicity Campaigns to be undertaken by IRDA on the lines of Bima Bemisaal for Public Liability Insurance
- Modifying the coverage under the Public Liability covers to meet the practical requirements of the buyers of Insurance in terms of coverage and at the time of an unfortunate claim.
- Simplifying the Claims procedure so that the true value of insurance can be realised by the Insured when he needs it the most. (for ease of claiming see Chapter 10)

Let us discuss these in more detail.

9.4 Emphasising Public Liability Insurance as a good business practice, as an essential tenet of good corporate governance through public awareness campaigns.

9.4.1 After the Kamala Mills Fire and a few similar incidents like that, the State Government took legal action against BMC officials, Fire Brigade Officials and the Restaurant Owners and also detained seven officials in custody, apart from which in 2019 after intense scrutiny and audit of the Fire Department, many licenses of eateries, drinking holes were cancelled which failed in their audits in demonstrating compliance with; and adherence to fire safety norms. All these measures had a salutary effect on the restaurateurs who in order to retain their customers started displaying fire safety certificates on their entrances or very visibly throughout their premises. A similar Public Awareness campaign that highlights the importance of having Public Liability

Insurance should also be undertaken but there might be resistance from the Insurers who might misconstrue this as solicitation of claims from the public.

9.4.2 There is always a fear in the minds of Insurers that evidencing such insurances actually invites victims to claim, and please refer to Para 7.6.7 of the report where we quoted the example of Oil Companies and their dealers going to great pains so as not to divulge that all consumers who use LPG cylinders are protected up to Rs. 40 lakh under the Public Liability Insurance incepted by the Oil Companies. This apprehension has also been vocalised by General Insurance Liability departments but these fears can be allayed by the following arguments:

- All members of the Public are aware of Motor Insurance policies but the incidence of claims do not increase merely by such knowledge, there has to be an accident post which victims can claim against such Insurance.
- When it comes to Product Liability, the Insurers are not averse to issuing Certificates of Insurances (COI) whereby such insurance is evidenced to the Insured's customers that the Insured has a valid Product Liability Insurance which can be claimed upon for any Bodily Injury, Property Damage to the Customers who demand such evidence. Again, mere assurance of such insurance does not by itself create a claim, the necessary trigger has to be a defect in the goods which has been solely attributable to such Bodily Injury, Property Damage to the Customers.

9.5 **Training all the Customer facing staff of the Insured in Public Liability Insurance and its practical application especially those who may need to demonstrate empathy at the time of any Public Liability event.**

9.5.1 Recently many instances have come to light where though Public Liability insurance had been incepted by the company at its corporate headquarters, the information thereto was available only with a few denizens of the corporate ivory tower, and it was not known to the frontline staff who is often dismissive and downright rude to customers who have suffered Bodily Injury on premises.

9.5.2 This happened on the premises of India's largest bank (which everybody in the liability insurance circles knows) incepts Public Liability Insurance up to decent limits, yet when an elderly gentleman fell on its premises and suffered

grievous bodily injury, the branch manager was dismissive of such incident, did not even offer immediate first aid or transport to the hospital, adding to the distress of the victim.

9.5.3 Now most CGLs (refer to chapter 2 of the Report – Types of Insurance Policies) apart from offering standard Liability coverage also offer a No-fault First Aid Coverage under Medical Expenses Coverage – Coverage C under the policy which provides a No Questions Asked First Aid Coverage to any victim who suffers Bodily Injury on the Insured's premises during the validity of his CGL coverage. Some insurers grant up to a maximum of Rs6 lakh coverage per person, the average limits though are between Rs50,000 to Rs2 lakh per person. Please also refer to Chapter 6 Para 6.6.5 of the report where a retail chain insured has successfully recovered a claim under the same section for emergency medical and first aid expenses given to 7 customers when they were injured on his premises in an accident involving a lift crash.

9.5.4 Now if the frontline staff is aware of such a provision, then their entire attitude with respect to a Public Liability event undergoes a change. If they realise that the Insurance Company will pay post facto without any questions asked, whatever expenditure they have incurred for providing first aid to victims who have suffered Bodily Injury on their premises, they will be empathetic, will provide first aid expenditure including ambulance and immediate medical expenses including immediate hospitalisation – See the wording below.

Coverage C (CGL) – Medical Expenses

The Insurer will pay reasonable expenses for:

a. *First aid administered at the time of an accident;*
b. *Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and*
c. *Necessary ambulance, hospital, professional nursing and funeral services.*

9.5.5 Similar situation applies to Care Control and Custody or Valet Parking Services or the many other terms and conditions of a normal CGL, which if the frontline staff of the Insured is aware of and knows the procedure of claiming will definitely avoid any escalation of an unfortunate situation into a legal proceeding. Once the Insured understands that a stronger bond is created between his customer and himself when he addresses a grievance or a situation

involving his clients better, he will be more receptive to the idea of Public Liability Insurance.

9.6 **Just as IRDA mandates that all Insurers must book at least 5% of their total GPW through rural business, a decent percentage must be made mandatory for Public Liability Insurance.**

9.6.1 Please refer to Para 7.2 where we mentioned that on account of Liability Insurance being a mere 1.52% of the GDPI, it did not receive attention at the top echelons of the General Insurance companies. Now unless these insurers have regulatory mandates to acquire a certain percentage of their total GPW from Public Liability Insurance, this line of business will never get the focus it deserves from the top management of the Insurance Company.

9.6.2 In fact it gets so little top management attention , that there is no focus on training their Marketing staff in explaining the various terms and conditions of the cover and in fact at times the sales in this line of business suffer because neither are the marketing staff of the Insurers able to create a need for Public Liability insurance, nor are they able to even assure the Insured that apart from statutory compliances, this insurance can clearly come to their aid at the time of an unfortunate event which if of a particular magnitude can expose them not only to public anger but also to political displeasure.

9.6.3 Besides with this move, we will address one of the long standing lacuna of the General Insurance Industry of India – the dearth of accurate reliable data in this line of business. Once Public Liability business is made mandatory, insurers will have to maintain product wise data for each major and minor product lines, thus aiding in drafting better strategies for overall development of the product derived from product development, distribution and effective rating.

9.7 **Modifying the Public Liability covers sold to ensure that they meet the practical requirements of the buyers of Insurance in terms of coverage and at the time of an unfortunate claim.**

9.7.1 Given that all of Liability Insurances are imports, even the erstwhile Market Agreement was dictated to by the Reinsurers of the time who had borrowed the same heavily from European wording. Later when the American

companies came to India, they introduced the American CGL wording which also found a decent customer base in discerning and mandated buyers of insurance.

9.7.2 But in all these endeavours, essential 'Indianisation' of wordings was missed out. Almost 35 years after the launch of these wordings, it is time to question ourselves – are these wordings indeed fit for purpose? Is there anything in the wording which needs to be modified to suit the Indian legal system and jurisprudence?

9.7.3 In terms of making the Public Liability /CGL policy suitable for Indian Regulatory and judicial systems, the insurers must think of the following policy amendments:

9.7.3.1 **Allowing Relocation Expenses apart from Bodily Injury and Property Damage:** Lately in various industrial disasters we have seen Government officials order displacement of individuals and their relocation. The Owner of the Unit is also asked to compensate them for this inconvenience which comes to a substantial amount. Now when the Insuring agreement of all policies only specify BI/PD claims as being payable, then this part of the award remains non-payable much to the consternation of the buyer of Public Liability Insurance.

9.7.3.2 **The insurer should be ready to pay the deposit which is often demanded by the National Green Tribunal in the immediate aftermath of an Industrial Accident from the Owner/Insured.**

The second important change we need in the Policy agreement is allowing for a Deposit of the Insurance proceeds so that when there is a demand for a deposit from the Insured by the Regulatory authorities, the Public Liability Insurance they have taken must respond and pay up the deposit to give the much-needed relief to the Insured.

This should not be difficult for the Insurer, because at least under the PLIA, the District Collector does demand the amount from the Insurer as a Deposit from which he disburses the claim who have been registered in his list of affected victims of the industrial accident. And furthermore, under the PLIA the insurer has to comply with the provisions of PLIA under Sec 7 (3) as reproduced below:

[(3) When an award is made under this section, -
the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (2B) of section 4, shall, **within a period of thirty days** of the date of announcement of the award, deposit that amount in such manner as the Collector may direct…

So, adopting this even for the buyers of common law Public Liability Insurance should not be treated as a special dispensation but a necessary procedure. Indeed Mr. Sanjay Datta – Head of Commercial Operations, ICICI Lombard General Insurance Company expressed a willingness to release the much-needed deposit to the Government authorities demanding the same.

However, we do believe that a protocol governing the deposit proceeds may be needed to be put in place, this opinion has also been vocalised by Avya Kapoor – there has to be transparency in the disbursement of the compensation to the victims from these deposits and such disbursement should be time bound. A necessary procedure should be laid down such that, these deposits which are intended to finance the compensation amounts should be deposited in a public sector bank and in case the moneys are not utilised within a period of five years, then it should be refunded back to the Insurer. This is because PLIA provides under Section 6 (3):

(3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.

9.7.3.3 **The other elements that can be successfully introduced from other Liability lines of Business especially the Directors' and Officers' policies are:**

- Allowing civil fines and penalties for Public Liability Insurance – If the civic authorities have swung into action, and are imposing civil fines and penalties, then the same must be allowed even under Public Liability Insurance, in much the same way as they are allowed under D

& O Insurance, though there is always a caveat that provided they are insurable in the jurisdiction that they are awarded.

- Mitigation Expenses and Emergency Costs – must also be allowed under Public Liability Insurance.
- Advancement of Defence costs which is also a regular feature of D & O must be allowed here as a matter of routine rather than as an exception.
- In the aftermath of an industrial Disaster, it is often observed that the passports of the senior Management/ promoters are seized and their assets and liberty are under threat, and they need to retain legal counsel to extricate themselves from such proceedings. Now these types of coverage enhancements are only given under a D & O policy, and the Public Liability policy only covers compensation claims. We strongly suggest that these coverage enhancements be also allowed under every variant of the Public Liability policy so as to make these policies more comprehensive for the potential buyer.

9.7.3.4 **Giving seamless covers across PLIA Only and Common Law Liability Covers.**

Now this is a major lacuna across the two covers that needs to be addressed by the Policymakers. This needs to be explained further.

Even at the risk of repetition, we seek to refer you to our comments on PLIA in Chapter 3 of the same report. This covers the statutory liability imposed by the Act on all Owners of units handling hazardous substances. The maximum limits of indemnity permitted under this policy as per the Rules are Rs5 crores allowed as compensation to the victims per accident and the Insured is permitted to claim indemnity for maximum 3 accidents in a year, i.e., up to Rs15 crores in any given policy period of 12 months.

Going however by the magnitude of the Bhopal Disaster, which was anyway the raison d'être of the PLIA, even a back-of-the-envelope calculation will bring out the fact that had this Act been in the law books at the time Bhopal happened, the per accident limit of Rs5

crores would not have been adequate. Even assuming that approximately 20,000 people died and 5,50,000 victims suffered injuries, then a cursory calculation worked out as follows will peg the total compensation at Rs. 725 crores.

Death compensation – Rs25,000 x 20,000 - Rs. 50, 00,00,000
Medical Expenses – Rs12,500 x 500000 - Rs. 675,00,00,000
Total Compensation payable under the Act - Rs.725,00,00,000

So, an Environment Relief Fund was created which would provide Excess Protection by allowing the same limits if the Base limits are found inadequate. However, once that is found inadequate then the Liability passes back to the Owner. Even a Liability of Rs62.5 crores can cripple an Industrial Unit and they must get the benefit of Insurance if they wish to buy the same. **However, under the current system they do not, even if they have incepted the Common Law Industrial Public Liability Insurance or CGL covering Premises and Operations.**

And why would that be? It is because the Common Law Policy **does not cover any Statutory Liability whatsoever** …. In fact, this is clearly enunciated in the Insuring Agreement as well as the Exclusions. The request therefore would be for the Insurance Industry to consider allowing excess limits even above the Statutory PLIA policy by making the necessary wording amendments because they will have failed to live up to the expectations of their customers if they leave even the smallest gap between the PLIA policy and the common law policy. This can be done by carrying out the amendments suggested below:

- Deleting the Exclusion pertaining to Statutory Liability,
- Amending the Insuring Agreement appropriately
- Attaching an affirmative endorsement in the Policy giving effect to the above.

9.7.3.5 **Allowing the Limits to operate on a 1:1 ratio between Any One Accident to Any One Year or Aggregate Limits.**

Most liability insurance practitioners would agree that liability is a severity rather than frequency-based risk exposure and in fact most Financial Lines Policies are written on a 1:1 ratio between the per occurrence limits and the aggregate limits. In the underwriting world, it has always been accepted that since there is no limit on the number of accidents you may have in the policy, it is always better to incept a policy with the ratio 1:1, at least it allows a higher limit in the event of an unfortunate accident.

So just by turning the ratio between AOA to AOY to 1:1, instead of maintaining it to the current 1:3 limits, it will benefit all insureds to a considerable extent because:

- The Any One Accident (AOA) maximum limit will increase to Rs. 15 crores
- The ERF which mirrors the limits given in the Base policy will also give limits till Rs15 crores per accident.

If we were to once again consider the compensation payable in a catastrophic disaster as enunciated in Para 9.8.4 (d) above, we would realise what a substantial relief it would provide to the beleaguered insured who would have to contend with the number of claims under the PLIA and the magnitude of awards under the Common Law.

9.8 **Giving higher percentage discounts for optional Purchase of Public Liability Insurance across all modular policies.**

Please refer to Chapter 4 where the types of Public Liability Insurance policies available in the market have been discussed. In all these policies, which are normally taken by householders, office occupiers or owners of SMEs. In each of these policies there are sectional discounts, which are graded so that after the compulsory sections which are usually the Premises coverage against Fire and Allied Perils and Burglary and Housebreaking etc., there are optional modules like the Public Liability Section. This is generally overlooked until the agent points out that just by adding the section,

the Insured would be entitled to a higher slab discount! Here the insurance industry could do two things….

- Either make Public Liability a compulsory section
- Or give a higher sectional discount if Public Liability Coverage is opted for

Obviously, doing both simultaneously would give better results in a price sensitive market like India!

9.9 **Introduce rational rating tables or systems especially for the PLIA so that the contribution to ERF does not suffer.**

As mentioned earlier in the report to meet catastrophic liabilities that arise under the Act, a Top-up facility was created in the form of an ERF to provide one reinstatement to the Insured. In order to fill the coffers of the ERF, an equal contribution to the annual premium charged under the PLIA would be paid towards ERF. Now obviously here, due to heavy discounting of the PLIA premium, it is quite possible that a few insurers in the market charge premiums disproportionately lower than the actual risk! This despite the fact that in any case PLIA is given only to units handling hazardous substances, thus acting as a discrimination against the Insurers in terms of adverse risk selection. Now if that happens, this will have a very negative impact on the ERF collections as well.

In order to curb such a nefarious practice, it may be necessary to reintroduce some rating tables or a PLIA tariff so that underwriting discipline can be maintained in statutory insurances.

Chapter 10: Initiatives to be taken by the Insurance Industry to facilitate quick and effective Public Liability claims recovery by the Insured.

10.1 In any insurance policy the moment of truth comes when a payable claim arises under the policy and the efficacy of insurance is tested in two most important criteria related to claims – the size of the claim and the age of the claim. The more the recovery, the better his claims experience and the smaller the age of the claim – i.e. the time taken between notification of claims and receipt of the claims proceeds by the Insured, the more successful he is deemed to be in his claims endeavour.

As of now, public liability claims are at the highest on the complexity scale – the perception is that if the policy wording is so complex, then it is hardly surprising that the claims process is difficult too. This is exacerbated by the following factors:

10.1.1 **Lack of knowledge and information about the Liability lines of Business within the Insurance Industry staff.**

Many offices of Insurers, sell liability policies but have very little knowledge or training on what to do when a claim is notified. For many weeks the file languishes, there is often no response by the Insurer, the Insured also knows little of how to handle such claims and many claims files are closed for want of documentation. Most times, rather than taking a stand, they depend completely on Surveyors and loss assessors who are also plagued with lack of knowledge and misapplication of mind with regard to liability concepts – there are many who are property surveyors but also asked to do liability survey work and it is often difficult to argue a rightful stand with them.

In many parts of the world, therefore the insurer appoints a surveyor or a loss assessor who is only entrusted with arriving at the rightful compensation due, but the entire policy interpretation is reserved by the insurer in his hands. We are in favour of this approach because the liability claim has quite a few grey areas and it is the intent of the underwriter of the policy which holds paramount in such cases. This achieves two purposes:

- The underwriter's technical understanding complements the claims' team's handling of the matter.
- The underwriter often learns from the claims scenario and would then take pains to use that knowledge to suit the client's requirements and his own constraints.

10.1.2 **Operational challenges for the Insurance Carrier**: Long tail insurance claims result into claim provisioning concerns for the insurers. Further adding to the woes of the insurers is the unpredictable outcome of legal proceedings, which may render the original provisioning inadequate, leading to regulatory concerns or questions from the shareholders. This works as a natural deterrent from the supply side ultimately leading to low penetration.

10.1.3 **Overlapping of Government Action, Legal Action and Insurance Claim:** Time and again, in the event of a public tragedy, we have seen the Government spring into action and announce financial relief to the victims. Now let us take the recent Morbi disaster – the Government dipped into the National Exchequer and announced a Rs 4 lakh compensation for the dead, however what if a citizen wants to proceed against Oreva to establish his claim under the Law of Torts, how would that pan out?

10.1.4 **Complicated Claim Settlement Process:** No accident or injury is the same as another. That is what makes liability claims so complex. There's no cookie-cutter mould that the insurers or lawyers can use and simply repeat case after case. Due to this each claim has to be assessed and adjudicated as per the respective facts and circumstances, which brings in a lot of subjectivity in the settlement of the claims. There are two bases of claims settlement – the traditional Reimbursement/Right To Defend Basis of claims handling and the American Duty to Defend Basis of claims handling. The traditional Reimbursement/Right to Defend Basis of claims handling is replete with so many issues, continuous demand for endless documentation, an unending wait for litigation resolution, a continuously growing demand for legal fees which the insured has to bear from his own pocket, before he gets the claims proceeds, that it is not difficult to imagine him being unnerved at the prospect thereof at the start of the claim.

10.2 So what are the few measures that the Insurance Industry can take to improve the Claims experience of the insured under a Public Liability policy?

10.2.1 **Remove the insistence on initiation or resolution of legal proceedings for it to trigger a valid claim under the Public Liability policy.**

For long the understanding was that in order to trigger a valid claim under the Public and Product Liability Insurance policies, a legal proceeding must be filed in the court of law. The PSU Insurers still maintain that they will pay only if there is a court case filed by the insured's claimant and the verdict indicts the insured.

The American wordings which hit the market had wording in their policy which did not mandate a court proceeding, a valid claim could also be registered by a written claim for compensation from a third party but interestingly the CGL does not have the definition of a claim in the entire policy. They also start with "when the Suit is filed" on the insured.

Now this is in dissonance with the average buyer – a businessman in India would like to avoid legal proceeding and will be looking for out-of-court settlements so that he is no longer spending any time on tiresome litigation but concentrating on his business, but this is frowned upon by the insurer unless his prior approval is taken and he is allowed to be present when the settlement is signed. This dislike of any out-of-court settlement seriously handicaps the popularity and acceptability of Public Liability Insurance in the hands of a potential buyer who is looking at a quick exit from potential litigation.

In fact, as a corollary, they must remove the bar on out of court settlements as long as the final meeting(s) in which such settlements may be discussed are notified to the Insurer so that he can remain present at the same and assure himself that such settlements are compensatory in nature and not excessive with regard to the injury suffered.

10.2.2 **Encourage compliance with the letter and spirit of "Duty to Defend" basis of Claims handling**.

Duty to Defend basis of claims handling means that the insurer assumes the total duty to defend his insured including appointing a defence lawyer and paying his bills until the out-of-court settlement, court verdict or the depletion

of the limits of indemnity whichever comes first. This is in contrast to the **Reimbursement/ Right to Defend** Basis of Claims handling which is still given by the vast majority of insures in India. In **a Reimbursement/Right to Defend wording**, the Insured is expected to defend himself, appoint his lawyer, pay legal fees and then once the judge has pronounced the verdict in his case, claim the legal fees spent and the damages awarded against him. In a long length country like India this itself frustrates the Insured to a point of paying off the claimant and not claiming it from the Insurance he had taken to indemnify him in exactly the same situation.

Duty to Defend wording came on like a breath of fresh air when it was first introduced by Tata AIG but since then it has been observed that most insurers in India merely print Duty to Defend Wording but do not practise the same. Again, if this were practised in letter and spirit, it would definitely appeal to the buyer of Public Liability insurance, because there are no demands made on his time and/or money once he has notified the insurer of a claim on his policy.

Here again the Casualty Insurers need to make up their mind about the Basis of Claims Handling:

- If they want to control the claim, they must give a Duty to Defend wording and adhere to the procedural discharge of the duty.
- If they are desirous of letting the Insured handle the claim and then indemnify him on a Reimbursement basis, then they must adopt a hands-off approach after receiving the basic claim notification from the Insured and invoke their right to defend in the rarest of rare cases.

The Reimbursement wording (aka Right to Defend wording) currently states that the insured shall not admit any liability nor offer any settlement and even needs prior approval of the insurer in choosing and appointing a defence lawyer and these are very onerous provisions for a litigation averse Insured. If the insurers do not wish to participate in the defence of the insured, they must after the notification of a claim allow full autonomy to the insured to handle the claim to the best of his interest. They may of course demand notices of all important milestones of the case, including their presence and approval to any out-of-court settlements, so that their interests are not compromised, but the

current practice of being completely indifferent to the claim from the start and then denying the claim later for want of information is best avoided.

10.2.3 **Training of the empanelled Surveyors and their own claims staff.**

It is not unusual to find Property and Engineering Surveyors being asked to arrive at Liability claims settlements. Since the skill set required is completely different, we believe that Liability training is the crying need of the hour to both loss assessors/ surveyors and the claims department of the insurers.

10.2.4 **Allowing an On-account payment in Liability Claims.**

There is a very clear provision of allowing On-account claims in property and engineering lines of business where admissibility of the claim as per policy terms and conditions is not in question, but the claim recovery is likely to be delayed causing undue hardship to the insured. We have often been told by many insurers and loss assessors that no such provision exists in liability lines of business and this may be partly due to many D & O liability policies providing for Advancement of Defence Costs, after all until the case is being decided in the court, all that the insured has to pay are defence costs, which on account of the above coverage, are reimbursed to the insured a soon as he incurs them. However, since so far, no such feature exists in liability policies, and we believe that this is seriously the need of the hour in Public Liability class of business also.

10.2.5 **Making the Claims Process/ Owner Independent in the Industrial Public Liability Insurance claims:**

Since the liability that arises under the PLIA is statutory, no- fault and absolute* (See Chapter 2 on the legal principle of Absolute Liability) and consequently the process laid down under the PLIA is also clear and unambiguous, this should be observed even for common law public Liability Insurance claims lodged under the Industrial Public Liability policy or the CGL policy incepted by a businessman. The entire claims process must be made clear and unambiguous and in fact Insured independent, just as in the case of Motor Accident Claims Tribunal. In fact, this is what is intended under PLIA as well, since even under the PLIA, as soon as there is an Industrial Accident, it is the District Collector who accepts or invites applications for

relief, makes a list of affected victims and then demands the money from the Insurer, the ERF and the Owner.

10.2.6 **Replicating the Motor Third Party claims settling machinery even in Public Liability claims under the Industrial/Non-Industrial or the CGL policy.**

There is a lot of merit in analysing the current Third Party Motor Liability Claims settling machinery and how this can be adapted or better still replicated to address the concerns of victims of industrial or non-industrial accidents. Let us examine this one by one.

- It must here be recognised that Third Party Motor Insurance Claims settling machinery has been put in place by the lawmakers and the Insurers because this insurance is legally mandated and compulsory by law. This is a desirable requirement but not a pre-requisite.
- There is a separate Motor Accidents Claims Tribunal which is only tasked with adjudicating on Motor accident cases rather than overloading an already bursting civil law judiciary.
- The Insurance Claims process is completely Owner/Insured independent where the Tribunal simply demands the Insurance of the Vehicle involved in the accident and proceeds to handle the entire claim with the Insurer of the said vehicle.
- This also allows for the judicial authority to apply their minds with respect to adequate and appropriate compensation to be awarded to the victims who may be ranging from disparate sections of the society in preference to the broad brush approach currently in evidence when compensations are declared randomly stipulating a fixed amount without taking into consideration essential parameters like the age, earning capacity and future career progressions, number of dependants etc.

Chapter 11: Conclusion

11.1 The above issues highlight a broad spectrum of the concerns that need to be addressed. Only the insurance industry alone cannot resolve these issues. It needs a concerted effort from the Legislature, Judiciary and Executive branch of administration. We have collated the above issues post discussion from industry veterans who have also shared their inputs about possible solutions which we have attempted to elucidate in following chapters.

11.1.1 The real test of the effectiveness of any policy or legislature can be truly measured when the end user is deriving the benefit intended for them. In terms of the Public Liability Insurance Act, if the victims derive the benefits envisaged under the Act and in terms of insurance policies, if the buyers of such insurance succeed in effecting expeditious claims recovery, they will be deemed to rise to the purpose of their existence. If in a time of need the insured cannot avail the financial cushion he expected from the insurance policy, for him any benefit of the policy would be lost. Similarly, if the benefits of the legislated insurance policies like PLI Act policy is not reaching the ultimate victim, one can safely say that the legislature failed to fulfil the intended purpose.

Report prepared by :

Uttara Vaid, Soumya Shukla and Prachi Vaid for Uttara Vaid Advisory (https://www.uvadvisory.in) in Association with Moneylife Foundation (https://www.mlfoundation.in/)

Uttara Vaid Advisory, A-wing, 2703, Parkside, Lodha Park, Pandurang Budhkar Marg, Worli, Mumbai – 400013.

Date – January 2023

सचिव (खान) का कार्यालय
Office of Secretary (Mines)
डा. सं./Dy. No. 10263755
दिनांक/Date 22/06/2022

MOST URGENT/IMMEDIATE

F. No. HSM-12/96/2020-HSM
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
(HSM DIVISION)
***

1st Level, Jal Wing,
Indira Paryavaran Bhawan
Jor Bagh Road,
New Delhi-110003

Dated: 20th June, 2022

OFFICE MEMORANDUM

Subject: Seeking Comments on Draft Cabinet Note for introducing the "Public Liability Insurance (Amendment) Bill, 2022"- regarding.

The undersigned is directed to forward herewith a copy of Draft Cabinet Note on the above captioned subject, as proposed by the Ministry of Environment, Forest and Climate Change. It is requested that the concerned Ministry/ Department may submit its comments / suggestions on the draft Cabinet Note on "Public Liability Insurance (Amendment) Bill, 2022 if any within two weeks' time.

2. This issues with the approval of Competent Authority.

JS(fn) JD(S) 22/6 urgently please
21/6

Encl: As above

(Ved Prakash Mishra)
Director
Tele: 011-2081 9402
E-mail: mishra.vp@gov.in

23/6

To,

US(AK) 23/6/22 22/6
SO(CON) This subject pertains to M-V.

Jaiswal, ASO

1. The Additional Secretary, PMO
2. The Joint Secretary, Cabinet Secretariat
3. CEO NITI Aayog
4. The Secretary, Ministry of Mines
5. The Secretary, Ministry of Power
6. The Secretary, Ministry of Steel
7. The Secretary, Ministry of Petroleum and Natural Gas
8. The Secretary, Ministry of Road, Transport and Highways
9. The Secretary, Ministry of Shipping
10. The Secretary, Ministry of Jal Shakti

11. The Secretary, Ministry of Chemical and Fertilizers
12. The Secretary, Ministry of New and Renewable Energy
13. The Secretary, Ministry of Earth Sciences
14. The Secretary, Ministry of Housing and Urban Affairs
15. The Secretary, Ministry of Heavy Industries
16. The Secretary, Department of Industrial policy and Promotion
17. The Secretary, Ministry of Home Affairs,
18. The Secretary, Ministry of Agriculture and Farmers' Welfare
19. The Secretary, Ministry of Commerce and Industry,
20. The Secretary, Ministry of Health and Family Welfare,
21. The Secretary, Ministry of Fisheries, Animal Husbandry and Dairying,
22. The Secretary, Ministry of Law & Justice
23. The Secretary, Department of Legal Affairs,
24. The Secretary, Department of Economic Affairs, Ministry of Finance,
25. The Secretary, Department of Expenditure, Ministry of Finance

Copy for information to:

1. PPS to Hon'ble MEF&CC
2. PPS to Hon'ble MoS (EF&CC)
3. PPS to Secretary, MoEF&CC
4. PPS to AS (NPG)

ANNEXURE-1

THE PUBLIC LIABILITY INSURANCE ACT, 1991

ARRANGEMENT OF SECTIONS

SECTIONS

THE PUBLIC LIABILITY INSURANCE ACT, 1991

ACT NO. 6 OF 1991

[22*nd January*, 1991.]

An Act 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.

BE it enacted by Parliament in the Forty-first Year of The Republic of India as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Public Liability Insurance Act, 1991.

(*2*) It shall come into force on such date[1] as the Central Government may, by notification, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

[2][(*a*) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity;]

(*b*) "Collector" means the Collector having jurisdiction over the area in which the accident occurs;

(*c*) "handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(*d*) "hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as may be specified, by notification, by the Central Government;

(*e*) "insurance" means insurance against liability under sub-section (*1*) of section 3;

(*f*) "notification" means a notification published in the official Gazette;

[3][(*g*) "owner" means a person who owns, or has control over handling, any hazardous substance at the time of accident and includes,—

(*i*) in the case of firm, any of its partners;

(*ii*) in the case of an association, any of its members; and

(*iii*) in the case of a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to, the company for the conduct of the business of the company;]

(*h*) "prescribed" means prescribed by rules made under this Act;

[4][(*ha*) "Relief Fund" means the Environmental Relief Fund established under section 7A];

(*i*) "rules" means rules made under this Act;

(*j*) "vehicle" means any mode of surface transport other than railways.

3.Liability to give relief in certain cases on principle of no fault.—(*1*) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.

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1. 1st April, 1991, *vide* notification No. G.S.R 253, dated 27th March, 1991, *see* Gazette of India Ordinary, Part II sec. 3(*i*).
2. Subs. by Act 11 of 1992, s. 2, for clause (*a*) (w.e.f. 31-1-1992).
3. Subs. by s. 2, *ibid.*, for clause (*g*) (w.e.f. 31-1-1992).
4. Ins. by s. 2, *ibid.* (w.e.f. 31-1-1992).

(*2*) In any claim for relief under sub-section (*1*) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation.—For the purposes of this section,—

(*i*) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923 (8 of 1923);

(*ii*) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

4. Duty of owner to take out insurance policies.—(*1*) Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (*1*) of section 3:

Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(*2*) Every owner shall get the insurance policy, referred to in sub-section (*1*), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.

[1][(*2A*) No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed.

Explanation.— For the purposes of this sub-section, "paid-up capital" means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.

(*2B*) The liability of the insurer under one assurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(*2C*) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed.

(*2D*) The insurer shall remit to the authority specified in sub-section (*3*) of section 7A the amount received from the owner under sub-section (*2C*) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit the amount, it shall be recoverable from insurer as arrears of land revenue or of public demand.]

(*3*)The Central Government may, by notification, exempt from the operation of sub-section (*1*) any owner, namely:—

(*a*) the Central Government;

(*b*) any State Government;

(*c*) any corporation owned or controlled by the Central Government or a State Government; or

(*d*) any local authority:

Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (*1*) of section 3.

5. Verification and publication of accident by Collector.—Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence

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1.Ins. by Act 11 of 1992, s. 3 (w.e.f. 31-1-1992).

of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (*1*) of section 6.

6. Application for claim for relief.—(*1*) An application for claim for relief may be made—

(*a*) by the person who has sustained the injury;

(*b*) by the owner of the property to which the damage has been caused;

(*c*) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(*d*) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(*2*) Every application under sub-section (*1*) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.

(*3*) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.

7. Award of relief.—(*1*) On receipt of an application under sub-section (*1*) of section 6, the Collector shall, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.

(*2*) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

[1][(*3*) When an award is made under this section,—

(*a*) the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (*2B*) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct;

(*b*) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (*1*) such amount as may be specified in that scheme;

(*c*) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.]

(*4*) In holding any inquiry under sub-section (*1*), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit.

(*5*) The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure,1973 (2 of 1974).

(*6*) Where the insurer or the owner against whom the award is made under sub-section (*1*) fails to deposit the amount of such award within the period specified under sub-section (*3*), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

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1. Subs. by Act 11 of 1992, s. 4, for sub-section (*3*) (w.e.f. 31-1-1992).

(*7*) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (*1*) of section 6.

[1][(*8*) Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of award, the Collector may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), grant a temporary injunction to restrain such act.]

[2][**7A. Establishment of Environmental Relief Fund.**—(*1*) The Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund.

(*2*) The Relief Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme made under sub-section (*3*),relief under the award made by the Collector under section 7.

(*3*) The Central Government may, by notification, make a scheme specifying the authority in which the Relief Fund shall vest, the manner in which the Relief Fund shall be administered, the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom.]

8. Provisions as to other right to claim compensation for death, etc.—(*1*) The right to claim relief under sub-section (*1*) of section 3 in respect of death of, or injury to, any person or damage to any property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

(*2*) Notwithstanding anything contained in sub-section (*1*), where in respect of death of, or injury to, any person or damage to any property, the owner, liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid under this Act.

9.Power to call for information.—Any person authorised by the Central Government may, for the purposes of ascertaining whether any requirements of this Act or of any rule or of any direction given under this Act have been compiled with, require any owner to submit to that person such information as that person may reasonably think necessary.

10. Power of entry and inspection.—Any person, authorised by the Central Government in this behalf, shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been compiled with and such owner is bound to render all assistance to such person.

11. Power of search and seizure.—(*1*) If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place, premises or vehicle, in contravention of sub-section (*1*) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance.

(*2*) Where, as a result of any search under sub-section (*1*) any handling of hazardous substance has been found in relation to which contravention of sub-section (*1*) of section 4 has taken place, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act:

Provided that where it is not practicable to seize any such substance or thing, he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person.

(*3*) He may, if he has reason to believe that it is expedient so to do to prevent an accident dispose of the hazardous substance seized under sub-section (*2*) immediately in such manner as he may deem fit.

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1. Ins. by Act 11 of 1992, s. 4 (w.e.f. 31-1-1992).
2. Ins. by s. 5, *ibid.* (w.e.f. 31-1-1992).

(*4*) All expenses incurred by him in the disposal of hazardous substances under sub-section (*3*) shall be recoverable from the owner as arrears of land revenue or of public demand.

12. Power to give directions.—Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(*a*) prohibition or regulation of the handling of any hazardous substance; or

(*b*) stoppage or regulation of the supply of electricity, water or any other service.

13. Power to make application to Courts for restraining owner from handling hazardous substances.—(*1*) If the Central Government or any person authorised by that Government in this behalf has reason to believe that any owner has been handling any hazardous substance in contravention of any of the provisions of this Act, that Government or, as the case may be, that person may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class for restraining such owner from such handling.

(*2*) On receipt of the application under sub-section (*1*), the Court may make such order as it deems fit.

(*3*) Where under sub-section (*2*), the Court makes an order restraining any owner from handling hazardous substance, it may, in that order—

(*a*) direct such owner to desist from such handling;

(*b*) authorise the Central Government or, as the case may be, the person referred to in sub-section(*1*), if the direction under clause (*a*) is not complied with by the owner to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.

(*4*) All expenses incurred by the Central Government, or as the case may be, the person in implementing the directions of Court under clause (*b*) of sub-section (*3*), shall be recoverable from the owner as arrears of land revenue or of public demand.

14.Penalty for contravention of sub-section (*1*) or sub-section (*2*) of section 4 or failure to comply with directions under section 12.—(*1*) Whoever contravenes any of the provisions of [1][sub-section (*1*) or sub-section (*2*) or sub-section (*2A*) or sub-section (*2C*)] of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.

(*2*) Whoever, having already been convicted of an offence under sub-section (*1*), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.

(*3*) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age.

15.Penalty for failure to comply with direction under section 9 or order under section 11 or obstructing any person in discharge of his functions under section 10 or 11.— If any owner fails to comply with direction issued under section 9 or fails to comply with order issued under sub-section (*2*) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (*1*) or sub-section (*3*) of section 11, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both

1. Subs. by Act 11 of 1992, s. 6, for "sub-section (*1*) or sub-section (*2*)" (w.e.f. 31-1-1992)

16. Offences by companies.—(*1*) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals;

(*b*) "director," in relation to a firm, means a partner in the firm.

17. Offences by Government Departments.—Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

18. Cognizance of offences.—No court shall take cognizance of any offence under this Act except on a complaint made by—

(*a*) the Central Government or any authority or officer authorised in this behalf by that Government; or

(*b*) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

19. Power to delegate.—The Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power under section 23) as it may deem necessary or expedient to any person (including any officer, authority or other agency).

20. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

21. Advisory Committee.—(*1*) The Central Government may, from time to time, constitute an Advisory Committee on the matters relating to the insurance policy under this Act.

(*2*) The Advisory Committee shall consist of—

(*a*) three officers representing the Central Government;

(*b*) two persons representing the insurers;

(*c*) two persons representing the owners; and

(*d*) two persons from amongst the experts of insurance or hazardous substances.

to be appointed by the Central Government.

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(*3*) The Chairman of the Advisory Committee shall be one of the members representing the Central Government, nominated in this behalf by that Government.

22. Effect of other laws.—The provisions of this Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

23. Power to make rules.—(*1*) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

[1][(*a*) the maximum amount for which an insurance policy may be taken out by an owner under sub-section (*2A*) of section 4;

(*aa*) the amount required to be paid by every owner for being credited to the Relief Fund under sub-section (*2C*) of section 4;

(*ab*) the manner in which and the period within which the amount received from the owner is required to be remitted by the insurer under sub-section (*2D*) of section 4];

[2][(*ac*)] establishment and maintenance of fund under sub-section (*3*) of section 4;

(*b*) the form of application and the particulars to be given therein and the documents to accompany such application under sub-section (*2*) of section 6;

(*c*) the procedure for holding an inquiry under sub-section (*4*) of section 7;

(*d*) the purposes for which the Collector shall have powers of a Civil Court under sub-section (*5*) of section 7;

(*e*) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (*b*) of section 18;

(*f*) any other matter which is required to be, or may be, prescribed.

(*3*) Every [3][rule or scheme] made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the [3][rule or scheme] or both Houses agree that the [3][rule or scheme] should not be made, the [3][rule or scheme] shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that [3][rule or scheme].

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1. Ins. by Act 11 of 1992, s. 7 (w.e.f. 31-1-1992).
2. Clause (*a*) shall be re-lettered as clause (*ac*) by s. 7, *ibid.* (w.e.f. 31-1-1992)
3. Subs. by s. 7, *ibid.*, for "rule" (w.e.f. 31-1-1992).

THE SCHEDULE

[*See* section 3(*1*)]

(*i*) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.

(*ii*) For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.

(*iii*) For permanent total or permanent partial disability or other injury or sickness, the relief will be (*a*) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and (*b*) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.

(*iv*) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months:

provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age.

(*v*) Up to Rs. 6,000 depending on the actual damage, for any damage to private property.

ANNEXURE – II

COMPARATIVE CHART ON THE AMENDMENT PROPOSED VIS-À-VIS ORIGINAL PROVISIONS

Section/Title	Existing Provisions	Amendment proposed	Rationale
Section 1. **Short title and commencement.-**	(1) This Act may be called the Public Liability Insurance Act, 1991. (2) It shall come into force on such date as the Central Government may, by notification, appoint.	(1) This Act may be called the Public Liability Insurance (Amendment) Bill, 2022. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	-
Section 2. **Definitions. -**	InIn this Act, unless the context otherwise requires, (a) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity;] (b) "Collector" means the Collector having jurisdiction over the area in which the accident occurs; (c) "handling", in relation to any	In Public Liability Insurance Act, 1991 (hereinafter referred to as the principal Act), in section 2, - a. after clause (ha), the following clause shall be inserted, namely: - (hb) "property" includes any private property or public property affected or damaged by any unit or undertaking, due to manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, transfer or such other processes of hazardous substance.".	In Section 2 of the Principal Act, there is no definition defined for "**Property**". For clarity and to avoid ambiguity and misinterpretation, appropriate definition of "Property" is a necessity, and to include public property and Environment also within the scope of the Act.

	hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance; (d) "hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as may be specified, by notification, by the Central Government; (e) "insurance" means insurance against liability under sub-section (1) of section 3: (f) "notification" means a notification published in the official Gazette; (g) "owner" means a person who owns, or has control over handling any hazardous substance at the time of accident and includes, - in the case of a firm, any of its partners;	(b) after clause (j), the following clause shall be inserted, namely: - "(k) words and expressions used and not defined in this Act but defined in the Environment Protection Act,1986 shall have the meaning respectively assigned to them in that Act.".	

	i. in the case of an association, any of its members; and ii. in the case or a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to the company for the conduct of the business of the company;] (h) "prescribed" means prescribed by rules made under this Act, [(ha) "Relief Fund" means the Environmental Relief Fund established under section 7A] (i) "rules" means rules made under this Act; (j) "vehicle" means any mode of surface transport other than railways.		
Section 3: **Liability to give relief in certain cases on principle of no fault. -**	(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall-be liable to give such relief as is specified in Schedule for such death, injury or damage. (2) In any claim for relief under sub-	In the principal Act, in section 3, for sub section (1), the following sub-section shall be substituted, namely: - "(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to	The amounts of compensation, if included in rules, may be adjusted for inflation in future more conveniently.

	section (l) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. *Explanation.* - For the purpose of this section, - (i) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923 (8 of 1923); (ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.	reimburse such amount, or provide such other relief as may be prescribed, for- F. death due fatal accident; G. medical expenses incurred due to total or partial disability; H. loss of wages due to partial disability; I. other injury or sickness; or J. damage to private property.	
Section 4: **Duty of owner to take out insurance policies. -**	(1) Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of section 3; Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as	In the principal Act, in section 4,- a. for sub-section (1), the following shall be substituted, namely: - "(1) Every owner of any undertaking shall take out, before he starts handling any hazardous substance, one or more insurance policies for each unit providing for contracts of insurance whereby he is insured against liability to give such relief or reimburse such amount as may	For Clarity and to specify the legal requirements to mandate separate policy for each industry/units.

	soon as may be and in any case within a period of one year from such commencement. (2) Every owner shall get the insurance policy, referred to in subsection (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued. [(2A) No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed. *(Explanation. -For the purpose of this sub-section,* "paid-up capital" means in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contracts of insurance.) (2B) The liability of the insurer under one insurance policy shall not exceed the	be prescribed under sub-section (1) of section 3. *Explanation.* - For the purposes of this sub-section, it is hereby clarified that any undertaking having separate consent to operate under- a. the Air (Prevention and Control of Pollution) Act, 1981; and b. the Water (Prevention and Control of Pollution) Act, 1974, shall be treated as a separate unit.". Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement. (b) for sub-section (2A), the following sub-section shall be substituted, namely: - "(2A) An insurance policy taken out or renewed by an owner for any undertaking or unit shall be for an amount which shall not be less than the amount of the paid-up capital of that undertaking or unit	Inflation adjustment

	amount specified in the terms of the contract of insurance in that insurance policy. (2C) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed. (2D) The insurer shall remit to the authority specified in sub-section (3) of section 7A the amount received from the owner under sub-section (2C) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit that amount, it shall be recoverable from the insurer as arrears of land revenue or of public demand.] (3) The Central Government may, by notification, exempt from the operation of sub-section (1) any owner, namely: - (a) the Central Government:	handling any hazardous substance owned or controlled by that owner and may extend to such amount as may be prescribed but not exceeding five hundred crore rupees.". *Explanation.* — For the purposes of this sub-section, "paid-up capital" means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.

	(b) any State Government, (c) any corporation owned or controlled by the Central Government or a State Government; or (d) any local authority: Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (1) of section 3.		
Section 6: **Application for claim for relief. -**	(1) An application for claim for relief may be made- (a) by the person who has sustained the injury; (b) by the owner of the property to which the damage has been caused; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not	In the principal Act, in section 6, after sub-section (1), the following sub-section shall be inserted, namely: - "(1A) where any damage has been caused to any public property or private property due to manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, transfer or such other processes, of such hazardous substance, an application for claim for restoration of the property may be made by the owner of the property or such other person, as may be prescribed, to the Collector.".	For inclusion of public property within the scope of the Act.

	joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. (2) Every application under sub-section (1) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed. (3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.		
Section 7: **Award of relief. -**	(1) On receipt of an application under sub-section (1) of section 6, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons	In the principal Act. in section 7, after sub-section (8), the following sub-section shall be inserted, namely: - "(9) Where the environment is affected or damaged due to manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, transfer or such other processes, of such hazardous substance, the Central	For inclusion of damage to Environment in the scope of the Act.

	to whom such amount of relief shall be paid. (2) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award. (3) When an award is made under this section, - (a) the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (2B) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct; (b) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (1) such amount as may be specified in that scheme; (c) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.	Government may, on an application made by Central Pollution Control Board or the State Pollution Control Board, as the case may be, allocate the fund for restoration of the damage so caused."	

	(4) In holding any inquiry under sub-section (1), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit. (5) The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). (6) Where the insurer or the owner against whom the award is made under sub-section (1) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.		

	(7) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (1) of section 6. (8) Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of the award, the Collector may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, (5 of 1908), grant a temporary injunction to restrain such act.]		
Section 14. **Penalty for contravention of sub-section (1) or sub-section (2) of section 4 or failure to comply with directions under section 12. -**	1. Whoever contravenes any of the provisions of 1 [sub-section (1) or sub-section (2) or sub-section (2A) or sub-section (2C)] of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which	In the principal Act, for section 14, the following shall be substituted, namely: - **"14. Penalty for contravention. -** 1. Whoever contravenes any of the provisions of sub-section (1), sub-section (2), sub-section (2A) or sub-section (2C) of section 4, he shall	To comply with the Action Plan forwarded by the Ministry to DPIIT for decriminalization of penal provisions of various Acts/Rules administered by MoEFCC.

	shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both. 2. Whoever, having already been convicted of an offence under sub-section (1), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees. 3. Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age.	be liable to pay the penalty equal to the amount which shall not be less than the amount of premium for insurance policy and may extend up to twice the amount of such premium. 2. Where contravention under sub-section (1) continues, an additional penalty may be imposed by the adjudication officer, which shall not exceed the amount of annual premium to be paid, for each month or part thereof during which the contravention continues. 3. All penalties imposed under this Act shall be credited to ERF.	

Section 15. **Penalty for failure to comply with direction under section 9 or order under section 11 or obstructing any person in discharge of his functions under section 10 or 11.** -	If any owner fails to comply with direction issued under section 9 or fails to comply with order issued under sub-section (2) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (1) or sub-section (3) of section 11, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.	In the principal Act, for section 15, the following shall be substituted, namely: - 15. **"Penalty for non-compliance of the directions.** - (1) Whoever does not comply with any directions issued under section 12, he shall be liable to pay a penalty which shall not be less than five lakh rupees which may extend to fifty lakh rupees. (2) Where any noncompliance under sub-section (1) continues, he shall be liable to pay an additional penalty be imposed by the adjudication officer, which shall not exceed ten lakh rupees for each month or part thereof of non-compliance. (3) Where any owner does not comply with direction issued under section 9 or does not comply with order issued under sub-section (2) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (1) or sub-section (3) of section 11, he shall be liable	To comply with the Action Plan forwarded by the Ministry to DPIIT for decriminalization of penal provisions of various Acts/Rules administered by MoEF&CC.

		to pay penalty which shall extend to one lakh rupees for each such non-compliance. **15 A. Adjudicating Officer. -** (1) The Central Government, for the purposes of determining the penalties under sections 14 and 15, may appoint District Magistrate having jurisdiction over the area to be the adjudicating officer, to hold an inquiry in the manner, as may be prescribed and to impose the penalty: Provided that the Central Government may appoint as many adjudicating officers as may be required. (2) The adjudicating officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person	

		concerned has failed to comply with the provisions of sub-section (1), sub-section (2), sub-section (2A) or sub-section (2C) of section 4 and section 12, he may determine such penalty as he thinks fit in accordance the provisions of section 14 and 15: Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter. **15 B. Appeal. -** 1. Any person aggrieved by the order, passed by the adjudicating officer under section 14 or 15, may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010. 2. Every appeal under sub-section (1) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. 3. The National Green Tribunal may, after giving the parties to	

		the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.".	
Section 16. **Offences by companies. -**	1. Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the	The section 16 is hereby omitted.	To comply with the Action Plan forwarded by the Ministry to DPIIT for decriminalization of penal provisions of various Acts/ Rules administered by MoEFCC. Since, penal provisions have been decriminalized, hence penalty may be paid by company itself as any other person.

	commission of such offence. 2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. *Explanation. —For the purposes of this section, —* *(a)* "company" means anybody corporate and includes a firm or other association of individuals; (b) "director," in relation to a firm, means a partner in the firm.		

Section 17. **Offences by Government Departments. -**	Where an offence under this Act has been committed by any Department of Government. the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.	In the principal Act, for section 17, the following shall be substituted, namely: - **"17. Contravention by Government Departments. –** Where contravention of any provision of this Act has been made by any department or agency of the Central Government or any State Government, the person contravening such provision and if acting on the instruction of senior officer, such senior officer shall be liable to pay the penalty not exceeding Rs. 50000/- for each such contravention". **Insertion of a new section 17A** In the principal Act, after 17, the following shall be inserted, namely: - **17A. (1)** Where any person fails to pay the penalty or additional penalty, for – a. contravention or continued contravention under section 14 and 17, as the case may be; or b. noncompliance of the directions under section 15,	To comply with the Action Plan forwarded by the Ministry to DPIIT for decriminalization of penal provisions of various Acts/Rules administered by MoEFCC.

		he shall be liable for imprisonment which may extend to one year and/or with fine which may extend to five lakh rupees. 2. Where any offence under section 17A has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.	

		3. Notwithstanding anything contained in sub-section (2), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. *Explanation.* — For the purposes of this section, - (a) "company" means anybody corporate and includes a firm or other association of individuals; (b) "director." in relation to a firm, means a partner in the firm.	
Section 23.	(1) The Central Government may, by notification, make rules for carrying out	In the principal Act, in section 23, in sub-section (2), -	To move the quantum of relief to rules from the Act so as to make it

Power to make rules. -	the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely [(a) the maximum amount for which an insurance policy may be taken out by an owner under sub-section (2A) of section 4; (aa) the amount required to be paid by every owner for being credited to the Relief Fund under sub-section (2C) of section 4; (ab) the manner in which and the period within which the amount received from the owner is required to be remitted by the insurer under sub-section (2D) of section 4]; [(ac)] establishment and maintenance of fund under sub-section (3) of section 4; (b) the form of application and the particulars to be given therein and the documents to accompany such application under sub-section (2) of section 6;	i. After clause (ac), the following clause shall be inserted, namely: - "(ad) amount of reimbursement or other relief under sub-section (1) of section 3;"; ii. after clause (e), the following clause shall be inserted, namely: - "(ea) the manner of holding inquiry under section 15B;".	more flexible as per the inflation.

	(c) the procedure for holding an inquiry under sub-section (4) of section 7; (d) the purposes for which the Collector shall have powers of a Civil Court under sub-section (5) of section 7; (e) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 18; (f) any other matter which is required to be, or may be, prescribed. (3) Every [rule or scheme] made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the [rule or scheme] or both Houses agree that the [rule or		

	scheme] should not be made, the [rule or scheme] shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that [rule or scheme].		
THE SCHEDULE	THE SCHEDULE [See section 3(1)] i. Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case. ii. For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500. iii. For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred, if any,	In the principal Act, the Schedule shall be omitted.	The amounts of compensation, if included in rules, may be adjusted for inflation in future more conveniently.

	up to a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000. iv. For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months: provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age. v. Up to Rs. 6,000 depending on the actual damage. for any damage to private property			

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Annexure 2: Standard Broking Slip for Public Liability Risks

Broking Slip for CGL policy (Public Liability Risk Only)	
Name and Address Of the Insured	**Insured and its subsidiary companies**
Policy type	Duty to Defend CGL defence costs inclusive wording. Please enclose the policy wording you propose to use with your quote**.**
Policy Limit of Indemnity	Option-1 : INR -- Cr, Option-2 : INR -- Cr, Option-3 : INR --Cr any one event and in the aggregate
Location of the Risk	All premises owned, occupied, leased or used by the Insured including office premises, guesthouses etc. No Designated Premises Clause to be applied to the policy
Turnover to be insured	Please refer to the proposal form/ policy schedules.
Policy duration	12 months from payment of premium or TBA
Insured's Business	XXXX
Territory and Jurisdiction	Worldwide jurisdiction including USA/Canada.
Retroactive date	As per current policies, CGL to include:
Terms & Conditions of Cover	1. Worldwide Transportation of materials by road
	2. Seepage and Pollution - Sudden and accidental wording including Clean-up costs preferred to 72 hours clause.
	3. All Act of God perils
	4. Medical Expenses cover per person – without the application of a deductible
	5. Non-Owned Hired Automobile Liability
	6. Non-Manual Visits of the company's executives
	7. Lift Liability, Food and Beverages , Liquor Liability should be covered as per base wording
	8. Fire Damage Limits to be indicated.
	9. Mitigation Expenses
	10. Property under care, custody & control cover
	11. Personal and Advertising Injury up to full limits
	12. Terrorism Legal Liability
	13. Cross Liability or separation of Insureds clause to be included

	14. Waiver of Subrogation and Additional insured status to be granted pursuant to contractual obligations
	15. Minor Erection /Construction work in the Premises to be covered
	16.Carriage of treated effluents through pipeline extension clause
	17. Group Control Clause
	18. Garage Keepers Liability
	19. Tenant's Legal Liability
	20. Valet Keeper's Legal Liability
	21 Events hosted/arranged/participated in by the Insured to be covered.
	22. Contractors/Subcontractors Extension
	23. Discharge of Treated Effluents
	24. Cover for Civil fines and penalties, punitive and exemplary damages wherever insurable by law.
	25. Cover for additional facilities such as Gym, Crèche, etc. to be covered
	26 Extended Reporting Period to be agreed
	27. Incidental Medical Malpractice
Quote expected by	XXX
Enclosures	CGL Proposal forms filled by the client
Please clearly state the form you shall be using and kindly attach the same with your quote.	