

LEGAL INSURANCE: ACCESS TO JUSTICE OR SHIELD FOR CRIMINALS?

Written by *Preksha Shah*

Advocate, Bombay High Court, Mumbai, India

INTRODUCTION

The term 'legal insurance' refers to a type of insurance policy that provides coverage for legal expenses incurred in civil or criminal cases. In most cases, legal insurance policies cover only the expenses related to defending against a lawsuit or legal dispute. However, some policies may also provide coverage for other legal expenses, such as representation in a divorce proceeding or a criminal case. Legal insurance policies have become increasingly popular in recent years, as more and more people seek protection against the rising costs of legal representation. However, this trend has also led to some negative consequences, such as the potential for legal insurance policies to be used to shield murderers from prosecution discourage compliance with the law and so on. Legal insurance is a relatively new product in the insurance industry. However, it is also a controversial product, with both benefits and drawbacks. This paper will examine the merits and demerits of legal insurance, cases where it has been used, its misuse, global trends, and whether India should allow or disallow legal insurance.

MERITS OF LEGAL INSURANCE:

1. **Access to Legal Representation:** One of the biggest benefits of legal insurance is that it provides individuals with access to legal representation. Legal representation can be very expensive, and many people cannot afford it. Legal insurance can help people overcome this financial barrier, giving them access to quality legal representation when they need it.
2. **Affordable Legal Services:** Legal insurance can make legal services more affordable for the average person. When people have legal insurance, they can get legal advice

and representation at a lower cost than they would otherwise. This can help people avoid legal problems, as they can get the help they need before a small problem becomes a bigger one.

3. **Peace of Mind:** Legal insurance can give people peace of mind, especially companies, knowing that they are protected if they ever need legal help. This can reduce stress and anxiety, allowing people to focus on other areas of their life.
4. **Increase employment opportunities of lawyers:** Legal insurance, which provides policyholders with access to legal services, will increase demand for lawyers and create employment opportunities. Insurers will require legal experts to evaluate claims and provide guidance, and law firms will need to expand to meet the increased demand for legal services.

DEMERITS OF LEGAL INSURANCE:

1. **Misuse:** Individuals who use it to shield themselves from the consequences of their actions can misuse legal insurance. For example, someone who has committed a crime may use legal insurance to hire the best lawyers, making it more difficult for the authorities to prosecute him or her. Legal insurance can provide a significant benefit to murderers and other criminals who can afford to pay for it. By purchasing legal insurance, these individuals can ensure that they have access to high-quality legal representation in the event that they are charged with a crime. This can give them a significant advantage in court, as they will be able to hire the best attorneys and legal teams to defend them.
2. **Frivolous Lawsuits:** Legal insurance can encourage frivolous lawsuits. Individuals may see a lawsuit as an opportunity to cash in on a large settlement or judgment, even if their case has little merit. With legal insurance, these individuals may feel more emboldened to pursue legal action, therein increasing the burden of the courts. Large companies are often the targets of lawsuits, as they have deep pockets and can afford to pay large settlements or judgments. Legal insurance can make it easier for individuals

and small businesses to sue large corporations, as they will not have to worry about the high costs of legal representation.

3. **Two-Tiered Justice System:** Legal insurance can create a two-tiered justice system, where wealthy individuals are able to buy their way out of legal trouble while less affluent individuals are left to fend for themselves. This can be especially concerning in cases involving violent crimes, where the stakes are high and the consequences are severe.
4. **Discourage Legal Compliance:** Legal insurance can discourage people to comply with the law. Knowing that they have legal insurance can make people less cautious and more carefree about breaking the law, as they know they will have an appropriate legal team to back them up.

CASES WHERE LEGAL INSURANCE HAS BEEN USED

1. **O.J. Simpson Murder Trial:** One of the most high-profile cases where legal insurance played a significant role was the O.J. Simpson murder trial. Simpson, a former NFL star and actor, was accused of murdering his ex-wife, Nicole Brown Simpson, and her friend, Ron Goldman, in 1994. Simpson was able to hire a top-notch legal team, including high-profile attorneys such as Robert Shapiro, F. Lee Bailey, and Johnnie Cochran, to defend him in court. The cost of this legal team was estimated to be in the millions of dollars, but Simpson was able to pay for it using his legal insurance policy.
2. **Enron Bankruptcy Case:** Legal insurance was also used in the Enron bankruptcy case. Enron had a legal insurance policy that covered the costs of defending against lawsuits related to the company's bankruptcy. The policy was worth \$30 million, and it helped Enron defend itself against numerous lawsuits.

GLOBAL TRENDS

1. **Legal Insurance in Europe:** Legal insurance is widely available in Europe, and it is a well-established product in many countries. In countries such as Germany, legal insurance is required by law for certain professions, such as doctors and architects.
2. **Legal Insurance in the United States:** Legal insurance is also available in the United States, but it is not as widely used as it is in Europe. Legal insurance policies in the US typically cover a range of legal services, such as contract disputes, landlord-tenant issues, and employment law.
3. **Legal Insurance in Asia:** Legal insurance is a relatively new product in Asia, but it is becoming more popular. Countries such as Japan and South Korea have seen a rise in the use of legal insurance in recent years.

SHOULD INDIA ALLOW OR DISALLOW LEGAL INSURANCE?

India has yet to make a decision on whether to allow or disallow legal insurance. There are arguments for and against legal insurance, and the decision ultimately depends on what the government feels is best for its citizens.

ARGUMENTS FOR ALLOWING LEGAL INSURANCE:

Along with the abovementioned merits;

1. **Access to Legal Services:** majority of the people in India are living in poverty and working to make ends meet. Through legal insurances they will be able to afford good lawyers who can actually help them. Legal insurance can provide Indians with access to quality legal services. This can help ensure that justice is served and that individuals are not denied their rights due to lack of financial resources.
2. **Economic Benefits:** Legal insurance can have economic benefits for the country. By providing access to legal services, legal insurance can help prevent legal disputes from spiralling out of control and causing damage to the economy.

ARGUMENTS FOR DISALLOWING LEGAL INSURANCE:

Along with the abovementioned demerits;

1. **Lack of Regulation:** India has a large and unregulated legal services market, which may lead to the proliferation of unscrupulous legal insurance providers. This may lead to the exploitation of vulnerable individuals and small businesses who purchase legal insurance policies without fully understanding the terms and conditions of the policy.
2. **Impact on the Legal Aid System:** Allowing legal insurance in India may divert resources away from government-run legal aid centres, NGOs, and other low-cost legal service providers that serve the needs of the poor and marginalized. This could exacerbate the already existing problem of unequal access to justice in India.

CONCLUSION

Legal insurance can provide individuals with a valuable tool for protecting themselves against legal trouble. Legal insurance is a complex product with both benefits and drawbacks. While it can provide individuals with access to legal services and affordable legal representation, it can also be misused and encourage frivolous lawsuits. It is important for policymakers to consider these consequences when regulating the legal insurance industry, to ensure that it is used. The decision on whether to allow or disallow legal insurance ultimately depends on what the government feels is best for its citizens. If legal insurance is allowed, regulations and safeguards should be put in place to ensure that it is not misused and does not create a two-tiered justice system. If legal insurance is disallowed, efforts should be made to ensure that all citizens have access to quality legal representation, regardless of their financial resources.

REFERENCE

1. "Legal Expenses Insurance: A Comprehensive Guide to Its History, Products, Markets, and Regulation" by Michael Menapace and others (2017)

2. "Legal Insurance: An Overview of Coverage and Issues" by the Congressional Research Service (2019)
3. "Legal insurance: An empirical analysis of the demand for civil justice" by Carlos Gómez Ligüerre and others (2017)
4. "The Role of Legal Expenses Insurance in Access to Justice" by Richard Moorhead (2016)
5. "Legal Insurance: Global Markets to 2025" by ResearchAndMarkets.com (2021)

