TERRORISM INSURANCE IN INDIA: NEED FOR LEGISLATION GOVERNING THE INDIAN MARKET TERRORISM RISK INSURANCE POOL

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ABSTRACT

1) At the wake of the November Attacks in Mumbai, India woke up to the reality of terrorism. While the 9/11 Attacks in the United States was a warning call to the world, many did not think the same would be a reality in India. While the entire nation stagnated due to the incident, one sector of business enterprise suddenly saw an increase in the demand for an insurance coverage not prior known to the Indian Insurance System: Terrorism Insurance. Terrorism now exists as a low frequency, high severity risk. Though the 26/11 Mumbai Attacks opened up the market for India, the Insurance Companies had capitalized on the fear or terror much before the Mumbai attacks. The Indian Terrorism Pool, set up in 2001 as an aftermath of the 9/11 attacks paid some large claims for the first time during the November Attacks. But to date terrorism insurance is taken only by big blue chips companies and their subsidiary. Negligible number of homes and small businesses are covered under the scheme.

2) Currently, general insurers provide property insurance from the Indian Market Terrorism Risk Insurance Pool regulated by the Insurance Regulatory and Development Authority. The pool was formed as an initiative by general insurers in April 2002 after terrorism cover was withdrawn by international re-insurers post the 9/11 attack in The United States of America. Insurers say premium for terrorism cover has been on the decline during the last few years as the pool has seen no major losses. The capacity of the pool has also swelled to ₹4,500 crore.

3) But the recent terror attacks in Paris and London and the constant infiltration of the enemies through our borders have sparked a fear which has resulted in the spike of terrorism insurance in India. Whilst the pool has been capitalizing on this the fear, there is no legislative mechanism

to govern the pool. While countries such as the United States have a legislative document governing the same, this research paper aims to analyze whether a similar act is the need of the hour in India.

4) The author will carry out a doctrinal research to study the pros and cons of implementing such an Act, through analysis of relevant foreign legislations, reports and government schemes and aims to conduct a comparititive study with the Terrorism Risk Insurance Act of The United State of America. Finally, the paper will conclude with suggestions as to whether terrorism insurance act is a feasible solution to India's under regulated terrorism insurance sector.

Keywords: Terrorism Insurance, High Severity Risk, Indian Market Terrorism Risk Insurance Pool, IRDA, Terrorism Risk Insurance Act.

INTRODUCTION

The terrorism insurance market is an ever-growing sector owing to the increase in terrorism and related violence all over the world. This trend has also captivated the Indian insurance market. More and more individuals, companies and organizations are insuring themselves against any future contingency of a terrorist attack. But what exactly is Terrorism Insurance?

An act of terrorism is defined as an act or series of acts, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), or unlawful associations, recognized under Unlawful Activities (Prevention) Amendment Act, 2008 or any other related and applicable national or state legislation formulated to combat unlawful and terrorist activities in the nation for the time being in force, committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear for such purposes. Terrorism insurance provides insurance cover or promises to indemnify the insurer against any potential losses arising from these aforementioned terrorist activities.

INDIAN INSURANCE SECTOR AND TERRORISM INSURANCE

In India, terrorism insurance is regulated by the Indian Market Terrorism Risk Insurance Pool (IMTRIP) which is an initiative by all the non-life insurance companies in India in April 2002 to create domestic capacity for providing terrorism insurance cover after the withdrawal of reinsurance capacity for terrorism from the domestic companies' treaties in the aftermath of 9/11.[1] The Pool enables members/ non- life insurance companies to provide insurance cover against Terrorism risk in India on the combined underwriting capacity of the members and General Insurance Corporation of India.[2]

The Pool is applicable to all insurances of terrorism risk insured along with the insurances of property in any of the insured classes. Each member participates in all insurances of terrorism risk coming within the Pool's scope, to the extent of its share and the liability[3]. The liability is co-extensive and co-terminus with the liability under the original policy of insurance of terrorism risk.[4] The only peril covered under a terrorism insurance policy is terrorism.

Characteristics of the Indian Insurance Pool:

A) Structure: The IMTRP is administered by General Insurance Corporation of India (GIC Re) under Regulation 8 of the Insurance Regulatory Development Authority (General Insurance - Reinsurance) Regulations, 2000. It is an elective pool and there is no direct government participation, i.e. participation in the Terrorism Pool is voluntary, but almost all general insurers participate, except for specialized Health Insurance companies, Export Credit Guarantee Corporation of India Limited (ECGC) and Agriculture Insurance Corporation of India Limited.[5]

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[1] Insuring Terrorism Risk In India, B N Narasimhan, Organisation For Economic Cooperation & Development 2nd International Meeting On Terrorism Risk Insurance Paris, France 5th December, 2012. https://www.oecd.org/daf/fin/insurance/5.BNNarasimhan.pdf (Last visited: 21st June 2018 21:00 IST)

[2] Supra at 4.

[3] OECD International platform on Terrorism insurance, https://www.oecd.org/daf/fin/insurance/Terrorism-Risk-Insurance-Country-Comparison.pdf

[4] Insuring Terrorism Risk In India, B N Narasimhan, Organisation For Economic Cooperation & Development 2nd International Meeting On Terrorism Risk Insurance Paris, France 5th December, 2012. https://www.oecd.org/daf/fin/insurance/5.BNNarasimhan.pdf (Last visited: 21st August 2018 22:40 IST)

[5] OECD International Platform on Terrorism Insurance https://www.oecd.org/daf/fin/insurance/Terrorism-Risk-Insurance-Country-Comparison.pdf

The Pool Underwriting Committee determines the premium rates, terms of the cover, deductibles and conditions for terrorism risk. The General Insurance Company acts as the Pool Manager, and also contributes capacity to the Pool.[6] It takes 1% of the total premium as its management and administration expenses. For coverage beyond the Pool's capacity, insurers seek facultative reinsurance support from the international market. The total premium charged for the terrorism cover is ceded to the Pool. So the pool mechanism hinges on the reinsurance concept, i.e. the terrorism risk underwritten by one company is reinsured by all the Pool members, in agreed proportions. Pool results are shared among the Pool members in same proportion as the capacity provided. The member companies have a share in the loss retention as per agreement signed by each of them.[7]

B) Coverage: The classes of insurance presently covered by the Pool are all terrorism insurance covers underwritten in[8]:

- Fire
- Advance Loss Of Profits Cover in conjunction with above policies.
- Property section of Miscellaneous policies like Jeweller's Block
- Engineering (Industrial All Risk, Erection All Risk, Contractor's All Risk, Storage-cum-Erection, Marine- cum-Erection, Contractor's All Risks, Civil Engineering Completed Risks, Construction Plant & Machinery, Electronic Equipment Insurance)
- On-shore assets of Oil & Natural Gas Commission Package Policy/ Port Package policies, Stock Floater Policies, & on-shore drilling rig equipment

C) Premium Rates: Premium rates for terrorism cover were revised upwards in April 2009 after enormous losses from the Mumbai terrorist attack event of 26th November 2008.

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[6] Background on: Insurance Risk and Terrorism, Insurance Information Institute, https://www.iii.org/article/background-on-terrorism-risk-and-insurance (Last Visited on: 2nd September 2018 12:34 IST)
[7] Outreville, J & Preker, Alex. (2002). Introduction to Insurance and Reinsurance.
[8] https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/75.All%20Risk%20-%20Policy%20Wording.pdf (Last Visited: 23 August 2018 3:30 PM)

Insurance Regulatory and Development Authority and Terrorism Insurance:

The Insurance Regulatory Development Authority is the regulatory authority of all insurance activities in India. Therefore the terrorism insurance sector is also regulated by the IRDA. The IMTRP is administered by General Insurance Corporation of India under Regulation 8 of the Insurance Regulatory Development Authority (General Insurance - Reinsurance) Regulations, 2000. Regulation 8 states that:

" (8)The Indian Reinsurer shall organise domestic pools for reinsurance surpluses in fire, marine hull and other classes in consultation with all insurers on basis, limits and terms which are fair to all insurers and assist in maintaining the retention of business within India as close to the level achieved for the year 1999-2000 as possible. The arrangements so made shall be submitted to the Authority within three months of these regulations coming into force, for approval."[9] The IRDA is responsible to ensure the proper working of the pool and ensure that these insurers and re-insurers provide services so as to safeguard the interest of the insured.

THE PRESENT CHALLENGES FACE BY THE TERRORISM INSURANCE SECTOR IN INDIA

One among the challenges face by the Indian Terrorism Insurance Sector is the difficulty to quantify the extend of the damage caused by terrorism and the technicalities of the very concept of terrorism itself. Terrorism is a low frequency, high severity risk.[10] Terrorist attacks are not random but purposeful to maximize damage and designed to cause surprise. It is an herculean task to analyse and determine an act of terrorism. From an insurance viewpoint, terrorism risk is very different from other risks typically insured, as it is impossible to determine the probable number of events (frequency) likely to result in claims and the maximum cost of these events.[11] In addition, no one knows what the worst- case scenario might be. Since the numbers of terrorist attacks have not been very large, there is little data on which to base estimates of future losses, either in terms of frequency or severity of the loss. The tragic events of September 11, 2001 in

[9] Regulation 8, Insurance Regulatory Development Authority (General Insurance - Reinsurance) Regulations, 2000.
[10] Insuring Terrorism Risk In India, B N Narasimhan, Organisation For Economic Cooperation & Development 2nd International Meeting On Terrorism Risk Insurance Paris, France 5th December, 2012. http://www.oecd.org/daf/fin/insurance/5.BNNarasimhan.pdf
[11] http://www.indiainsure.com/pdf/inotes-jan-09.pdf (Last Visited: 28th August 2018 7:45 PM)

USA brought to light the huge potential exposures insurance companies could face in the event of another terrorist attack. Faced with continued uncertainties about the frequency and magnitude of future attacks, insurers and reinsurers across the world at that time reacted swiftly and imposed terrorism exclusion clauses in their policies. Prior to 9/11, Insurance companies considered the risk so low that they did not identify or price potential losses from terrorist activity separately from the standard property policy. In fact, in India also, the terrorism cover was inbuilt along with Riot, Strike & Malicious Damage cover under the fire policy[12].

Another challenge faced by the sector is the lack of awareness regarding the same. Though internal disturbances and war are not new concept to the Indian society, we faced the brunt of terrorism for the first time with the 26/11 Mumbai attacks. But the pool already aware of the doom beforehand was already in place so as to absorb the intensity of the damage caused. But only the big players in the market could reap the benefit of the existence of the pool. Smaller parties, to date are not aware of the market of terrorism insurance.

But the most important challenge faced by the terrorism insurance sector in India is the lack of an exclusive legislative mechanism to govern the same.

TERRORISM RISK INSURANCE ACT: NEED OF THE HOUR?

The Terrorism Risk Insurance Act is a United States Federal law that aims to create a federal mechanism in order to facilitate insurance claims related to terrorism insurance. The Act "provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism.[13] It was initially set to expire on 31 December 2005, but was extended to 2007, 2014 and now to 2020 by the Obama Administration.

The need for a comprehensive act to govern the terrorism insurance sector was an aftermath of the financial burden from the 9/11 attacks that fell on reinsurers that further spread the risk assumed by primary insurers. Unable to model or price terrorism exposures, reinsurers largely

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[12] Working Policy on STANDARD FIRE AND SPECIAL PERILS POLICY (MATERIAL DAMAGE), IRDA, https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/54.SFSP%20-%20Policy%20Wording.pdf (Last Visited: 1st September 2018 11:30 PM)

13 Terrorism Risk Insurance Program, U.S. Treasury Department Website. U.S. Treasury Department (Retrieved 20 March 2013)

withdrew from the market for terrorism coverage. Without reinsurance, primary insurers were then compelled to exclude terrorism. Most state insurance regulators approved terrorism exclusions for use by primary insurers.[14] These reinsurance payments came in the wake of outlays triggered by a series of catastrophic natural disasters over the past decade and portfolio losses due to stock market declines. Having their capital base severely hit, most reinsurers decided to reduce their terrorism coverage drastically or even to stop covering this risk. Hence, in the immediate aftermath of September 11, 2001, U.S. insurers found themselves with significant amounts of terrorism exposure from their existing portfolio with limited possibilities of obtaining reinsurance to reduce the losses from a future attack. The few that did provide coverage to their clients charged very high prices.[15] This led to the need of a federal intervention.

The Federal Government of United States of America decided to join in securing the insurance for the citizens and jointly or proportionately (depending on the layer of coverage) would cover the risk. The intent of the Act was that insurers would offer terrorism coverage at premiums that would be attractive to firms at risk who would then decide to purchase it.

But India, we do not have a comprehensive legislation for the same. The terrorism insurance sector is governed through other forms of insurance policies such as travel insurance, fire insurance, life insurance etc. If not, it is covered under the Indian Market Terrorism Risk Insurance Pool regulated by the IRDA. Does the Indian terrorism insurance sector need a similar action plan or is the existing system sufficient? In India Insurance companies provide Terrorism coverage only up to Rs.750 crores at any one location from the Terrorism Pool as per Pool rules and terms. If a client wants coverage for terrorism risks above Rs.750 crores, Companies like New India, can arrange the same and issue a Stand Alone Terrorism Coverage policy[16]. This is where the need of a legislative mechanism comes into place. If the Government

[14] The Specter of Terrorism, Roger Douglas Law, Liberty, and the Pursuit of Terrorism, University of Michigan Press (2014) , pp 12-33.

[15] Kunreuther, Howard and Erwann Michel-Kerjan. "Challenges For Terrorism Risk Insurance In The United States," Journal of Economic Perspectives, 2004, v18(4,Fall), 201-214.

[16] https://www.shriramgi.com/news-events/terrorism-a-low-frequency-high-severity-risk/ (Last Visited: 3rd September 2018 8:16 IST)

could cover the risk or share in the risk along with these insurers, the market can be regulated in much more efficient way.

Similarly, he terrorism pool covers only the property damage and consequential loss arising out of any terror strike. Under the Pool arrangement, an act of Terrorism is an act that involves the use of force or violence by any person(s), whether acting alone or on behalf of any organization, committed for political, religious, ideological or similar purpose. However, any loss or damage resulting from the action taken in controlling, preventing or suppressing any act of terrorism is not covered under the policy. Terrorism Claims arising from other lines of insurance like personal accident, life insurance, health insurance, public liability etc. are not covered by the terrorism pool. The impact of any claims arising in these classes of insurance would be direct i.e. it would be billed to respective companies who covered it who may refuse to cover the same as they consider the same to originate from an act of terrorism.

Similarly, the Insurance Regulatory and Development Authority would also have a better framework to operate making the regulation much more efficient and effective.

CONCLUSION

The terrorism insurance sector is a rapidly growing market for insurers as well as re-insurers. Nevertheless, advancement in technology as well as better administration and policies to counter terrorism has reduced the risk of terrorism in the last few years.

But as always precaution is safer option Nevertheless, the need of the hour is to spread the reach of the insurance cover to ordinary people and public institutions and public property. In India, only the affluent and the elite insure their property against terrorism whereas terrorist activities are mostly directed towards the public and damage is caused to public property.

Whether comprehensive legislation can ensure this, is debatable. In light of failure of many other legislation framed to reach out to the ordinary citizen, the success of a Terrorism Insurance Act in India is questionable. Therefore, this research concludes that rather than promulgating a legislation governing terrorism insurance sector, the focus must be on creating onus and providing better support to the IRDA to implement their role as supervisor of the Pool. Thus, the author has moved away from the initial hypothesis to conclude that the need of the hour for Indian Terrorism sector is not legislative scheme, but better implementation and regulation of the existing pool and increased assistance of the Central Government to insure the peril of terrorism.

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10. "Terrorism Risk Insurance Program". U.S. Treasury Department Website. U.S. Treasury Department. (Retrieved 20 March 2013)

11. Kunreuther, Howard and Erwann Michel-Kerjan. "Challenges For Terrorism Risk Insurance In The United States," Journal of Economic Perspectives, 2004, v18(4,Fall), 201-214.