



**ORIGINAL RESEARCH PAPER**

**Law**

**COMPARATIVE STUDY OF TERRORISM RISK INSURANCE IN INDIA AND USA**

**KEY WORDS:** Terrorism risk, Insurance, Comprehensive Legislation

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**ABSTRACT**

Even in 21<sup>st</sup> century, terrorism still remains as one of the greatest global risk and serious threat to the mankind. The evolution of terrorism risk exposes majority countries to complex threats from both international and homegrown groups. Terrorism risk is demonstrating to be a most important and complicated for the insurance industry and also for the Government. For industry, terrorism risk is different from other types of insurable risks posing unique difficulties for insurers and other insurance service providers including Government. Terrorism insurance is insurance purchased by property owners to cover their potential losses and liabilities that might occur due to terrorist attack. Governments across the world have taken various steps with respect to policies and laws connected with terrorism risk insurance. Terrorist attacks on September 11 2001, created a severe market shortage for terrorism insurance in USA. As a result U.S congress passed the Terrorism Risk Insurance Act, which provided legislative protection for insurance claims related to terrorism attack in U.S.A. In India, terrorism risk insurance is regulated by the Indian Market Terrorism Risk Insurance Pool (IMTRIP) which is an initiative by all non-life insurance companies in April 2002. Terrorism Insurance in India is added on peril under property insurance and terrorism cover is voluntary / optional for insured. There is no comprehensive legislation to regulate it. Further Government direct participation is not in India, as compared to that of USA.

**INTRODUCTION**

A well developed and evolved insurance sector is a boon for economic development for any country.

In India, insurance has deep rooted history. The oriental life insurance company was established in 1818, started life insurance business in India. The Madras equitable had begun transacting life insurance business in the Madras presidency. 18<sup>th</sup> century was dominated by foreign insurance offices namely Albert life insurance, Royal insurance, Liverpool and London global insurance.

The Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business. In order to protecting the interest of the sector the earlier legislation was consolidated and amended by the Insurance Act 1938. The Government of India nationalized the Life Insurance business and General Insurance business in 1973. Further following the recommendations of the Malhotra Committee report in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The private companies were allowed to enter the insurance business.

The first insurance company in the U.S dates back to colonial days. In 1752, Benjamin Franklin and several others provided for Insurance of Houses from loss by Fire. The first stock insurance company formed in the United States was the insurance company of North America in 1792. In U.S formal regulation of the insurance industry began in earliest when the first state Commissioner of Insurance was appointed in 1851.

Historically, the Insurance industry in the United States was regulated by Individual State Governments. Insurance is regulated by the states. This system of regulation stems from the Mccarran Ferguson Act of 1945, the Act specifically provides that the regulation of the business of insurance by the State Governments is in the public interest.

In wake of insolvencies of insurance company in the 1980s

leads to establishment for National Association of Insurance Commissioners (NAIC), it was adopted several model reforms for State Insurance Regulation. The NAIC act as a forum for creation of model laws and regulations. Each state decides whether to pass each NAIC model law or regulation with some modification or as it is. NAIC modes acts and regulations provide some degree of uniformity between states, but these models do not have the force of law and become effective when adopted by a State.

**Meaning of Terrorism :**

The whole world today is under the deadly scourge of terrorism. Terrorism is a form of violence that breaks all the patterns of civilization that mankind share. It targets innocent and defenseless people. Day in and day out we hear shocking reports of act of terrorism committed by different groups in India as well as in the other parts of the world. Terrorism is the systematic use of threats which creates fear. The generally accepted definition of terrorism is that is the use of violence against civilians by sub national group for political and for other purposes. Violence and destruction are used in the commission of the act to produce the desired effect. Terrorism may be defined as the disruptive activities of a group(s) of highly trained individuals motivated with ideological, religious, territorial, regional or parochial interests intending to destabilize an existing system and tilt the balance in their favor to establish the system of desired design. Such activities are negative in character and destructive in nature having no consideration for humanitarian value system. It is interesting to note that though many States sponsor terrorism, either through clandestine channels or direct, none ever support the terrorists openly; those who support do so in the albeit of calling them as protectors of a belief. The biggest terrorist attack at international level took place on September 11, 2001 in a chain attacks on the United States of America, for this attack Islamic terrorists hijacked civilian airliners and utilized them to achieve their goal by attacking the World Trade Center towers in New York City and the Pentagon in Washington, DC. Other major terrorist attacks and activities happened in New Delhi, known as Indian Parliament attack; Bali car bomb attack, Amarnath yatra attack 2017, pulwama attack 2019.

The term has proved to be impervious and impenetrable for definition. Terrorism the word comes from 'terrorisme' which is based on the Latin verb 'terrere' that is caused to tremble. It dates back to 1795 when the term was used to describe the actions of the Jacobean club in their rule of post revolutionary France, the so called 'reign of terror'. Jacobeans have rumored to have coined the term terrorist to refer to themselves. The European Union includes in its 2002 definition of terrorism, 'the aim of destabilizing or destroying the fundamental, political constitutional, economic or social structure of a country'. Terrorism is defined in US by the code of FBI as the 'unlawful use of force and violence against person or property to intimidate or coerce a Government, civilian population or any segment thereof in furtherance of political or social objectives'.

An act of terrorism is defined as an act or series of 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 organization(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 & terrorist activities in the nation for the time being in force, committed for political, religions 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.

**Nature of terrorism Risk**

Terrorism risk is different from the kind of risk, which traditionally defined by industrial experts. Terrorism risk is generally characterized by the set of specific features which general lack of predictability of the targets, and the severity and frequency of future attacks. By its very nature, terrorism insurance is more problematic than other types of insurance as there is little data to analyze and predict its effect and recurrence.

**Position in India and USA**

Many foreign Governments and insurance markets have introduced insurance pools with Government participation. Some were created in response to the events of 9/11, while others were established in response to specific terrorist treats within their own country.

**India**

Terrorism insurance pools are the global standard approach to providing cost effective re-insurance for terrorism damages.

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 the year 2002 to create domestic capacity for providing terrorism insurance cover after the withdrawal of re-insurance capacity for terrorism from the domestic companies' treats in the aftermath of 9/11.

The pool enables members / non-life insurance companies to provide insurance cover against Terrorism risk in India on combined underwriting capacity of the members and GIC.

The IMTRIP is managed and administered by General Insurance Corporation of India as per Sec 8 of the Insurance Regulatory Development Authority Regulation 2000. However, it is elective pool and there is no direct Government participation. The scope of Scheme is Indian Territory only.

The pool underwriting committee determines the rates of premium, terms of the cover and other conditions for terrorism risk. The General Insurance Company acts as the pool manager. The IRDA is responsible for 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 limit of indemnity under IMTRP shall not exceed the total sum insured given in the policy schedule or Rs 2,000 crores whichever is lower. The total cover available per compound or location is limited to Rs 2,000 crores. This includes all loss or damage caused to property and loss of profits caused by business interruption.

**USA**

Prior to the September 11<sup>th</sup>, 2001 attacks on the World Trade Centre and Pentagon, terrorism coverage was usually included in General Insurance Policies without an additional cost to insured.

In spite of many terrorist attacks earlier to 11/9 attack, insurers did not view domestic or international terrorism a risk that should be considered while undertaking commercial insurance policies. Thus terrorism risk peril was an unnamed peril that was covered in insurance policies.

Insurance industry estimates the 9/11 attacks cost the industry \$ 47 billion, and it is most expensive and one of the largest single insured loss event in history of U.S. After 9/11 attack, insurer were quick to reassure the public that the industry could pay for the largest insured loss in history. After the massive financial losses from the 9/11 attack, reinsurers excluded terrorism risk from coverage, which is in turn compelled insurers to start excluding risk from commercial policies. The insurers and reinsurers were unwilling to provide such insurance with growing concerns of major losses to the industry in the absence of Government support. As a result, the companies that continued to offer risk coverage charged exorbitant premiums making terrorism insurance unaffordable for many. For the above reasons various industry groups called for federal intervention.

The Federal Government of United States of America decided to join in securing the insurance for the citizens and jointly or proportionately would cover terrorism risk.

The Terrorism Risk Insurance Act of 2002 was passed by Congress on November 26, 2002. The Act "Provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism. It was initially set to expire on 31<sup>st</sup> December 2005 but extended from time to time now it is extended up to 31<sup>st</sup> December 2027.

The intent of the Act was that, insurers would offer terrorism coverage at attractive premiums to firms to encourage to purchase it.

The purpose of the Act is to establish a temporary federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to protect consumers by addressing market disruptions and ensure the availability of widespread and affordable insurance for terrorism risk.

TRIA requires that commercial property and casualty insurers offer terrorism coverage in the policies they are selling. It is with the federal backstop intervention that the prices for terrorism insurance was relatively stabilized and most insured are willing to pay.

TRIA essentially amounts to a Government reinsurance program.

To fall within TRIA's definition and qualify for certification, a terrorist act must be found to be

- a violent act dangerous to life, property or infrastructure
- resulting in damage within the U.S or to a U.S. air carrier or

- U.S flagged vessel or on the premises of a U.S.Mission and
- committed by an individual or individuals acting on behalf of any foreign person or foreign interest as part of an effort to coerce the civilian population of the U.S or to influence the policy or affect the conduct of the U.S Government

TRIA coverage applies to commercial property and casualty insurance. It does not apply to personal insurance.

### CONCLUSION

Terrorism risk insurance sector is at its inception stage. In India, terrorism risk insurance is regulated by the Indian Market Terrorism Risk Insurance Pool (IMTRIP), which is an initiative by all the non-life insurance companies. Further it is an elective pool and there is no Government direct participation. There is no separate i.e., sui generis legislation is there in India, as compared to that of U.S.A, which is need of hour to provide effective and complete coverage for terrorism risk insurance.

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