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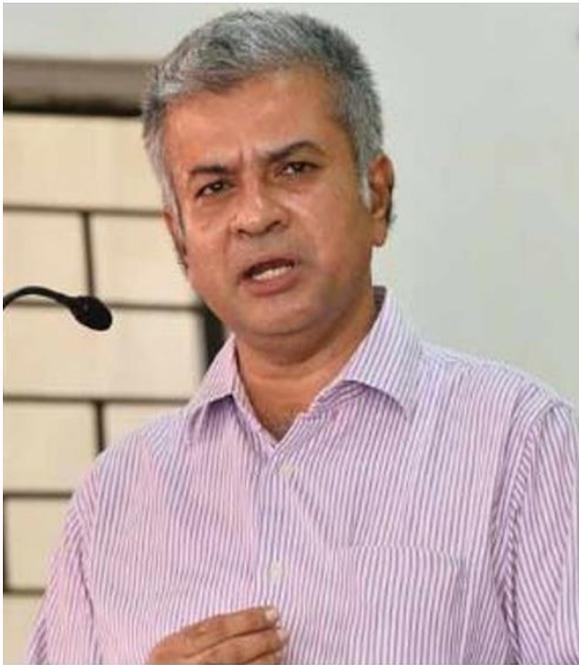
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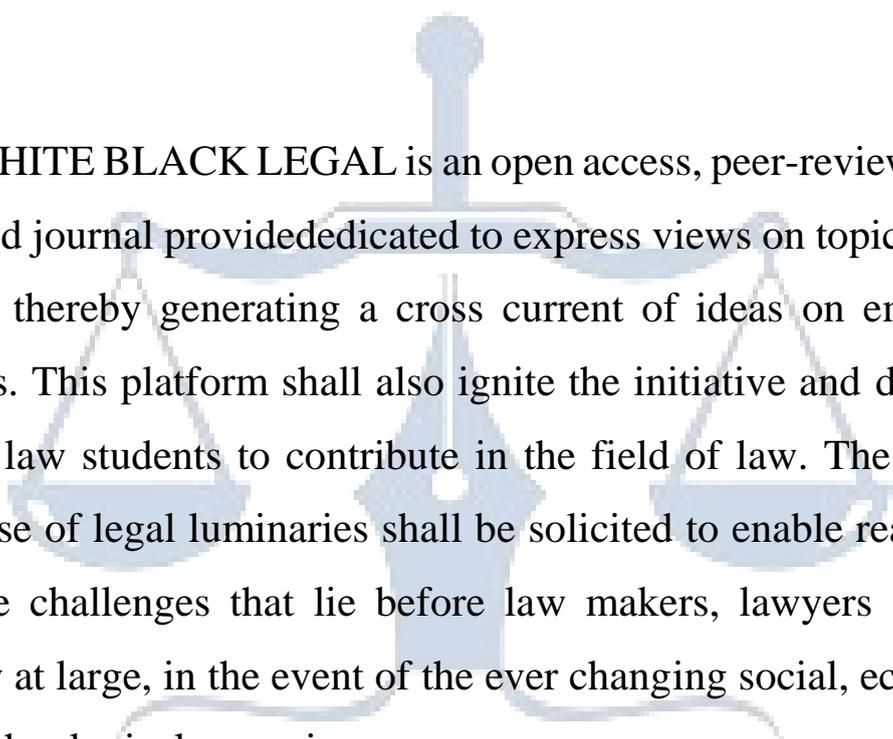


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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PROFESSIONAL LIABILITY INSURANCE

SCANARIO IN INDIA

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INTRODUCTION

Ivamy, a recognised expert in insurance law, defined an insurance contract as "a contract whereby one person, referred to as the insurer, undertakes to pay a sum of money or its equivalent to the other person, referred to as the assured, in exchange for the agreed consideration, referred to as the premium, on the occurrence of a specified event."¹ General insurance and life insurance are the two categories into which insurance can be divided. Insuring a person's life is referred to as life insurance. Most of the time, it serves as a form of investment and protection that depends heavily on whether the predetermined event occurs or not. The distinctive aspect of life insurance is that it does not rely on the fundamental indemnity principle of all other insurance types. General insurance includes all additional types of coverage, such as professional liability insurance, marine insurance, and fire insurance.

What exactly is Professional Liability Insurance?

Professional indemnity insurance, errors and omissions insurance, and professional liability insurance are other names for the same coverage. This insurance protects the insured against any legal action that may result from negligence, malpractice, mistakes, or omissions made while carrying out their professional responsibilities. Only civil liabilities that a professional might have are covered by professional liability insurance. It excludes any claim based on criminal responsibility. Professional misconduct or negligence may result in physical harm (typically includes medical professionals), financial harm (typically includes chartered accountants, lawyers, etc.), or both physical harm and financial harm (generally covers

¹ Ahmed Salman Syed, 'Viability of Islamic Insurance (Takaful) in India: SWOT Analysis Approach' <https://www.academia.edu/28845068/Viability_of_Islamic_Insurance_Takaful_in_India_SWOT_Analysis_Approach> accessed 13 October 2024.

architects).²

The insurers coverage for professional responsibility includes the costs of litigation, trial-related expenses, and any amount of Professional indemnity insurance, errors and omissions insurance, and professional liability insurance are other names for the same coverage. This insurance protects the insured in the event that a claim for civil damages or a settlement against a professional is made as a result of carelessness, malpractice, mistakes, or omissions. There is no single law in Indian law that governs the many facets of professional liability insurance.

SCENARIO IN INDIA

This insurance is not one of the most popular in the country of India. The Insurance Act does not mandate for this insurance cover to be procured and more so the specific practice rules of professional practice of different professions do not mandate for this insurance cover. The policy can only be embarked on by the wish of the user or the service provider who desire to go through the process. But because there are so many instances of medical malpractice that arise, most doctors and medical facilities must go out and get such insurance; the same cannot be said for lawyers and firms because only a handful of those lawyers are ever involved in negligence cases that require taking professional liability insurance. In the United Kingdom it is obligatory that solicitors purchase and sustain their professional indemnity from 1st October 2013. This is so because many cases are filed against the lawyers, it also serve as way of protecting the place of the client not only the lawyer. The same is not the position in India as there is no such mandate that which has to be followed the lawyers.

What does this Insurance Cover?

The scope of the coverage that insurers may offer is not constrained by any laws or regulations. The majority of insurers outline in their policy how much liability they are ready to cover. The following can be used to summarise the scope of coverage:³

- The legal responsibility that a professional may face for any financial harm that a client may have endured as a result of a lawyer's negligence or violation of professional duty.

² 'NEGLIGENCE, MENS REA, AND CRIMINAL RESPONSIBILITY | Punishment and Responsibility: Essays in the Philosophy of Law | Oxford Academic' <<https://academic.oup.com/book/11532/chapter-abstract/160310250?redirectedFrom=fulltext>> accessed 13 October 2024.

³ 'Understanding Your Insurance Policy | Department of Insurance, SC - Official Website' <<https://doi.sc.gov/957/Understanding-Your-Insurance-Policy>> accessed 13 October 2024.

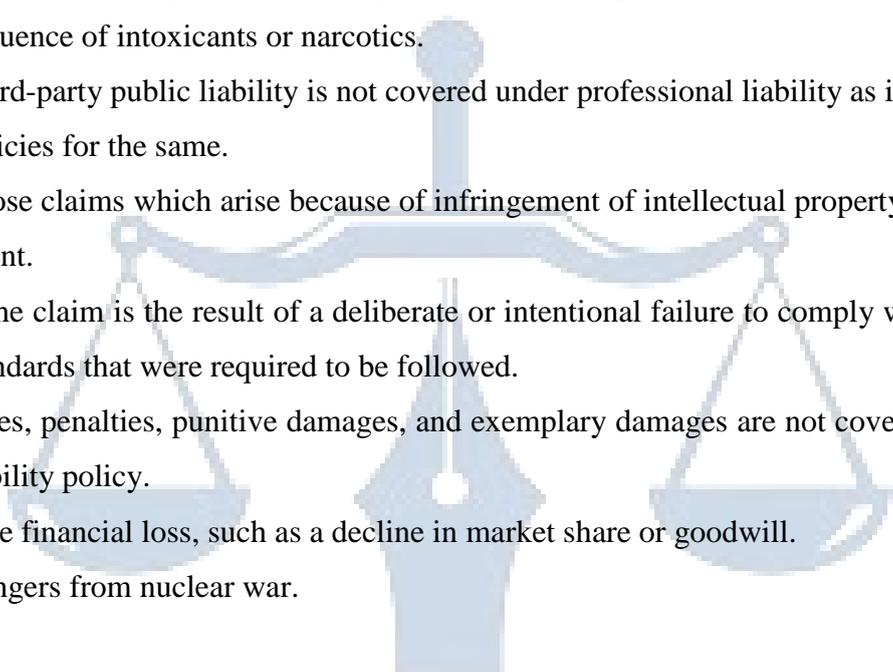
- Law offices are also covered by the policy because they provide professional legal services. Nowhere does it explicitly state that attorneys or law firms cannot purchase professional liability insurance.
- In some circumstances, group insurances are covered by the policy. Sometimes a firm will obtain a group professional liability insurance to cover itself against any claims as a result of the act of one or more of its employees.
- Any amount paid to the insured by way of compensation, damages or otherwise, or paid on behalf of the insured in the defence of any proceedings, or any costs, charges or expenses incurred by the insured in relation to a claim under the policy., are added to the insurance claim amount.

Who are excluded?

Similar to any policies Professional liability insurance policies also come with a provision for exclusion that would not be covered under the policy. The following are examples of the more frequent exclusions⁴:

- If the claim has arisen because of any criminal act or an act preempted under any law. This means to say that if any criminal act that led to the claim or any criminal liability that resulted from the incident will not be taken care by the insurer. If the breach of professional duty is in connection with such services being rendered while the person is under the influence of intoxicants or narcotics.
- Third party public liability is excepted from the policy as it has another policy on it means to say that if any criminal act that led to the claim or any criminal liability that resulted from the incident will not be taken care by the insurer.
- If the breach of professional duty is in connection with such services being rendered while the person is under the influence of intoxicants or narcotics.
- Third party public liability is excluded from the policy as it has its own policy on the same. Those claims which emanate as a result of violation of a client's intellectual property rights.
- If the claim is based upon of an intentional violation or reckless disregard of legal requirements which it was obligatory on the plaintiff to follow.

⁴ 'Professional Liability Insurance Coverage: Notable Exclusions'
<<https://jencapgroup.com/insights/professional/professional-liability-insurance-coverage-notable-exclusions/>>
accessed 13 October 2024.

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- Legal costs, fines, penalties, punitive damages and exemplary damages are excluded from the going liability policy.
 - Impairment in the form of a directly measurable financial loss, for example, loss of market share and goodwill, as been done in violation of any law. This means to say that any criminal act leading to the claim or any criminal liability that arises will not be covered by the insurer.
 - If the breach of professional duty is due to rendering of such services while under the influence of intoxicants or narcotics.
 - Third-party public liability is not covered under professional liability as it has separate policies for the same.
 - Those claims which arise because of infringement of intellectual property rights of the client.
 - If the claim is the result of a deliberate or intentional failure to comply with any legal standards that were required to be followed.
 - Fines, penalties, punitive damages, and exemplary damages are not covered under the liability policy.
 - Pure financial loss, such as a decline in market share or goodwill.
 - Dangers from nuclear war.

Who is a professional?

Understanding who qualifies as a professional for insurance purposes is crucial in order to determine who can take out such insurance. There is no current statute that defines the word "professional." A professional is what the Oxford Reference Dictionary describes as⁵:

- Having to do with or being a profession
- Engaged in a paid occupation rather than as a hobby,
- Competent,
- A competent person,
- An individual who excels in a certain activity.

This implies that the term "professional" would apply to anyone who is an expert, skilled, or engaged in a particular career. Since this term is so wide, it is challenging to pinpoint the precise

⁵ 'Professional' - Oxford Reference' <<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100348273>> accessed 15 October 2024.

groups of individuals who potentially fall under it. For the purposes of professional liability insurance, individuals are referred to as professionals. Doctors, chartered accountants, lawyers, and architects are all considered professionals in everyday speech.

There are a lot of professional liability insurance providers present in the market majorly in the private sectors. After a policy analysis, it can be stated that professional means architects, engineers, doctors, lawyers, chartered accountants, and medical practitioners and includes services that are medical establishments, IT companies, financial organizations and companies related to media, law firms and those other similar professional service providers.

The term "professional" is not properly defined, which leads to uncertainty and makes it challenging to define the extent of professional liability insurance and who is eligible to purchase it. The types of people who are insured are listed in each individual policy, however they vary from insurer to insurer. This is harmful to the categories of professionals who are not given the choice to use it since they are not recognised as professionals. To avoid any ambiguity and to guarantee that all professions are covered by professional liability insurance, it is crucial that the term "professional" be defined, even only for insurance purposes.

Action against professional misconduct

Professional misconduct covers both immoral and criminal behaviour as well as behaviours that fall outside the scope of the services and advice provided by the experts.

Consider the case of lawyers.

It is still rare for Indian attorneys and legal firms to buy what is referred to as professional liability insurance. The absence of awareness is one of the causes of this. Not all lawyers or law firms may be aware that professional liability insurance is available, and consumers are similarly unaware that they can sue their lawyers or law firms for negligence or for breach of professional standards. For reasons that are yet uncertain, few cases have been reported whereby clients have sued their attorneys or the concerned law firms for acts of rendering services inattentive. If there is a problem with the service to be offered by the attorneys or the law firms, to whom should the client resort?

Any person who has been aggrieved can report an advocate to the disciplinary committee of the State Bar Council or the Committee to Take a Suo Moto Action as provided by section 3 of the Advocates Act of 1961. Consequently, a number of penalties are imposed on the advocates found to have been negligent or to have committed any other offense as provided

under the law. As a result of the fact that it is mainly oriented toward the conduct of the advocate, this does not afford any redress for the injured party.

There was an option of approaching the consumer redressal forum as the second appropriate method. The parliament enacted the Consumer Protection Act 1986 with the idea of getting quick redress of consumers' grievances. As it relates to concerns held in the National Consumer Redressal Forum in *D.K. Gandhi v. M. Mathias*⁶, the forum responded positively to two questions which are if delivering of legal services by lawyers are services and the clients as consumers under the statute. The initial lawsuit was filed in a State dispute forum where it was decided that since legal services are offered under a unilateral contract called power of attorney it cannot be taken to consumer forums. There was a request made to the National consumer redressal forum stating that the state forum order was not proper and it fell under the definition of consumer disputes and therefore could be reviewed in consumer forums.

For this reason a SLP was filed with the supreme court of India presiding over the matter and granting the said petitions with a further stay on the National Consumer redressal forum. Thus, for the present, it is not clear what legal and unlawful action constitute Professional Misconduct in the case of rendered legal services. For this reason, there has been the need for a statute or rules particular to mitigating the management of claims against the professional services of attorneys.

SOURCE OF SECURITY

India is a developing nation that is expanding quickly. The number of international players has expanded since the Indian market was opened up to foreign investment. Although there is no provision for foreigners to practise law, many lawyers and law firms now have clients who are from these countries. The bounds of domestic law have been crossed by the profession's breadth. Numerous law firms serve both domestic and international clientele. The idea of suing their lawyers is not new to the foreign individuals and businesses. In reality, obtaining and keeping up a professional liability insurance policy is required for legal professionals in many nations. Numerous overseas clients had to result from this requesting that the legal firms they are representing obtain professional liability insurance. It demonstrates to the client the firm's financial capacity in the event that a judgement for damages or compensation is rendered

⁶ *D.K. Gandhi v. M. Mathias, 2007 (3) CPR 84.*

against it. Professional liability insurance serves as a safeguard for both clients and legal experts, particularly in situations when the potential liability is considerable. Even one unsuccessful lawsuit brought against the law practise can have a detrimental influence on the other cases it handles and its standing in the community. If the firm is covered by professional liability insurance, the clients will have more faith in it. Legal practitioners shouldn't use the few cases that have been brought against them as justification for not purchasing insurance protection against professional liability.

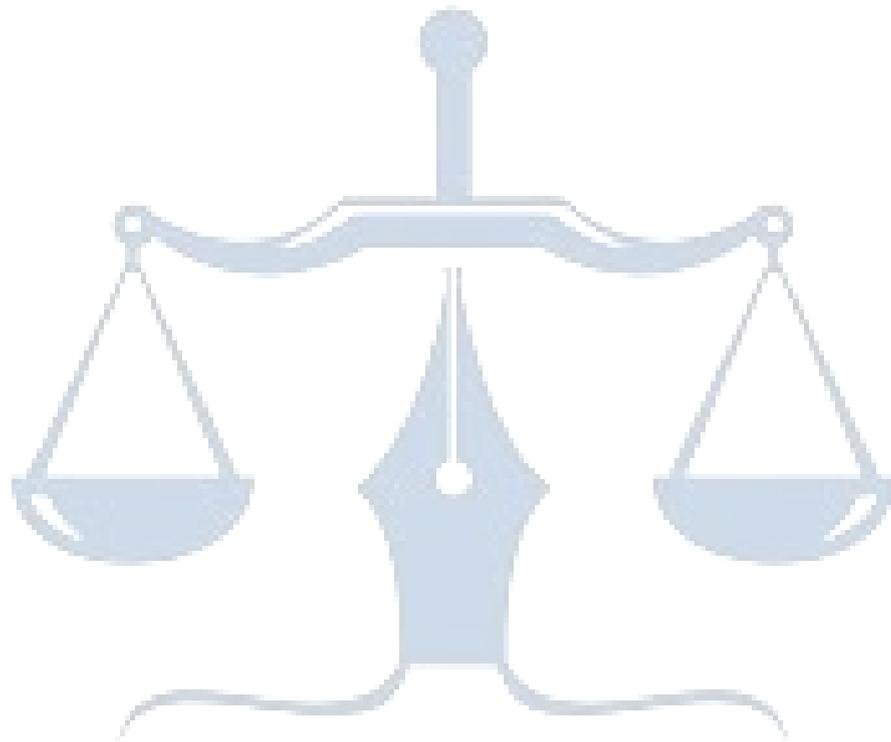
SUGGESTIONS

These laws have been specially enacted for the control of life insurance, marine and fire insurance respectively. The need to take professional liability insurance has been made easier by the expansion of the insurance business as well as expansion of the economy. Specific legislation or particular rules have to be adopted for the professional liability insurance to be regulated. Although, by using both of these terms they are able to design comprehensive outlines for the insurance, they have to focus on the definition of the term "Professional" in order to remove any confusion and to exactly describe the groups of persons who would be included into the insurance. There is nothing wrong with requiring a lawyer or law firms to have professional liability insurance, if they engage in matters that are worth more than a certain amount. The last thing that has to be considered, or in fact the first thing, which has to be clarified is to which court the wronged person shall turn to, if he wants to bring a lawsuit against a lawyer or law business.

CONCLUSION

It has been seen that the growth of every sector like retail banking HCI insurance sector and so on has had a positive role in the economic development. Professional liability insurance is evidently extremely rare among legal employees. It may well be seen as protecting their clients, as well as being of pertinence to lawyers. The claim per sector includes the aspect of financial security for both parties since insurance coverage claim in civil liabilities situations such as the attorney's fees, and any amount of damages, compensations or any settlement payable by the attorney Individual cases are now of high dollar value due to perplexity of the international competitors on the market. Where clients who assert they suffered monetary damage initiate an action against a lawyer or a law company, Without professional liability insurance, he or she would go bust after incurring a loss of millions. Further, it would lead to an unpleasant

reputational loss and, consequently, harm the other clients. Lack of professional liability insurance means the law firm is at risk and the clients are at risk of not being made whole once there was a lawsuit. So, it is particularly essential at the current period that professional liability insurance should be being regulated and obligatory for attorneys and legal firms to obtain.



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