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INSURANCE LAW IN INDIA

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Introduction:

Insurance may be described as a social device to reduce or eliminate risk of life and property. Under the plan of insurance, a large number of people associate themselves by sharing risk, attached to individual. The risk, which can be insured against include fire, the peril of sea, death, incident, & burglary. Any risk contingent upon these may be insured against at a premium commensurate with the risk involved.

Insurance is actually a contract between 2 parties whereby one party called insurer undertakes in exchange for a fixed sum called premium to pay the other party ON happening of a certain event. Insurance is a contract whereby, in return for the payment of premium by the insured, the insurers pay the financial losses suffered by the insured as a result of the occurrence of unforeseen events. With the help of Insurance, large number of people exposed to similar risks makes contributions to a common fund out of which the losses suffered by the unfortunate few, due to accidental events, are made good. An insurer is a company selling the insurance; an insured or policyholder is the person or entity buying the insurance. The insurance rate is a factor used to determine the amount to be charged for a certain amount of insurance coverage, called the premium.

Insurance law is the name given to practices of law surrounding insurance, including insurance policies and claims. Insurance regulation that governs the business of insurance is typically aimed at assuring the solvency of insurance companies. Thus, this type of regulation governs capitalization, reserve policies, rates and various other "back office" processes.

On January 19, 1956, the management of life insurance business of two hundred and forty five Indian and foreign insurers and provident societies then operating in India was taken over by the Central Government. The Life Insurance Corporation ("LIC") was formed in September 1956 by the Life Insurance Corporation Act, 1956 ("LIC Act") which granted LIC the exclusive privilege to conduct life insurance business in India.

However, an exception was made in the case of any company, firm or persons intending to carry on life insurance business in India in respect of the lives of "persons ordinarily resident outside India",

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provided the approval of the Central Government was obtained. The exception was however not absolute and a curious prohibition existed. Such company, firm or person would not be permitted to insure the life of any "person ordinarily resident outside India", during any period of their temporary residence in India.

However, the LIC Act, 1956 left outside its purview the Post Office Life Insurance Fund, any Family Pension Scheme framed under the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 or the Employees' Provident Funds and the Family Pension Fund Act, 1952.

Acts/Regulations Governing both Life and General Insurance in India:

- Insurance Act, 1938 and Insurance Laws (Amendment) act, 2015
- Insurance Rules 1939 • IRDA Act, 1999
- Insurance Amendment Act, 2002
- Insurance (Appearl to Securities Appellate Tribubnal) Rules, 2016
- Exchange Control Regulations (FEMA)Indian Stamp Act, 1899
- Insurance Ombudsman Rules, 2017
- Rules and Regulations Framed under Insurance Regulatory and Development Authority IIRDAI) Act, 1999

History of Insurance in India:

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu (Manusmrithi), Yagnavalkya (Dharmasastra) and Kautilya (Arthasastra). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular. Now, we will be discussing in brief about the history of Life Insurance and General Insurance in India.

- **Life Insurance:**

In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life business.

In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.

An Ordinance was issued on 19th January 1956 nationalising the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector.

- **General Insurance:**

1957 saw the formation of the General Insurance Council, a wing of the Insurance Association of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices. In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then.

In 1972 with the passing of the General Insurance Business (Nationalisation) Act, general insurance business was nationalised with effect from 1st January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd. and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commence business on January 1st 1973.

Recently, the Central Government has proposed merger of 3 Public Sector General Insurance Companies, except New India Assurance Company Limited, paving the way for consolidation in Government-run general insurance companies.

- **Health Insurance:**

Health insurance business in India has, traditionally, been regulated by the framework governing general insurance business as issued by the Insurance Regulatory and Development Authority of India (IRDAI) from time to time. However, due to a series of developments, a need was felt for creating a specific framework for the development and operation of health insurance products. In 2013, the IRDAI issued the IRDA (Health Insurance) Regulations 2013 (Health Regulations 2013) along with the Guidelines on Standardization in Health Insurance of 20th February 2013 (Standardization Guidelines 2013) which set out the procedures and requirements for filing health insurance products and certain follow through operational requirements.

It is a growing segment of India's economy. The Indian health system is one of the largest in the world, with the number of people it concerns: nearly 1.3 billion potential beneficiaries. The health industry in India has rapidly become one of the most important sectors in the country in terms of income and job creation. In 2018, one hundred million Indian households (500 million people) do not benefit from health coverage. In 2011, 3.9% of India's gross domestic product was spent in the health sector.

According to the World Health Organization (WHO), this is among the lowest of the BRICS (Brazil, Russia, India, China, and South Africa) economies. Policies are available that offer both individual and family cover. Out of this 3.9%, health insurance accounts for 5-10% of expenditure, employers account for around 9% while personal expenditure amounts to an astounding 82%.[2] In the year 2016, the NSSO released the report "Key Indicators of Social Consumption in India: Health" based on its 71st round of surveys. The survey carried out in the year 2014 found out that, more than 80% of Indians are not covered under any health insurance plan, and only 18% (government funded 12%) of the urban population and 14% (government funded 13%) of the rural population was covered under any form of health insurance.

Who can be a Nominee?

Any person who is a relative of the Life assured is generally the Nominee. However, a third party can also be nominated. But the Insurance Company can question the third party nomination from insurable interest angle. Insurable interest is the interest which the Policyholder has the on the life to be insured. A person is deemed to be having infinite insurable interest on one's own life. However, there the Life assured is different from the Policyholder, insurable interest has to be established.Otherwise the Policy contract, if issued, becomes void as a Wagering Contract under Section 30 of the Indian Contract Act, 1872. Where a third party is nominated (an outsider), the purpose of establishing insurable interest could be defeated. Hence third party nominations can be questioned from insurable interest angle.

Types of Nominees:

Generally, the role of Nominee is that of a Trustee and he can give a valid discharge upon settlement of dues under a Life insurance policy to him. However, a Nominee as a Trustee is accountable to the legal heirs and such legal heirs can claim from Nominees.

There were many legal disputes in the past where Legal heirs made a counter-claim with the Life insurance companies for their share in the proceeds of death claim benefit and this resulted in delays in settlement of the claim till the legal dispute is resolved in the Court of law. As a result, the intended objective of providing an immediate succour to the bereaved family upon the death of the bread-winner was not achieved in many cases. Therefore, the Government amended Section 39 of the Insurance Act, 1938, by recognising 2 types of Nominees – a Beneficial Nominee and a Collector Nominee.

Legislative Regime:

The principal legislation regulating the insurance business in India is the Insurance Act of 1938. Some other existing legislations in the field are – the Life Insurance Corporation (LIC) Act, 1956, the Marine Insurance Act, 1963, the General Insurance Business (GIB) (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The provisions of the Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for life or non-life. Similarly, the provisions of the Companies Act, 1956 are applicable to the companies carrying on insurance business.

The subordinate legislation includes Insurance Rules, 1939 and the Ombudsman Rules, 1998 framed by the Central Government under Sec.114 of the principal Act as also 32 regulations made by the IRDA under Sec.114 A of the principal Act and Sec.26 of the IRDA Act 1999.

Ombudsmen:

The Ombudsmen are appointed in accordance with the Redressed of Public Grievances Rules, 1998, to resolve all complaints relating to settlement of claims on the part of insurance companies in a cost-effective, efficient and effective manner. Any person who has a grievance against an insurer may make a complaint to an Ombudsman within his jurisdiction, in the manner specified. However, prior to making a complaint, such person should have made a representation to the insurer and either the insurer has rejected the complaint or has not replied to it. Further, the complaint should be made not later than a year from the date of rejection of the complaint by the insurer and should not be any other proceedings pending in any other court, Consumer Forum or arbitrator pending on the same subject matter. The Ombudsmen are also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much such a dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium.

Further Interference:

The insurance industry is driven as a commodity rather than a service[1]. Providing a low price is critical, optimizing risk assessment is an obsession and processing customer efficiently is a key focus[2]. As a consequence the digital transformation unlike in other industry remains a low priority[3]. Meanwhile with the venue of the digital and the all online, retail consumer wants not only to access anything, everywhere at any time, but also reaches everything anywhere every time. The customer wishes to acquire customized products & personalized services promoted through mobile, tablet or computer. The Digital world, a new far west for consumerists, opens a new era where every business must learn how to cope in order not to disappear. It includes the insurance[4].The insurance industry is driven as a commodity rather than a service[1]. Providing a low price is critical, optimizing risk assessment is an obsession and processing customer efficiently is a key focus[2]. As a consequence the digital transformation unlike in other industry remains a low priority[3]. Meanwhile with the venue of the digital and the all online, retail consumer wants not only to access anything, everywhere at any time, but also reaches everything anywhere every time. The customer wishes to acquire customized products & personalized services promoted through mobile, tablet or computer. The Digital world, a new far west for consumerists, opens a new era where every business must learn how to cope in order not to disappear. It includes the insurance[4].The insurance industry is driven as a commodity rather than a service[1]. Providing a low price is critical, optimizing risk assessment is an obsession and processing customer efficiently is a key focus[2]. As a consequence the digital transformation unlike in other industry remains a low priority[3]. Meanwhile with the venue of the digital and the all online, retail consumer wants not only to access anything, everywhere at any time, but also reaches everything anywhere every time. The customer wishes to acquire customized products & personalized services promoted through mobile, tablet or computer. The Digital world, a new far west for consumerists, opens a new era where every business must learn how to cope in order not to disappear. It includes the insurance[4].The insurance industry is driven as a commodity rather than a service[1]. Providing a low price is critical, optimizing risk assessment is an obsession and processing customer efficiently is a key focus[2]. As a consequence the digital transformation unlike in other industry remains a low priority[3]. Meanwhile with the venue of the digital and the all online, retail consumer wants not only to access anything, everywhere at any time, but also reaches everything anywhere every time. The customer wishes to acquire customized products & personalized services promoted through mobile, tablet or computer. The Digital world, a new far west for consumerists, opens a new era where every business must learn how to cope in order not to disappear. It includes the insurance[4].The context of the insurance industry is difficult and needs to be clarified in order to foresee a future trend. Its environment is driven by a conjuncture of constant yet endless progress (social, politic and economic). Such conjuncture could be opposed to industry structure that is more complex and heavily regulated. Such a situation has an impact to the equilibrium of the simple supply and demand theory. Such impact can be direct or indirect to the industry environment evolution. They will be direct when they or could affect the industry and its capacity to exercise its competence. The capital requirement to serve the solvency margin regulation is extremely

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important .Better data availability and finer underwriting practices in the developed countries lead to lower premium rates as compared to premium rates in India. While the Indian insurance sector has evolved to a great extent, it is an undeniable fact that it still has a long way to go. The private insurance companies in India, for example, are much newer as compared to insurance companies in the West and are therefore, not as experienced in the insurance sector as their counterparts in the USA and the UK. Insurance experts in the industry claim, however, that the Indian insurance sector is on the path to improvement and we will see a positive change in the underwriting practices in about four to five years.

By 2012 Indian Insurance is a US$72 billion industry. However, only two million people (0.2% of the total population of 1 billion) are covered under med claim. With more and more private companies in the sector, this situation is expected to change. ECGC, ESIC and AIC provide insurance services for niche markets. So, their scope is limited by legislation but enjoy some special powers. The majority of Western Countries have state run medical systems so have less need for medical insurance.

On 16 September 2013, IRDA launched "insurance repository" services in India. It is a unique concept and first to be introduced in India. This system enables policy holders to buy and keep insurance policies in dematerialised or electronic form. Policyholders can hold all their insurance policies in an electronic format in a single account called electronic insurance account (eIA). Insurance Regulatory and Development Authority of India has issued licences to four entities to act as Insurance Repository:

- CDSL Insurance Repository Limited
- Karvy Insurance repository Limited
- NSDL Database Management Limited
- CAMS Repository Services Limited

Agents:

An agent is a person who represents a principal, who can be another person or a company, and act in the principal's behalf. An insurance agent represents the insurance company and an insurance broker represents the insurance applicant—both must be licensed by the state in which they conduct business.

The main duty of agents and brokers is to sell insurance. They also explain the benefits of insurance, and give their insured information as to what is covered and what isn't. They may also provide service after a loss, informing the insured what steps need to be taken to have the claim paid.

The insurance company is responsible for the acts of its agents, and it can be assumed by the insurance applicant that any information or payment of money to the agent will be received by the insurance company—not necessarily so for the broker, because the broker represents the insurance client, not the company.

Conclusion:

The law's protective attitude towards the insured results, in part, from the superior position of the insurance company over the applicant. Thus, notice to the insured is an important factor in establishing the insurer's defence. For this reason a designation in the policy including or excluding someone as agent for the company is valid only from the time when the insured receives the policy. Although a solicitor may let one of several companies' issue a policy for a given applicant, the representative is considered to be the agent for that insurer.

It should be remembered that these rules, while oversimplified when cited out of context, are applied in complex factual situations, and further complicated in that the "agent" is usually an agency dealing with several insurance companies under contract.

If the policy or application contains a stronger provision expressly barring the agent from waiving certain conditions, this term will be upheld. 0 Agents acting for company purposes, but clearly in excess of the normal authority, will not bind the insurer, but the company may not defend against waiver or estoppel on the basis of undisclosed instructions to the agent, or normal office procedure, which are contrary to the agent's acts.

The doctrine of uberrimae fides - utmost good faith - is present in the insurance law of all common law systems. An insurance contract is a contract of utmost good faith. The most important expression of that principle, under the doctrine as it has been interpreted in England, is that the prospective insured must accurately disclose to the insurer everything that he knows and that is or would be material to the reasonable insurer. Something is material if it would influence a prudent insurer in determining whether to write a risk, and if so upon what terms. If the insurer is not told everything material about the risk, or if a material misrepresentation is made, the insurer may avoid (or "rescind") the policy, i.e. the insurer may treat the policy as having been void from inception, returning the premium paid.

Reinsurance contracts (between reinsurers and insurers/cedents) require the highest level of utmost good faith, and such utmost good faith is considered the foundation of reinsurance. In order to make reinsurance affordable, a reinsurer cannot duplicate costly insurer underwriting and claim handling costs, and must rely on an insurer's absolute transparency and candor. In return, a reinsurer must appropriately investigate and reimburse an insurer's good faith claim payments, following the fortunes of the cadent.

Firstly, reinsurance can be used by which insurance companies are indemnified by reinsurer for catastrophic losses. Reinsurance is the shifting of part or all of the insurance originally written by one insurer to another insurer. The reinsurer is then responsible for the payment of its share of the loss.

Secondly, insurers can avoid the concentration of risk by dispersing their coverage over a large geographical area. The concentration of loss exposures in a geographical area exposed to frequent floods, tornadoes, hurricanes, or other natural disasters can result in periodic catastrophic losses. If the loss exposures are geographically dispersed (isolated), the possibility of a catastrophic loss is reduced.

Finally, new financial instruments are now available for dealing with catastrophic losses. These instruments include catastrophic bonds and options sold on the Chicago board of trade.