

**DISSERTATION SUBMITTED IN PARTIAL FULFILMENT FOR
THE AWARD OF THE DEGREE OF MASTER OF LAWS**

**“A CRITICAL ANALYSIS OF CONSUMER PROTECTION IN
LIFE INSURANCE”**



UNDER THE GUIDANCE OF:

**DR. ASHOK PATIL,
ASSOCIATE PROFESSOR,
NLSIU, BANGALORE**

SUBMITTED BY:

**JAGDISH W. KHOBRADE
I.D. NO.316
2nd YEAR LL.M, NLSIU**

**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
BANGALORE**

CERTIFICATE

This is to certify that **Mr. Jagdish Wamanrao Khobragade**, is submitting the Dissertation entitled, "**A CRITICAL ANALYSIS OF CONSUMER PROTECTION IN LIFE INSURANCE SECTOR**", to National Law School of India University, Bangalore, in his partial fulfilment of the requirements for the award of Degree of Master of Laws (LL.M). He has worked under my supervision and guidance and the dissertation is the product of the original work carried out by the candidate.

This dissertation has not been submitted for the award of any degree or Diploma.

Place: Bangalore

Date: 31-05-2010



Dr. Ashok Patil

Associate Professor

NLSIU-Bangalore

DECLARATION

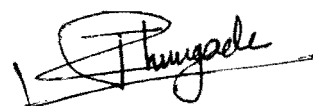
This dissertation entitled "**A CRITICAL ANALYSIS OF CONSUMER PROTECTION IN LIFE INSURANCE SECTOR**" is a result of genuine research work undertaken by me in the course of my LL.M programme at the National Law School of India University, Bangalore, under the guidance of Prof. Ashok Patil.

This work is undertaken in the final semester and is my original work, except for such help taken from such authorities as have been referred to at respective places for which due acknowledgment has been made.

I further declare that this work has not been submitted either in part or in whole, for any degree or diploma at any other university or institution.

Place: Bangalore

Date: 31/05/2010



Jagdish Khobragde

LL.M Final Year

ID. No. 316

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Jagdish Khobragade

LIST OF ABBREVIATIONS

A.I.R. -All India Reporters

ASCI -Advertisement standards council of India

CPJ- Consumer protection Journal

CPR- Consumer protection Rights

COPRA- consumer protection Act

CERC- Consumer Education & Research Council

DIT- Department of Trade & Industry

GDP -Gross Domestic Product

GIB -General Insurance Business

GICI- General Insurance Corporation of India

IRDA -Insurance Regulatory Development Authority

IAT- Insurance Appellate Tribunal

IFCO -India Federation of Consumers

IFCAI- Institute of Chartered Financial Analysts of India

IJLS- International Journal of Leadership Studies

LIC- Life Insurance Corporation

NC- National Commission

NGO's- Non- Governmental Organisations

SC -Supreme Court

St. Comm.-State Commission

SCC -Supreme Court Cases

SEBI- Securities & Exchange Board of India

TAC- Tarrif Advisory Committee

U.K.- United Kingdom

U.S.A. -United States of America

CONTENTS

CERTIFICATE

DECLARATION

ACKNOWLEDGEMENT

LIST OF ABRIVIATION

CHAPTER I

1. Introduction.....	1
1.1 Objective of Study.....	8
1.2 Hypotheses.....	9
1.3 Research Methodology.....	9
1.4 Sources of Data.....	9
1.5 Research Questions.....	9
1.6 Chapterisation	10
1.7 Mode of Citation.....	12

CHAPTER II

2. Concept and Meaning of Consumer and Life Insurance.....	13
2.1 Who is consumer.....	15
2.2 Who can file a Complaint.....	16
2.3 Nature of Insurance	16
2.3.1 Contract of Insurance	17
2.3.2. Classification of Contract of Insurance	18
2.3.3. What is life insurance.....	19
2. 3. Consumerism in India.....	20
2. 4. Consumer protection as a constitutional mandate.....	21
2.5. Deficiency in Service.....	23
2.5.1.Insurnace and Consumer.....	23
2.6. Life Insurance.....	23

2.7. General Principles	28
2.7.1 Burden of proof.....	28
2.7.2 Meaning of material fact.....	30
2.7.3. Insurable interest.....	30
2.7.4 Utmost good faith.....	32
2.7.5 Right of reinstatement.....	33
2.7.6. Subrogation.....	33
2.7.7Contribution.....	34

CHAPTER III

3. The Insurance Regulatory and Development Authority and Its Regulations.....	36
3.1. The Insurance Regulatory and Development Authority Act, 1999.....	40
3.2. Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002,.....	44
3.3. Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000.....	54

CHAPTER IV

4. Insurance Law & Regulations in India.....	58
4.1. The Insurance Act, 1938.....	58
4.2. Insurance Laws (Amendment) Bill, 2008.....	59
4.3. Critical analysis of new proposed amendment to sec. 45 of Insurance Act, 1938.....	64
4.4. Life Insurance Act, 1956.....	67

CHAPTER V

5. Insurance dispute and settlements.....	69
5.1. Role of courts	71
5.2. Insurance ombudsman	84

CHAPTER VI

6. A Comparative Study of U.K., U.S. and India.....	86
6.1.U.K.....	86
6.2. U.S.A.....	93
6.3. INDIA.....	100

CHAPTER VII

7. Conclusion and Suggestion.....	104
7.1. Bibliography.....	108

CHAPTER I

INTRODUCTION

The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of Consumer from exploitation. The definition of Consumer itself covers larger area including Services.¹ The life insurance is one of the major areas which directly deal with the life of Consumer. The moment a person comes into this world, he starts consuming. He needs clothes; milk, oil, soap, water etc., and these needs keep taking one form or the other all along his life. Thus all are Consumers in the literal sense and the most important is "social security,"² which life insurance has supposed to provide. Security in general can be thought of as peace of mind and freedom from uncertainty whereas insecurity implies feeling of doubt, fear, and apprehension. Therefore, Security is measured by the probability that man's needs will be satisfied. On the other hand Economic security is also very important term and can be evaluated only for a particular individual, family, business or country at a given point of time.³ But there may be instances where a consumer is harassed or cheated. India has the highest number of life insurance policies in force and the total investible funds with the life Insurance Corporation of India (LIC) are almost 8 per cent of GDP. The LIC employs more than one lakh employees who in turn supervise through 2,000 branch offices with more than five lakh agents.⁴

These Insurance Companies under the control of the Government of India have been playing a significant role in the Indian modern economy. But the ratio of complaint file by the insured has been increasing with the expansion of insurance business. These complaints are filed on account

¹ See, The Consumer Protection Act, 1986, Sec. 2 (d)

² See, CONCISE OXFORD ENGLISH DICTIONARY, 11th edn; Social Security meaning in UK: Monetary assistance from the state for people with an inadequate or no income. Social Security in US: a federal insurance scheme providing benefits for pensioners, the unemployed, and the disabled.

³ See, S.S. HUEBNER AND KENNETH BLACK, JR., LIFE INSURANCE (New Jersey, Prentice Hall, Inc., Englewood Cliffs, 1982, 10th edn.) p. xv, see, also DAVIS W. GREGG, "Economic Security: patterns and Philosophies," LIFE AND HEALTH INSURANCE HANDBOOK, (Homewood, ILL: Dow Jones, Irwin, 1973, Chapter I.

⁴ AJIT RANADE AND RAJEEV AHUJA, "Life Insurance in India: Emerging Issues", ECONOMIC AND POLITICAL WEEKLY, Vol. 34, No. 3/4, Money, Banking and Finance (Jan. 16 -29, 1999), pp. 203-205+207-21, See, also Law Commission of India, "190th Report on the Revision of Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999", (June 2004)

of unfair conditions of the policy to defeat the general claims of the beneficiaries, delaying/denying payments on flimsy excuses, discretionary powers of the officials in settling the claims. These kinds of complaints are maximum in life insurance cases as compare to other types of insurance in India.

Insurance has considered as Social Security, the story of insurance is as old as the story of Mankind. Welfare countries like India have introduced insurance laws for the protection of risk of future and to beat the unforeseen event. The modern forms of life policies are numerous, ranging from the traditional whole life policy, which simply pays an agreed sum of money on the death of the life insured, and the term policy, which pays on death within stated time, through endowment policies to annuities and policies linked to investment in securities or property.⁵ These types of policy can be “with profits”, so that the insured expects to receive a bonus over and above the stated sum insured. The fact that many life policies of the latter sort are in reality also an investment has been recognised for some years, with additional regulatory measures being adopted for the protection of consumers.⁶The instinct for security against such risk is one of the basic motivations determining human attitude.⁷The Collective co-operation among persons exposed to a particular risk in order to share risk, is as old as the dawn of human civilization. The Aryans had evolved a communitarian life which was proof against the ravages of time and gave sustenance to everyone. It has been stated that, “*Yogakshema*”, in Rigveda, conveys the idea of Security and well being or prosperity as also some kind of insurance, which was practiced by the ancient Indian Society and states, more than 3000 years ago.⁸

⁵ A contract which contains provision for life cover is still a contract of life insurance, especially for the purposes of the Life Assurance Act 1774 and the Insurance Companies Act, 1982, where the amount of life cover is variable and no more than the amount for which the policy might be surrendered at any time; *fuji finance Ltd., v. Aetna Life Insurance Co., Ltd* (1994) 4 All E.R. 608

⁶ JOHN BIRD'S, *BIRDS MODERN INSURANCE LAW*, (London, Sweet & Maxwell, 2007, 7th edn.) p.348

⁷ DHARMENDRA KUMAR, *Indian Insurance: The Historical Perspective*, India Insurance Report: Series-I, p. 17

⁸ See, [(5)F.J. MCLEAN “Human Side of Insurance”], it was well defined that Insurance in India can be traced back to the Vedas. For instance, *Yogakshema*, the name of Life Insurance Corporation of India's corporate headquarters, is derived from the Rig Veda. The term suggests that a form of “community insurance” was prevalent around 1000 BC and practised by the Aryans.

Insurance is one of the services as enumerated in the Consumer Protection Act, 1986 and falls within the purview of the definition of service under Sec. 2(1)(o). A consumer who suffers loss on account of deficiency in service may approach the redressal forum constituted under the Act for compensation. On the other hand, "*Risk covered under a policy of life insurance on happening of certain event as per terms of the policy is a service under the definition of service in the Act which is inclusive in nature*".⁹ The Act provides that "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with *banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information*, but does not include the rendering of any service free of charge or under a contract of personal service.¹⁰

The real role of Insurance Company starts when any insurer claims for either on maturity of the policy or death of the insured. Peoples have trust on insurance company and therefore they take a policy from a particular company. While making proposal they do not read all the conditions and with the help of agent they go for the policy, without thinking about consequences of the terms and conditions and there they do the mistake. Because, it is true that contract of insurance is based on principle of *utmost good faith*, but that does not mean to cheat the innocent people by mentioning undue terms & conditions in the life insurance policy. Generally the claims may be from the legal representatives of the deceased/insured, who are needy and they approach to the insurance company. Then LIC has to fulfil the confidence of trust on the basis of contract of insurance, but certainly there are many examples where insured has to suffer at the hands of insurance companies. When he approaches to the consumer forum directly, without going for another alternative dispute settlement like Ombudsman, at the first instance, result would be in his favour. However, actual struggle for him starts when the LIC moves from consumer forum to

⁹ *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243

¹⁰ The consumer protection Act, 1986, Sec. 2(1) (o)

state commission, National commission and lastly to Supreme court.¹¹ And in the most of cases order get reversed against the consumer, only on the ground of breach of trust (principle of utmost good faith).¹² If you see the jurisprudential aspects, right is co-relative to duty and whereas, legal right is in the strictest sense of the term as a capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others.¹³ Therefore whether the LIC is really under the guise of principle of utmost good faith following the co-relative duty or not, if there is no duty on the insurer then why the preamble of Insurance Act, 1938, states that, “for the protection of interest of policyholders and for the welfare of the people under the State assistance”. Otherwise, it would be only duty on the policyholder to follow the principle of utmost good faith for the benefit of insurance company.

However, there are few cases where Supreme Court has given decision in favour of Consumer. The reason of this is pro-government approach of Supreme Court, and it is not only because the panel of lawyers appointed by the LIC but because of lack of information amongst the poor consumers. And therefore consumer has to suffer at the hands of big lobbies of insurances companies. Though, Insurance Regulatory Development Authority (IRDA) has come up with new legislation for the protection and regulation of insurance laws in India, but has not proved much effective because of lack of awareness amongst the common man. Whereas, other countries are more developed and well regulated by the insurance regulatory authorities with a view of social security for all. For example in England they have Insurance Commissioner whose job is to hear the cases from all over the state. Here the fact that each commissioner has jurisdiction throughout Great Britain is most useful.¹⁴ And the consumer awareness proves to be good as compare to other developing countries in England and United States of America.

¹¹ Because they have set of panel of lawyers, whose job is to represent LIC and to win the cases, what here, I would like to suggest that LIC is always in a dominant position to change the decision in their favour.

¹² MARK S. DORFMAN, INTRODUCTION TO INSURANCE, (New Jersey Prentice-Hall, Inc., Englewood Cliffs, ,1982, 2nd edn.) pp. 89-90

¹³ THOMAS ERSKINE HOLLAND, K.C., THE ELEMENTS OF JURISPRUDENCE, (BiblioBazaar, LLC,2009) P.82

¹⁴ SIR ROBERT MICKLETHWAT, THE INSURANCE COMMISSIONERS, (London Stevens & sons, 1976) , P.48

The Consumer Protection Act, 1987 is a milestone in the history of socio-economic legislation in the country. It is one of the most progressive and comprehensive piece of legislations enacted for the protection of consumers. It was enacted after in-depth study of consumer protection law in a number of countries and in consultation with representatives of consumers, trade and industry and extensive discussions within the Government. The main objective of the Act is to provide for the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, and reliefs of a specific nature and award of compensation wherever appropriate to the consumer. The Act has been amended in 1993 both to the extend its coverage and scope and to enhance the powers of the redressal machinery. The salient features of the Act are:

- The Act applies to all goods and services unless specifically exempted by the Central Government
- It also covers all the sectors whether private, public or cooperative
- The provisions of the Act are compensatory in nature

This Act, also provides Rights to the consumers, it enshrines the following rights of consumers:

- Right to be protected against the marketing of goods and services which are hazardous to life and property
- Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices
- Right to be assured, wherever possible of access to a variety of goods and services at competitive prices
- Right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums

➤ Right to seek redressal against unfair trade practices unscrupulous exploitation of consumers; and right to consumer education

Insurance services have expanded and developed speedily during the last couple of decades. It has entered in a big way in financing large scale business activities. The basic reason of fast expansion of insurance services perhaps has been that it has duty to serve people in the right manner. Insurance is people-centric business where the policyholder is the focal point. The objective of insurance business regulation is to protect the interest of the policyholders.¹⁵ In this process, the Insurance Regulatory and Development Authority (IRDA) has made rules and provided guidelines to the insurance companies. The IRDA was established to protect the interest of the policyholder and for the orderly growth of the insurance business in India. In spite of having number of provisions in insurance law and regulation, the insurance policyholders suffer from delays and repudiation of claims. The insurance regulations impose the duty on insurers to establish an effective and efficient grievance, settlement mechanism. IRDA also established an insurance ombudsman to settle disputes of insurance policyholders. Moreover, This Study looks at the provisions laid down in the Consumer Protection Act, and deals with the applicability of the consumer law and the role played by the consumer courts, councils in the settlement of disputes between the parties.¹⁶ And therefore the concept of "*Humanity's quest for Security is universal*"¹⁷ is defeated at the threshold when we see the anti-consumer role of life insurance companies.

In India the business of life insurance was nationalised with the setting up of Life Insurance Corporation on 1st September 1956. The basic purpose of nationalisation of insurance business was to mobilise resources and to cater to the maximum to the people specially living in rural areas. Life Insurance Corporation provides services to its clients by covering risks through the

¹⁵ See, SHIVANAND H. LENGTI, "*Insurance disputes in India*", THE ICAFI UNIVERSITY JOURNAL OF BANKING & INSURANCE LAW, Vol. VII, Nos. 3 &4, 2009, pp.83-90

¹⁶ *Ibid*

¹⁷ Humanity's quest for security is Universal. Although security means different things for different people, there appears to be one common frame of reference. All views of security relates to needs and wants. Insurance is the outcome of man's constant search for security and finding out ways and means of ameliorating the hardship arising out of calamities. Since the origin of human world man is searching for security and it's not a new thing to seek security in the contemporary period. See,

whole life. It has also introduced group insurance benefits to the weaker sections of the society at a nominal cost. The other insurance companies under the control of the Government, such as, New India Assurance Company Limited, United India Company Limited, National Insurance Company Limited and Oriental Insurance Company Limited are the subsidiaries opening under General Insurance Corporation of India.¹⁸ Life insurers undertake the Life Insurance business;¹⁹ general insurers handle the rest. The business of insurance essentially means defraying risks attached to an activity (including life) and sharing the risks between various entities, both persons and organisations. Insurance companies are important players in financial markets as they collect and invest large amounts of premium in various investment instruments. Insurance offers the following benefits:

- a) Protection to investors
- b) Accumulation of savings
- c) Channelling these savings into sectors needing huge long-term investments.

Insurance companies receive a steady cash stream of premium or contributions to pension plans. Their cash flows are determined on the basis of various actuary studies and models. Since their liabilities are long-term or contingent in nature, their investments are also long-term and they are able to maintain a healthy liquidity position. Since they offer more than the return on savings in the shape of life cover to the investors, the rate of return guaranteed on their insurance policies is relatively low. Consequently, the need to seek high rates of return on their investments is also low. Since the risk factor in the insurance business is quite high, insurance companies usually

¹⁸ See, The Life Insurance Corporation Act, 1956, Statement of Object and Reasons

¹⁹ Section 2(11), Insurance Act, 1938: "*Life Insurance Business*" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) and the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include

- (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
- (b) the granting of annuities upon human life; and
- (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

invest in relatively safer bets such as bonds of GOI, PSUs, state governments, local bodies, corporate houses and mortgages of long-term nature. Lately, insurance companies have also ventured into pension schemes and mutual funds. Life insurance constitutes the major share of insurance business. Life insurance depends upon the laws of mortality. Life has to end sooner or later and the claim in respect of life is certain. On the other hand, in case of general insurance, there may never be any claim and the amount cannot be ascertained in advance. Hence, life insurance, besides providing a cover for life of individuals, also serves as a good source of savings for the beneficiaries. The life insurance market in India presents several striking features, which appear, for the most part, to be necessary concomitants of the underdeveloped nature of the country's economy. Existences of a large number of life insurance sellers and the narrowness of the life insurance market have been the characteristics peculiar to India. There are 23 Life insurance companies who actually deal with life insurance business. The volume of life insurance business annually sold on the Indian life insurance market came on an average to about Rs 160 crore. Most of these policies were sold during the phase of private enterprise, by Indian organisations termed "insurers" by the Indian Insurance Act (Act IV of 1938).

The term "insurers" included":

- a) Proprietary Joint Stock Companies
- b) Mutual Joint Stock Companies
- c) Partnership firms to which the Indian Partnership Act of 1932 applied
- d) Co-operative Life Insurance Societies

1.1. OBJECTIVE OF STUDY:

This study proposes to analyze and evaluate the situation of consumer and life insurance as whether they are really protected by this legislation or not. Besides this, it also has view how judicial and quasi judicial body have responded to the cases filed under the consumer protection Act, against the life insurance corporation and to evaluate whether existing laws on these sectors are adequate enough to respect and protect rights of the Consumer. Thus the basic objective of

this study is to know how the interests of consumer are protected in the insurance sector. In addition, to this study intend to do comparative study of the UK, US and India in respect of consumer protection in life insurance to know how it is defined in different countries by various jurist/writers. It also intends to propose the recommendations or the way out to meet the existing problems and future challenges.

1.2. HYPOTHESES:

1. Life insurance is a concept of social security, whereas as consumer protection Act, is meant to protect the interest of consumer, so how far the Consumer Protection Act is successful in achieving its goal.
2. Role of state, NGO's and Judiciary in protecting interest of consumer
3. Insurance Regulatory Authority is meant to protect and regulate the insurance business in India

1.3. RESEARCH METHODOLOGY:

The methodology adopted for this study is largely informative and descriptive and the sources are primarily secondary, relying on books, magazines, journals, newspapers and online databases. The purpose of this study is to critically analyze the Consumer Protection in life insurance. The aim of this study is to evaluate the statues regarding the protection of the interest of consumer in the life insurance sector. The method used in this study is descriptive and analytical.

1.4. SOURCES OF DATA:

To accomplish the aforesaid objective I have relied on the secondary data collection obtained from the reading material as provided in the subject of law. At the same time I also referred to some elementary books providing for the basic understanding of the concept of insurance and consumer.

1.5. RESEARCH QUESTIONS:

Following research questions will be examined in this Study

- 1) How the insurance sector has emerged as a multi core business in India?
- 2) What are the policies of IRDA which protects the interest of consumers or insurers?
- 3) How the interest of consumer protected in U.K. and U.S.A?
- 4) How Insurance legislations, rules, regulations and amendment Bills is protecting interest of consumers in the matters of life insurance?
- 5) Why most of the claims are repudiated by LIC on trivial grounds in India?
- 6) What are the provision in Insurance Act, 1938 which protects the interest of insurance company
- 7) What is the role of judiciary in protecting interest of consumer?
- 8) Why Sec.45 of insurance Act, 1938 is always used as shield?

1.6. CHAPTERISATIONS:

CHAPTER I: INTRODUCTION

It comprises the introduction to the study about consumer and insurance. It also includes historical background of the Life insurance and consumer movement which is an important topic of discussion for this study. In the Indian scenario people are not aware about their rights but what they do is to follow the United Kingdom in all aspects of legislations and Consumer protection Act, is also one of genesis of the great Britain.

CHAPTER II: THE CONCEPT AND MEANING OF CONSUMER AND LIFE INSURANCE

The concept of consumer has been evaluated in the context of Services. The concept of life insurance has also been introduced in this chapter in the context of present Indian legislations. The type of life insurance and how the consumer protection Act, governing under the life insurance sector.

CHAPTER III: THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY AND ITS REGULATIONS

This chapter comprises about regulatory system in India. For example, The Insurance Regulatory and Development Authority Act, 1999 and the Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002, Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000

CHAPTER IV: INSURANCE LAW & REGULATIONS IN INDIA

The Insurance Act, 1938 and the life Insurance Act, 1956 has also been taken for the study. And Specifically Sec.45 of Insurance Act, 1938 and Proposed Amendment to Sec.45 under the Insurance Laws (Amendment) Bill 2008

CHAPTER V: INSURANCE DISPUTES AND SETTLEMENTS: ROLE OF COURTS AND OTHER SUBORDINATE BODIES.

The Consumer Protection Act, 1986 was enacted with an objective to provide simple, speedy and inexpensive redressal to the grievances of consumers. It covers both the public and private sectors. To critically evaluate the judicial decision which are not suppose to violate the basic insurance law i.e. consumer's interest. How the approach of judicial is more inclined towards state than to the masses. In this chapter the researcher tried to find out the judicial

pronouncement and the role of judiciary in protection of interest of consumer in life insurance and also emphasis on role of Insurance Ombudsman in protection of interest of policyholder/consumer.

CHAPTER VI: A COMPARATIVE STUDY OF UK, US AND INDIA

This chapter is basically to compare various countries and their legislations with the help of life insurance business and the status of consumer in the particular country.

CHAPTER VII: CONCLUSION & SUGGESTIONS

1.7. MODE OF CITATION:

Harvard Bluebook: A uniform model of citation is followed throughout the write up.

For Books: NAME OF AUTHOR, NAME OF BOOK, (place of publication: Publisher, Year, Edition) Page no.

For Articles: NAME OF AUTHOR, Title of Article, NAME OF JOURNAL, Publication Detail, Page no.

CHAPTER II

CONCEPT AND MEANING OF CONSUMER AND LIFE INSURANCE

Since, the ancient time consumer has been defined as a person who is paying for goods and services. Even in the Barter system goods for goods were followed. However, today scenario has become changed due to the introduction of currency notes which is a medium of exchange. While buying or hiring something, consumer must be aware about the product or services. It is duty owe on the Consumer by the principle of “*Caveat emptor*” (Let the buyer beware). However, with the introduction of Consumer Protection Act, the concept has got little change by the principle of “*Caveat vendor*” i.e., “sellers beware”.

The exploitation of consumer is not new phenomenon. Even at the time of *Murayan Empire* it was there and therefore *Kautilyas* had introduced “*Arthashastra*” and there he incorporated strict laws to restrict the unfair trade and practices.²⁰ However, as far as insurance services are concerned, about 4,500 years ago, in the ancient land of *Babylonia*, which is today known as Iraq, traders used to bear risk of the caravan trade by giving loans that had to be later repaid with interest when the goods arrived safely. In 2100 BC, the Code of Hammurabi granted legal status to the practice. That was the beginning of Insurance. Moreover, Life insurance had its origins in ancient Rome, the capital city of Italy where citizens formed burial clubs that would meet the funeral expenses of its members as well as help survivors by making some payments.²¹

On April 9, 1985 the General Assembly of the United Nations passed a Resolution adopting a set of guidelines for consumer protection and authorised Secretary General United Nations to persuade the member countries especially the developing ones to adopt policies and laws for better protection of the interests of the consumers. India being one of the signatory to the

²⁰See, R. SHAMASASTRY, KAUTILYA ARTHASHASTRA.,(Bangalore, Government Press, 1915), pp.515-520

²¹ C.F.TRENERRY, THE ORIGIN AND EARLY HISTORY OF INSURANCE INCLUDING THE CONTRACT OF BOTTOMRY, (New Jersey LawBook Exchange, Ltd., Clark, , 2009), p 5. See also for detail reading kindly look into the following pages.pp.135, 181, 283and 307

Resolution enacted the consumer protection Act, 1986 to fulfil its obligation. The parliament enacted the legislation in December 1986, which came into force on April 15, 1987.²²

Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:²³

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;²⁴
- (h) To promote sustainable consumption

All of us are consumers of goods and services. For the purpose of the consumer protection Act, the word "consumer" has been defined separately for "goods" and "services" for the purpose of "goods", a consumer means a person belonging to the following categories; One who buys or

²² See, Report of Ministry of Economic and Social Affairs, 2004, United Nations guidelines for consumer protection (as expanded in 1999)

²³ *Ibid*

²⁴ See, JUSTICE D.P WADHAWA, THE LAW OF CONSUMER PROTECTION, (Nagpur, Wadhawa and Company, 2006, 1st edn.), p.5

agrees to buy any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment; It includes any user of such goods other than the person who actually buys goods and such use is made approval of the purchaser.

A person is not a consumer if he purchases goods for commercial or resale purposes. However, the word "commercial" does not include for the purpose of earning his livelihood by means of self employment.

2.1. Who is consumer?

The definition of Consumer protection Act has provided clear and comprehensive meaning of consumer which is as follows:

Section 2(d) of the Consumer Protection Act says that consumer means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

Explanation.—For the purposes of the sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.²⁵

²⁵ The consumer Protection Act, 1986, sec.2

2.2. Who can file a complaint?

The following can file a complaint under the Act:-

- A consumer
- Any voluntary consumer organisation registered under the Societies Registration Act, 1860 or under the Companies Act, 1956 or under any other law for the time being in force;
- The central Government
- The state Government or Union territory Administrations
- One or more consumers on behalf of numerous consumers who are having the same interest.²⁶

2.3. NATURE OF INSURANCE

“*Yat bhavati tat nasyati*”, whatever is created will be destroyed. Everything in this universe is subject to accident, destruction and perishes. Creation is inevitably followed by destruction. Change is a natural course & its occurrence involves risk Risk is closely connected with ownership The owner want to save themselves from risk and out of this desire, is the business of insurance born. The aim of all insurance is to protect the owner from a variety of risks which he anticipates .Collection of small contribution from all as premium & given to the sufferer.

Mainly Two purposes

- I. Immediate-short range-individual get the loss
- II. Far sighted-long range-remote purpose-to accelerate the economic growth of the nation-funds are invested in organized commerce & Industry (even 5 yr plans)

Once you take Insurance-It improves the mental, moral & national circumstances & raises conditions of the community. Insurance reduces the fear of future risk. Insurance is mainly protection against future loss. It can be better described as promise of reimbursement in any case of loss. Insurances are paid to people or companies by the insurance company against any

²⁶ *Supra note*, 16. p. 57

kind of hazards or calamities. Insurance Acts in India. The Insurance Sector in India is regulated by a number of Acts.²⁷ And the Insurance Policies in India are usually categorized as follows:

- I. General Insurance Policies
- II. Life Insurance Policies

2.3.1. CONTRACT OF INSURANCE

A contract of insurance is a contract either to indemnify a person against a loss which may arise on the happening of some or any event for an agreed consideration. To put it in other words it is a contract under which one party undertakes to pay to another person a sum of money or its equivalent on the happening of a specified event. Under such contract one party agrees to take the risk of another person's life, property or liability in consideration of certain comparatively small periodic payments. The person to be paid or indemnified is called the insurer or assured, the person who undertakes to indemnify or pay money is called the insurer or assurer or underwriter, the last word being generally used in marine insurance; the consideration received in the form of periodic payments is called the premiums or premia; and the document containing the contract is the insurance policy.

Every contract of insurance must have the following essential elements

- I. There must be a contract between parties who are called the insurer and the insured
- II. The contract must be that the insurer undertakes to protect the insured from any loss or damage to be insured on the happening of the event.
- III. In consideration for the above, the assured undertakes to make the insurer a periodical payment of a sum of money called premium.
- IV. The contract must be in writing and the document is called the insurance policy.

²⁷ The insurance Acts in India are, The Insurance Act, 1938, General Insurance Business (Nationalisation) Act, 1972, Life Insurance Corporation Act, 1956, Marine Insurance Act, 1963, Insurance Regulatory and Development Authority (IRDA) Act, 1999

2.3.2. CLASSIFICATION OF CONTRACTS OF INSURANCE

According to the Nature of the Event:

- I. **Life Insurance:** the sum insured becomes payable on the death of the insured or on the attained of a particular age.
- II. **Fire Insurance:** in this class of contracts, the sum is payable on the accident of fire by which the insured property is destroyed or damaged, Here the loss insured is the damage caused by fire.
- III. **Marine Insurance:** Here the sum becomes payable on the happening of a perilous event at sea.
- IV. **Miscellaneous Insurance:** This includes a variety of new insurances which go in the modern times under the terms social Insurance or Liability Insurance, Industrial Insurance, Motor Vehicles Insurance, Aviation Insurance., etc.

2.3.3. What is life Insurance?

Insurance is an arrangement to deal with unpleasant contingencies. It is a contractual arrangement which provides partial or total protection against adverse, typically financial outcomes. While there are many outcomes or risks which are insurable, there are many more against which there can be no insurance. Broadly insurance contracts can be divided into life and non- life insurance. Life insurance in particular provides protection to a household against the risk of premature death of its income earning member. In traditional societies such as India, the joint family system itself provided an insurance umbrella and succour to surviving family members. In modern times such arrangements are now increasingly made through the market mechanism by 'buying insurance'. Thus, individuals pay a price (Called the 'premium') to the insurance company in turn, provides compensation if a specified event occurs.²⁸

Life insurance is not simply a business proposition; it is not just a question of mobilisation of resources for development, it is a question of the citizens sense of well-being & sense of

²⁸ *Supra note, 1*

security. It provides a link between the present & the future. It is a matter of the socio-economic vision that a society has of its future. Ultimately it becomes the problem of mutuality of trust between the people and their government.

In view of socio-economic concept human nature is always profit oriented, not only profit oriented but selfish motive has always been a part of individual intuition. In life insurance the security for an unforeseen event plays an important role in getting insured. Today, across the world life insurance business is considered as fair and just because of good faith. Whereas, in US the new insurance jurisprudence has come up with the notion of "*Bad faith*"²⁹ and the American courts have employed the contractual duty of good faith and fair dealing as the legal basis for the implementation of a policy aimed at monitoring and discouraging the opportunistic behaviour of those insurance companies that too often disregarded the legitimate rights and interests of their policyholders.

Nationalisation of the life insurance in the year 1956 was among the major steps for bringing the insurance sector under direct public ownership and control. It also constituted an important landmark in the extension of direct public control and ownership over the organised financial institutions in the Country. The decision coincided with the Second Five Year Plan as well as the announcement of the Industrial Policy Resolution, 1956 which replaced the 1948 Resolution. The law for the take-over of the insurance companies was also the one which explicitly used the word "nationalisation" for the first time.³⁰

²⁹ Insurance bad faith is a legal term of art that describes a tort claim that an insured person may have against an insurance company for its bad acts. Under the law of most jurisdictions in the United States, insurance companies owe a duty of good faith and fair dealing to the persons they insure. In turn, the development of the modern cause of action for insurance bad faith can be traced to two landmark decisions of the Supreme Court of California: *Comunale v. Traders & General Ins. Co.*, 50 Cal. 2d 654, 328 P.2d 198, 68 A.L.R.2d 883

³⁰ KAMAL NAYAN KABRA, "*Nationalisation of Life Insurance In India*", ECONOMIC AND POLITICAL WEEKLY, Vol.21, No.47 (Nov.22, 1986), pp.2045-2053

2.3. CONSUMERISM IN INDIA

Consumers are simple, sincere people who earn their money the hard way, honest themselves, they seek honest merchants to supply their needs. When they buy products, they expect it to be good as their money and the same applies to insurance policies when any person get insured himself with the expectation that he will get all the benefits and sum-amount.

In India the seed of 'consumerism' was sown by **Late. C. Rajagopalachari**, who setup the first consumer centre at Madras before 1950, in the 1950's an attempt was made to consumer movement in the country on the advice of the planning commission, but it failed.

In Bombay in 1956, nine housewives and social workers joined hands to form the consumer Guidance society of India (CGSI). After the decade or two consumer groups began to sprout forth in various parts of the country, most of them dealing with local issues. In 1971, Indian consumer's union was registered in New Delhi, its objective, is to fight against price rise. During the Emergency (1975-76) a large number of consumer groups mushroomed all over the country but many survived only for a while. Through consumer protection guaranteed in the twenty point programme and grants given to consumer groups.

In 1978, a potent organisation, its name the Consumer Education and Research Council (CERC) was established in Ahmedabad. The next year eleven consumer organisations setup the India Federation of Consumer (IFCO) at National level to represent consumer interest.³¹ The government played a significant role in safeguarding the interest of the consumers by promoting a climate of fair competition and quality regarding the products between the consumers and business people. Before examining the different laws passed by Government to protect the interest of consumer, it is worth examining constitutional provision.

³¹ SHARMA K.P. "The Pronged Approach To Consumer In India", Vol.IX IJLS, 1989.P.108

2.4. CONSUMER PROTECTION AS A CONSTITUTIONAL MANDATE

Though the word 'consumer' is not to be found in the Constitution the consumer breathes and pees out through many of the blood vessels of the Constitution.³² The constitution of India is a social document. The preamble of the Constitution lays stress on socio-economic justice for effective exercise of all other basic rights guaranteed. Consumer justice as a facet of socio-economic justice thus flows from our constitution's basis philosophy. The underlying Constitutional imperatives and mandate for Consumer protection can also be read in other provisions of the constitution.

Art.14 expresses equality before law and equal protection of the laws aim at establishing what is called 'equality status' as enshrined in the preamble of the Indian Constitution. Art.14 enjoins a duty on the state to positively, deliberately and effectively protecting all the persons irrespective of any other consideration against harmful actions and omissions of others. As a Constitutional postulate, the state is obliged to protect the helpless consumer in his various dealings by passing necessary laws and enforcing them.³³

In all civilized countries most of the functions (regarding goods and services) have been undertaken to provide socio-economic justice to the people. According to Prof.W. Friedmann., "a modern welfare state functions as protector, dispenser of social services active participant of industrial and commercial activities and the arbitrators"³⁴

It is the duty of the state to protect the people from exploitation by the producer, industrialists and traders. Whenever, the state takes measures that should be to protect the consumers in the interest of general public. State may impinge upon the fundamental rights of the individual to carry on trade or business Art, 19 (1) (g) guarantees a right to all citizens to carry on any occupation, trade or business, it is subject to "reasonable restrictions' under Art 19 (6).

³² RAO KOTESWARA P, "Constitution, State & Consumer Welfare" Consumer Protection and Legal Control, Lucknow.,1981, p.2

³³ Article 14 of the Constitution of India: The shall not deny to any person equality before the law and the equal protection of the Laws within the territory of India.

³⁴ FRIEDMANN, W., LAW IN CHANGING SOCIETY, (Colorado, Fried B. Rothman &co., Littleton, 1972),pp. 378-82

A welfare state like India, has to promote the prosperity and well being of the people. The provisions of the Constitutions under the heading " Directive Principles of the state policy" (Art 36 to 51) lays down certain economic and social policies to be pursued by the state. State is obliged to take positive action in certain spheres in order to promote the welfare of the people and usher economic democracy. Art 38(1)³⁵ of the Constitution imposes a duty on the state to promote the welfare of the people by securing and protecting. Under clause (b) and (c) of Art.39, the state is duty bound to direct its policy towards securing the distribution of the ownership and control of the material resources of the community to sub serve the common good. The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These provisions have virtually justice and of an economic controller for the state, which it is obliged to play effectively to promote the welfare of the public and to protect and sustain the common good. Since the ultimate analysis, consumer interest is tantamount of public interest and public interest being the predominant concern of our welfare state. The above referred directives endorse the duty of the state to adopt measures for consumer protection. Some other provision were present under Arts 39 (e), 39 (f), 42,43,47 of the Constitution. This provision imposes a duty on the state to protect the interest of the public. All the above provisions of the Constitution clearly demonstrate the availability of abundant legislative and administrative power in the Constitution. The progressive interpretation by the judiciary in protecting the interest of consumers. In a fit case, an aggrieved consumer can file a writ petition in the High Court and Supreme Court under Art.32 of the Constitution of to vindicate his constitutional right to protection. There are some other statutory provisions under law of Contracts, Law of Torts and criminal law to protect the interest of the Consumers.

³⁵ Art. 38(1) of the Constitution of India: The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in the Justice Social, Economical & Political shall inform all the Institutions of the National Life.

2.5. DEFICIENCY IN SERVICE

Sec.2 (1) (g) of the Consumer Protection Act provides that, 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.³⁶

In normal course, if the service is found deficient as per the above criteria, is held deficient and the compensation is awarded. However, there may be abnormal circumstances beyond the control of the person performing service. If such circumstances prevent a person from rendering service of desired quality, nature and the manner, such person should not be penalised for the same.

2.5.1. INSURANCE AND CONSUMER

A consumer is one who uses a good or service. The insurance consumer is one who has purchased an insurance contract. The term "consumerism" refers to the effort to secure and to promote the rights of the consumer. Those individuals who work for consumer rights have been called consumerists.

2.6. LIFE INSURANCE

In *Rassano*,³⁷ life insurance had been contracted by an Egyptian in Egypt. Although at first sight the contract was most closely connected with Egypt, Mc Nair J held, that the contract was governed by the law of Ontario, where the head office of the insurer was situated. He said: "where a resident in a territory seeks life assurance from foreign insurance company through its

³⁶ The consumer protection Act, 1986, sec. 2

³⁷, *Rossano v Manufacturers life Ins Co* (1963) 2 QB 352; (1962) 1 Lloyd's Rep 187(life): the decision to contract was made by head office in Ontario; some premiums were paid in advance in Ontario, others in Egypt; policy money was payable in London and New York; notice of assignment had to be given to head office. A similar decision that of *Diplock J in Pick v Manufacturers Life Ins Co* (1958) 2 Lloyd's Rep 93 life; here too there were other contacts with the law of if the insurers head office. See, MALCOLM A CLARKE, THE LAW OF INSURANCE CONTRACTS, (London, Informa Professional Ltd., 2002, 4th edn)p. 43

local agent in that territory, it is manifest that normally he chooses the foreign company because he has faith not only in that company, but in the system of law under which it operates.” However, the contract in question was made in time of war and insecurity in the Middle East by a proposer who contemplated flight. In this, as in other cases in which that law of the place of head office has been applied, that was in the interest of the insured as much (if not more) than in that of insurer. Dicey’s suggestion, that *Ceteris paribus* the same rule should apply as a presumption in not only all life contracts but also other insurance contracts, is hard to support.³⁸

It would be unfair to discuss the meaning and definition of life insurance without referring to contract of insurance. A useful and popular definition is derived from that Channell J., in *prudential Insurance Company v. Inland Revenue Commissioners* [1904] 2 K.B. 658. A contract of insurance is one whereby one party (the insurer) promises in return for a money consideration (the premium) to pay to the other party (the assured) a sum of money or provide him with some corresponding benefit, upon the occurrence of one or more specified events.³⁹

“What do they know of the law of insurance, who only the law of contract know?” “A contract of insurance is no different from any other contract.” These conflicting views come from judges in the United States 70 years ago.⁴⁰

A general definition of life insurance can be found in *Collins English Dictionary* where it is described as “insurance that provides for a sum of money to be paid to the insured person at certain age or to the spouse or children on the death of the assured”⁴¹

The term further defined in UK legislation, probably the most informative definition being contained in The Insurance Companies Act 1982. This defines a “*Life policy*” as “any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract

³⁸ See, MALCONLM A CLARKE, THE LAW OF INSURANCE CONTRACTS, (London, , Informa Professional Ltd., 2002, 4th edn), p.43

³⁹ NICHOLAS LEGH-JONES, SIR ANDREW LONGMORE, JOHN BIRDS, DAVID OWEN, MACGILLIVRAY ON INSURANCE LAW, (London, Sweet & Maxwell, 1997, 9th edn).p.1

⁴⁰ See, Quotes by Holmes, 39 U Pitt L Rev 381 (1978). Even today, for example, in Ohio, “ an insurance policy is a contract, an the parties’ rights under the contract are purely contractual in nature”: *Park-Ohio Industries Inc v Home Indemnity co*, 975 F 2d 1215, 1218, and also see, *supra* note., 36, p.21

⁴¹ See, COLLINS ENGLISH DICTIONARY, meaning of Insurance is defined in detail

which is subject to payment of premiums for a term dependent upon human life.⁴²”There is no difference in the definition of a life insurance contract for non-local policies.

The business of life insurance in India in its existing form started in India in the year 1818 with the establishment of the Oriental Life Insurance Company in Calcutta, which failed in 1834. However, the success of Indian life insurance can be traced back roughly to the second decade of the nineteenth century when the Madras Equitable began transacting life insurance business in the Madras Presidency in 1829. After that, it was a rather dull phase with regard to the growth in life insurance enterprise. This dullness was due to the very critical phase through which the British insurance companies were passing due to mismanagement and inexperience, thus resulting in the failure of several British offices before 1870 and leading to the enactment of the British Insurance Act, 1870. Till the 70s of the nineteenth century, insurance had found no real place in the scheme of things and only certain European companies operating in parts of India did life insurance business on some scale. But Indian enterprise in this sphere later began to expand and in the last three decades of the nineteenth century the following companies were started in the Bombay Presidency:

- a) Bombay Mutual (1871)
- b) Oriental (1874)
- c) Empire of India (1897)

Few other companies were also set up in other parts of India. However, this period was dominated by foreign insurance offices, which did good business in India, namely – Albert Life Assurance, Royal Insurance, Liverpool and London Globe Insurance. The Indian offices that were set up during this period came up the hard way and had to struggle against the prevailing prejudice against life insurance and natural ignorance of the people. The recorded history of Insurance business in India, however, began in 1914 when the Government of India started

⁴² See, www.statutelaw.gov.uk, The Insurance Companies Act 1982, Sec.7, which is repealed now and there is another Act of 1985

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

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

The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number of insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalise the insurance business. An Ordinance issued on 19th January 1956 nationalised the Life Insurance sector and Life Insurance Corporation of India (LIC) came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies. Since then LIC was the only player till the late 90s when the Insurance sector was reopened for the private sector.

The word of finance is extremely complicated and there are many factors to consider when choosing any financial protection product. When looking for a policy you need to know what you are looking for and what is on offer in order that you get the right cover for your needs. One thing that many find confusing is the specific use of the term "insurance" and the use of "assurance". What are the differences between them? In general, the term insurance refers to providing cover for an event that might happen while assurance is the provision of cover for an event that is certain to happen. For the purpose of financial provisions, a life insurance policy provides cover for a set period of time. If the worst were to happen during that time (and there are no complications), then the insurance company will be required to pay out the agreed sum to the beneficiary. The only time the policy has any real monetary value is if there is a claim made for payment as a result of an event triggering that claim, such as the death of the person covered.

If the person outlives the term of the policy, then the insurance policy will cease and no payment will be made. Life assurance is different from insurance, and will always result in a payment this is achieved by combining an investment element along with and an insured sum. This means that over time the value of the policy can increase as the investment bonuses are added. If a person covered by life assurance were to die, then the insured sum would be paid out, alongside the investment bonuses which would have accrued over time. If it is necessary to cancel the policy prior to the end of any designated term period, or the death of the life being covered, then once an investment bonus has been added, the life assurance policy will have an encashment value. It is therefore to cash in a policy earlier than its usual termination date, in order to collect on the investment portion. It should be noted that many insurance companies place penalties for cashing in policies early.

The distinction between the two terms has become increasingly blurred. This is principally due to many companies offering both types of policy and grouping insurance and assurance titles in similar contexts, sometimes interchanging the two terms. Richard Brown, Chief Executive of Moneynet.co.uk, clarified the situation by stating, "most life insurance companies offer a wide range of insurance and investment services – for example pension, investment funds, investment bonds, car insurance, home & contents insurance, life assurance, and even loans. Sometimes a 'life insurance' company will call itself a 'life assurance' company but they mean one and the same." More companies within the financial services industry have realized that consumers are becoming increasingly baffled by the choice of financial products available. Although this confusion has resulted in a certain amount of apathy, many firms are resolving the situation by providing comprehensive information guides. This has led to an increase in the number of the online financial guides and glossaries that have become available. Sites such as Money net, Money facts, and Money Extra not only provide comparisons of financial products, but also information to help consumers make informed decisions. With organizations like Which?

Writing publications such as 'Be Your Own Financial Adviser', the focus has turned to providing consumers with sufficient information to make their own financial judgments.

English law has not yet come to a definite decision about the general question of the existence of a continuing duty of utmost good faith. It is noticeable that all cases in which the question has been considered have been marine insurance cases, where, because the policy is not a long-term policy, the consequences of allowing avoidance for a breach of post-contractual duty are not as severe as they might be in a life policy. It is also noticeable that in none of the cases did the decision turn on a finding that such a duty existed, far less that it had been breached. In principle it seems desirable that some notion of fair dealing be imported into the ongoing management of insurance relationships, though it may be doubted whether the very strict rules of utmost good faith are the appropriate mechanism for doing this. A point of special importance and difficulty is to identify what sanction should follow from a breach of the duty, for it is clear, particularly in the case of life policies, that automatic voidability of the policy is too harsh a consequence in most cases. It may be that the re-interpretation of pre-contractual utmost good faith exhibited by the House of Lords in *Top v. Pan Atlantic* will help lead in due course to the development of a sensible concept of post-contractual duty.

2.7. GENERAL PRINCIPLES

2.7.1. BURDEN OF PROOF

In any case the burden of proof may be displaced by the express terms of the policy itself. The burden of proof may be displaced by the express terms of the policy itself. The burden of proof of any particular fact or of its non-existence may be placed on either party by an agreement made between them. However, if the assured is required to prove that the loss was covered by the

policy, prima facie evidence of an excepted peril must be adduced by the insurer.⁴³ Risk protection has been a primary goal of humans and institutions throughout history. Protecting against risk is what insurance is all about. The burden of proof is on the insurer to establish the circumstances and unless the insurer is able to do so there is no question of policy being avoided on the ground of misstatement of facts similarly, in *life insurance corporation of india v. Smt. G.m. Channabasamma*, (1991) 1 SCC, 357, it is held that the burden of proof that the insured had made false representation and suppressed material facts is undoubtedly on the L.I.C.⁴⁴

The burden of proof is on the insurer to establish the circumstances and unless the insurer is able to do so there is no question of policy being avoided on the ground of misstatement of facts.⁴⁵

The case of the complainant is that he had taken a Money Back Policy in the name of Subhash, who was a minor, for Rs. 1,00,000/- on 9.3.1993. Subhash died on 1.6.1993 in Krishna Hospital, Karad due to fever. Therefore, the complainants preferred a claim. It was investigated since the death had taken place immediately after the policy was taken. The complainants approached the District Forum. The appellant/L.I.C. defended their case on the ground that on investigation it has been revealed that deceased Subhash was suffering from jaundice and for that he had taken medical treatment. This fact was revealed in the application dated 16.3.1993. His claim was accordingly repudiated because there was suppression of material facts. The District Forum relied upon the ruling cited in 1994 (1) CPR 736, *Sanjiv Mahendralal Shah v Life Insurance Corporation of India*, wherein it has been held that the burden of proof⁴⁶ was on the Insurance Company and they applied this ratio to the instant case although it was established that the deceased Subhash was suffering from jaundice. It further observed that Subhash died of Malaria

⁴³ ROBERT MERKIN, *CONIVAU'S LAW OF INSURANCE*, (London, Sweet and Maxwell 1990, 6th edn,) pp. 94-95

⁴⁴ *Life Insurance Corporation Of India v. Smt. G.M. Channabasamma*, AIR 1991 SC 392

⁴⁵ *Life Insurance Corporation of India and Others V. Asha Goel Smt. and Another*, 2001 AIR(SC) 549

⁴⁶ *Sanjiv Mahendralal Shah v. Life Insurance Corporation of India*, 1994 (1) CPR 736,

and that had no nexus with jaundice. Accordingly, impugned order came to be passed. The Forum has awarded 18% interest on the amount of Rs. 1,01,000/- till its realisation.⁴⁷

2.7.2. MEANING OF MATERIAL FACT

In Lambert v. Co-operative Insurance Society, the court of Appeal rejected suggestions that the test for materiality should be couched in terms which related to the expectations of the proposer or to the vies of the particular insurer. The test is thus objective by reference to the views of a hypothetical reasonable insurer. For the purpose of determining whether this hypothetical reasonable insurer would consider a particular fact material the court may take expert evidence from actual insurers as to their practice, but like all expert evidence this testimony assists the court but does not bind it.⁴⁸

2.7.3. INSURABLE INTEREST

A life insurance contract is an “Aleatory” contract. An aleatory contract may be described as a contract based on an element of chance or uncertainty. In a life insurance policy, the insurer contracts to pay the insured, in consideration of a price called premium, a specified sum of money, either to the latter, upon maturity of that policy or should death happen to him, to his legal dependants or executors as the case may be.

In Dalby Vs. India and London Life Insurance Co.⁴⁹ It was held that a contract of life insurance is not a contract of indemnity, like a marine or a fire policy, but is contract to pay a definite sum consideration of an annuity paid during life. A contract of life insurance may be defined as:

One in which one party agrees to pay a given sum of money upon the happening of a particular event contingent upon the duration of human life in consideration of immediate payment of a

⁴⁷ *Life Insurance Corporation of India Vs.Smt.Shantabai*, 2000-(003)-CPJ-0152-SCMAH

⁴⁸ For an example of the operation of this principle, see, *Roselodge v. Castle*[1966] 2 Lloyd’s Rep.105, C.A., a case of jewellery insurance, where the trial judge refused to accept expert evidence as to the materiality of certain facts .See, also,ANDREW MCGEE, THE LAW AND PRACTICE OF LIFE ASSURANCE CONTRACTS, (Lodon Sweet & Maxwell,1995), p.35

⁴⁹ [1854] 15 CB 365; 139 ER 465, Also see, *C Duraiswamy Iyengar Vs. United India Life Insurance Co.* AIR 1956 Mad 320: (1956) 1 Mad LJ 344

smaller sum or other equivalent payments by the other. So in order to effect a life insurance contract, it is necessary that the person, who is privy to the contract, should have an insurable interest in the life of the person, for whom the policy is being taken. Although it is difficult to lay down in a precise manner as to what would constitute insurance interest in a life insurance contract, yet it is a well-settled principle of law that there has to be an insurable interest attached to a life insurance contract. It is opposed to public policy to allow a person, who has no interest in the life of another person, to take an insurance policy in the name of the latter. In England, insurable interest is mandated by the Life Assurance Act, 1774, while in America and in India, it is required as a matter of public policy.

The most important aspect of insurable interest in a life insurance contract is that the interest should exist at the time of commencement of the policy, but it need not continue to exist at the time of the occurrence of the loss.⁵⁰

“A relation between the insured and the event insured against, such that the occurrence of the event will cause substantial loss or injury of some kind to the insured”.

It is very difficult to define with precision what constitute insurable interest in life policies. But one thing is settled, here as well as in England that for the validity of a contract of life insurance, as in the case of the other types of insurance, there must be an insurable interest. The preamble to the English Life Assurance Act, 1774 reads:⁵¹

Where it hath been found by experience, the making of insurance on lives, or other events, wherein the assured shall have no interest, has introduced a mischievous kind of gaming; for remedy whereof, be it enacted that from and after the passing of the Act, no insurance shall be made any person or persons, bodies politic or corporate, on the life of any person or persons, or on any other event or events, whatever, where in the person or persons for whose use, benefit or

⁵⁰ CWINYA-AI ROBERT ONGOM, “*what is the necessity of insurable interest in insurance contract?-looking at English law with the perspective of India*”, THE ICAI UNIVERSITY JOURNAL OF BANKING & INSURANCE LAW., Vol. VII., Nos. 3 &4, 2009, pp.91-99

⁵¹ KSN MURTHY & KVS SARMA, MODERN LAW OF INSURANCE, (Delhi, LexisNexies, Butterworths, 2002, 4th edn,) p.139

on whose account such policy or policies shall be made, shall have no interest, or by way of gaming and wagering and that every insurance made contrary to the true intent and meaning thereof shall be null and void to all intents and purposed whatsoever.

The doctrine of insurable interest was recognised in English law only in the latter half of the 18th century by this statute requiring insurable interest as a condition for the validity of the policy.

The following are the conditions for the validity of the policy.

1. The interest should not be a mere sentimental right or interest, for example, love & affection alone cannot constitute insurable interest.
2. It should be a right in property or a right arising out of a contract in relation to the property.
3. The interest must be pecuniary, that is, capable of estimation in terms of money. In other words, the peril must be such that its happening may bring upon the insured an actual or deemed pecuniary loss. Mere disadvantage or inconvenience or mental distress cannot be regarded as an insurable interest.
4. The interest must be lawful, that is, it should not be illegal, unlawful, and immoral or opposed to public policy.

When Insurable Interest must Exist?

- I. Life Insurance: at the time of beginning/inception
- II. Fire Insurance: both at the time of beginning and at the time of loss
- III. Marine Insurance: at the time of loss

2.7.4. UTMOST GOOD FAITH

A contract of insurance is a contract based upon the utmost good faith (*Uberrima fides*) and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

It is of course important single rule of insurance law that insurance is a contract of utmost good faith. The principle derives from the well-known case of *Carter v. Boehm*,⁵² where Lord Mansfield C.J. said "Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only, the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstances in his knowledge, to mislead the underwriter into a belief that the circumstances does not exist, and to induce him to estimate the risk as if it did not exist"

This case establishes that the proposer comes under a duty to disclose material facts to the insurer before the policy is entered into. The scope of that duty must now be considered.

2.7.5. REINSTATEMENT:

This right of the insurers to reinstate the property instead of paying the money may spring up;

- a. either from a contract in the form of a clause under the policy, or
- b. under a statute

This type of clause is not inserted in all policies in all branches of insurances, e.g., it is not and cannot be included in life policies. Only in indemnity insurances, in appropriate branches of insurance, like fire, burglary, steam boilers, or motor vehicle insurances, this clause called the reinstatement clause, entitling the insurers to exercise an option, on the happening of the insured event, either to reinstate or to pay the insured money can be incorporated.

2.7.6. SUBROGATION:

Assured must have been able to bring action. Example. Similarly, where the assured and the wrong doer are co-assureds the doctrine does not apply [*Petrofira v. Magnaload*, 1983 (2) Lloyd.s Rep 91].

⁵² See, (1766) 3 Burr 905, ANDREW MCGEE, THE LAW AND PRACTICE OF LIFE ASSURANCE CONTRACTS,(Lodon,Sweet & Maxwell, 1995), p.35

2.7.7. CONTRIBUTION:

Like subrogation, contribution is also a corollary to the principle of indemnity. Therefore contribution generally arises only in property insurance. The rule is of ancient origin and was recognized by the chancery courts.

*North British and Mercantile v. Liverpool and London Globe*⁵³, (1977)3 Ch.D 569, The doctrine is defined and explained in this judgment as: Contribution exists where the thing is done by the same person against the same loss, and to prevent a man first of all recovering more than the whole lossor if he recovers the whole loss from one which he could have recovered from the other, then to make the parties contribute rateably. But that only applies where there is the person insuring the same interests with more than one office. Contribution arises because of the liberty of the assured to insure the same property with more than one insurer which is called „double insurance.. By mere double insurance and, over insurance, the right of contribution springs up.

Essential conditions of Contribution

- I. All the insurance must relate to the same subject-matter.
- II. The policies concerned must all cover the same interest of the same insured.
- III. The policies concerned must all cover the same peril which caused the loss.
- IV. The policies must have been in force and all of them should be enforceable at the time of loss.

Example: If a house is insured with company X for Rs.5,000and with company Y for Rs.10000and the damage amounts to Rs.1200, company X will apparently be liable to contribute Rs.400 and company Y Rs.800.

Differences between the Doctrines of Contribution and Subrogation

⁵³ *North British and Mercantile v. Liverpool and London Globe*, (1977)3 Ch.D 569

- I. In contribution the purpose is to distribute the loss while in subrogation the loss is shifted from one person to another
- II. Contribution is between insurers but subrogation is against third party
- III. In contribution there must be more than one insurer but in subrogation there may be one insurer and one policy.
- IV. In contribution the right of the insurer is claimed but in subrogation the right of the insured is claimed.
- V. In modern fire policies we find the contribution clause, which enables the insurer to claim contribution from other co-insurers.

CHAPTER III

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY AND ITS REGULATIONS

In this chapter we are going to discuss important regulations and Acts, namely, the Insurance Regulatory and Development Authority Act, 1999 and the Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002, Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000.

On the recommendations of the Mallhotra Committee, the Government of India constituted an interim Insurance Regulatory Authority and later enacted the Insurance Regulatory and Development Authority Act, 1999 to establish a statutory body to regulate promote and ensure orderly growth of insurance and reinsurance business as also to protect the interest of policy holders. The constitution of the Insurance Regulatory and Development Authority (hereinafter referred to as the Authority/IRDA) is being considered as one of the most redeeming features of insurance reforms in India.⁵⁴

The IRDA Act provides for the composition of the Authority, terms and conditions of the Chairperson and members including their tenure and removal; duties, powers and functions of the Authority including regulation making power and delegation of powers; establishment of Insurance Advisory Committee; Insurance Regulatory and Development Authority fund and powers of the central Government to make rules, to issue directions to the Authority and to supersede the same, if it is necessary; and other miscellaneous provisions. The first schedule appended to the IRDA Act listed out several amendments to the Insurance Act, 1938. The Second Schedule to the IRDA Act inserted s.30 A in the Life Insurance Corporation Act, 1956 whereby the exclusive privilege of LIC to carry on life insurance business in India was to cease.

⁵⁴ See, Statement and object and Reasons of the Insurance Regulatory and Development Authority Act, 1999

The third Schedule to the IRDA Act inserted a similar provision. S. 24 A, in the General Insurance Business (Nationalization) Act, 1972 whereby the exclusive privilege of the GIC and its subsidiaries in relation to general insurance business ceased.⁵⁵

In India IRDA and related legislation has proven to be good for the life insurance. The subsequent changes in the Act had well debated and taken into consideration for the interest of consumer. Whereas, merger of IRDA Act, 1999 and Insurance Act, 1938. The Law Commission has suggested that there was no justification for continuing to have a separate legislation concerning the IRDA and that there was a need to merge the provisions of the IRDA Act, 1999 with the Insurance Act, 1938 in order to “ to bring about an integrated approach to the task of formulating a legislative regime that can encompass the key facets of the functioning of the Regulatory Authority even while strengthening the regulatory regime. The rationale behind the above suggestion was explained thus:

“With the IRDA exercising many of the key functions assigned to it under the Insurance Act,1938, there is no justification to have separate legislation concerning the constitution and functions of the IRDA. Moreover, at the time the IRDA Act was being prepared, the task of comprehensive revision of the Insurance Act,1938 was felt necessary but was not undertaken due to paucity of time. Now, with the experience of functioning of the IRDA and several rounds of discussion with key insurance personnal, a comprehensive revision of the Insurance Act, 1938 appears possible.”

The principal legislation regulating the insurance business in India is the Insurance Act, 1938. Some other existing legislation 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), 1999. The provision of Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for

⁵⁵ *Ibid*,

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 s.114 of the Insurance Act, 1938 as also at least 27 sets of Regulations made by the IRDA under s.114 A of the Insurance Act, 1938 and s.26 of the IRDA Act, 1999.

The Law Commission of India awaited the response of the Government of India as well as the IRDA till March 2004. A brief letter dated January 19, 2004 was received from the Joint Secretary(B&I), Government of India in the Ministry of Finance, Department of Economic Affairs, Insurance Division, indicating that they are in total agreement with the proposal in the consultation paper concerning merger of the provisions of the IRDA Act with the Insurance Act, changes in definitions, deletions of redundant provisions, constitution of an appellate authority to examine decisions of the IRDA, enhancement of penalties, rationalizing of the powers of the IRDA and strengthening obligations of the insurers, provisions for protection of the rights of the policyholders etc. It was stated that specific comments on the amendments suggested in numerous sections of the act proposed in the consultation paper would be given only after a new Insurance Act is drafted by the Law Commission and sent to us. There has thus been no specific response from the Insurance Department to the various other proposals in the consultation paper. Since the exercise of revision of the Acts was started more than a year ago, it was felt that the Report itself might get delayed if the Commission had to wait any further to receive their responses. Accordingly, the Commission proceeded to finalise its recommendations based on both oral and written responses received to the Consultation paper.⁵⁶

IRDA is an exceptional regulator as compared to other insurance supervisors elsewhere. Whilst an insurance regulator or supervisor primarily concerns himself with the grant of recognition to

⁵⁶ Law Commission of India, 190th Report on Revision of the Insurance Act, 1938 and The Insurance Regulatory and Development Authority Act, 1999, June 2004

an insure and monitoring the activities to ensure that the business is done on proper lines, IRDA besides this work has been entrusted with the task of the Indian insurance market development in a comprehensive and transparent manner, ensuring the availability of a risk cover to a large section of the society at a competitive price. One of the major objectives of IRDA is to ensure the insurance of the rural people of India.⁵⁷ It is in this background that the insurance companies have been obliged to attend to business in rural area, issue covers to be socially and economically weak sections of the society and to look after crop insurance. The Indian regulator has a dual role to play-a supervisor and a developmental role which one is likely to predominate depends upon the attitude and approach of the regulator. *Prima facie* in the initial years, the developmental phase will overwhelm the administrative role. Development of the industry does not per se confine itself to admission of new and strong players, but also includes the conduct of the market on ethical lines in a manner to ensure the customers delight.⁵⁸

In the backdrop of new industrial policy, the Government of India set up in 1993 a high-powered committee headed by Mr. R. N. Malhotra to examine the structure of the insurance industry, to assess its strength and weaknesses in terms of the objective of providing high quality services to the public and serving as an effective instrument for mobilization of financial resources for development, to review the then existing structure of regulation and supervision of insurance sector and to suggest reforms for strengthening and modernizing regulatory system in tune with the changing economic environment.

The Malhotra Committee submitted its report in 1994. Some of the major recommendations made by it were as under:-

- (a) the establishment of an independent regulatory authority (akin to Securities and Exchange Board of India);
- (b) allowing private sector to enter the insurance field;

⁵⁷ *Ibid*

⁵⁸ H CHATURVEDI, DHARMENDRA KUMAR, RAHUL SINGH, " India Insurance Report" Series-I, Birla Institute of Management Techonology, Noida, 2005, p. 16

- (c) improvement of the commission structure for agents to make it effective instrument for procuring business specially rural, personal and non-obligatory lines of business;
- (d) insurance plans for economically backward sections, appointment of institutional agents;
- (e) setting up of an institution of professional surveyors/loss assessors;
- (f) functioning of Tariff Advisory Committee (TAC) as a separate statutory body;
- (g) investment on the pattern laid down in s.27;
- (h) marketing of life insurance to relatively weaker sections of the society and specified proportion of business in rural areas;
- (i) provisions for co-operative societies for transacting life insurance business in states;
- (j) the requirement of specified proportion of the general business as rural non-traditional business to be undertaken by the new entrants;
- (k) welfare oriented schemes of general insurance;
- (l) technology driven operation of General Insurance Corporation of India (GICI); GIC to exclusively function as a reinsurer and to cease to be the holding company;
- (m) introduction of unlinked pension plans by the insurance companies; and
- (n) restructuring of insurance industry.

3.1. THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

The preamble of the Act itself provide for the protection of interest of holders of policies, to regulate, promote and ensure orderly growth of the insurance industry. The purpose of this Act is to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972. These contents total 32 sections divided into 6 chapters in the Act.⁵⁹

⁵⁹ See, preamble of the Insurance Regulatory and Development Authority Act, 1999

Three major concerns

1. The protection of the interest of the consumers
2. To ensure the financial soundness of the insurance industry &
3. To pave the way to help a healthy growth of the insurance market,
4. where both the govt & pvt parties play simultaneously

Duties, powers and functions of Authority

The IRDA has wide range powers and duties regarding regulation of insurance business India.

Section 14 (2)(1), the powers and functions of the Authority shall include-

- a. Issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration
- b. Protection of the interests of the policyholders in assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts.
- c. Specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
- d. Specifying the code of conduct for surveyors and loss assessors;
- e. Promoting efficiency in the conduct of insurance business;
- f. Promoting and regulating professional organisations connected with the insurance and re-insurance business;
- g. Levying fees and other charges for carrying out the purposes of this Act;

- h. Calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;
- i. Control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under s.64U of the Insurance Act 1938;
- j. Specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- k. Regulating investment of funds by insurance companies;
- l. Regulating maintenance of margin of solvency;
- m. Adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- n. Supervising the functioning of the Tariff

Advisory Committee:

- o. Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);
- p. Specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector, and
- q. Exercising such other powers as may be prescribed.⁶⁰

The first report was submitted by the Law Commission of India to the Ministry has suggested the following amendment in the sec.45 of Insurance Act, 1938

⁶⁰ Taxmann's Insurance Law Manual with IRDA Circulars & notifications, Actuaries Act, 2006, 5th edn., New Delhi, 2007,p.1.9

We recommend that Section 45 of the Insurance Act, 1938 should be recast in the following manner:

Section 45: policy not to be called in question on ground of mis-statement after 3 years.

- 1) No policy of life insurance shall be called in question after the expiry of three years from the date on which the policy is effected or where the policy is received after it has lapsed for any reason, from the date on which it is so received.
- 2) A policy of life insurance may be called in questions at any time within three years from the date on which the policy is effected or, as the case may be, the date on which it is revived, on the ground that any statement being a statement material to the expectancy of the life of the insured was incorrectly made in the proposed or other document on the basis of which the policy was issued or revived.⁶¹

But the fact is that despite that effort of Law Commission of India, there were no such amendment has been made. Today we have the same section and again in the year 2004 Law Commission of India has come up with new amendment to the Sec.45 of Insurance Act, 1938. This new proposal is having contrast proposal if we compare with the first recommendation report.⁶²

On the consumer protection front, the Authority had taken a big step forward by codifying the procedure and regulations. Right from the stage of a prospect being questioned about the necessity for a cover to stage of settlement of a claim, the Authority has prescribed in a detailed manner the privileges and benefits that a customer would get. For the first time, in the history of Indian Insurance, a "free look" period has been prescribed. A customer has also been made entitled to copies of the proposal form filled by him, a copy of the policy document and also the intimation regarding the grievance settlement procedure adopted by the insurer. Even before the Authority was formally established, Government had prescribed by rules and procedures for

⁶¹Law Commission of India, 112th Report on Sec.45 of Insurance Act,1938

⁶²Law Commission of India , 190th Report on Sec.45 of Insurance Act,1938

settlement of claims by Insurance Ombudsman. In the present scheme, there are certain gray areas which have to be looked and changes made. It would be in the fitness of things that the Authority, which has been charged with the responsibility of protecting the insurance customer, is also enabled to make regulations in the field concerning Ombudsman. In other words, the scheme put into practice by the Government in 1998 could be given up now and a new set of regulations enabled by the IRDA Act, brought into use. These new Regulations should look at the functioning of the sector now populated by a preponderance of private section companies on a holistic basis. The Regulations which are loose in certain areas can be tightened and a system of conciliation subject to the over all supervision of the regulator could be put into practice.

Form statistics available, it is evident that many customers have approached the Ombudsman with complaints which have been disposed in reasonably quick time; on an average about 6000 cases are heard and disposed of by all the Insurance Ombudsman in all –India basis. In the future, the industry has to build up an appellate mechanism, on the model of dedicated institutions, which will assure insurance consumers quick and effective relief. Till then, the Tribunal set up for SEBI could be entrusted with this work. The recent controversy between SEBI and IRDA has also come up with the conclusion that.

**3.2. INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
(PROTECTION OF POLICYHOLDERS INTERESTS) REGULATIONS, 2002,**

Policyholders may have complaints against insurers either in respect of their policies or their claims. As per Regulations for Protection of policyholders' interests, 2002, every insurer should have in place, a grievance redressal system to address the complaints of policyholders. Over and above this one may approach the Insurance Ombudsman for complaints relating to personal insurance claims for a value upto Rs.20 lacs. The other channels available to a policyholder are the Consumer courts and the civil courts. The IRDA has a Grievance Redressal Cell which plays a facilitative role by taking up complaints against insurers with the respective companies for speedy resolution. The IRDA however does not adjudicate on complaints.

When a policyholder has a complaint to make, he or she must first approach the Grievance or Consumer Complaints cell of the insurer. In the event of there being no response or no satisfactory response, the policyholder may write to the Grievance Redressal Cell of the IRDA which will then take up the matter with the concerned company for examination/re-examination.

If the complainant is looking for adjudication in respect of claims, he or she may approach the Insurance Ombudsman. The office of the Ombudsman was set up under the Redressal of Public Grievances Rules, 1998 framed by the Central Government. The rules apply to all the insurance companies operating in general insurance and life insurance business. The objects of the rules are to resolve all complaints relating to settlement of claim on the part of insurance companies in a cost-effective, efficient and impartial manner. The rules stipulate that there shall be a governing body of the Insurance Council which shall consist of one representative from each of the Insurance companies. The governing body shall appoint Ombudsmen for the purpose of these rules. Any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located. The Ombudsman may either make a recommendation through mediation or pass an award which he or she thinks is fair in the facts and circumstances of a claim.

With a view to protecting the interests of policyholders, the IRDA brought out The Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002. The Regulations apply to all insurers, insurance agents, insurance intermediaries and policyholders. In case of breach of the obligations cast on an insurer or insurance agent or insurance intermediary in terms of these regulations, the IRDA may initiate action against each or all of them, jointly or severally.

To ensure protection of the interest of the policy holders, the Authority, in consultation with the Insurance Regulatory Committee, makes the following regulations by exercising powers conferred by clause (zc) of sub-section (2) of section 114 A of the Insurance Act, 1938 read with

sections 14 and 26 of the Insurance Regulatory and Development Act, 1999. These regulations apply to all insurers, insurance agents, insurance intermediaries and policyholders. They lay down provisions regarding various aspects of consumer services. It lay down requirement regarding proposal form, matters to be mentioned in the policy, claim procedures, maximum time duration provided for processing of claims and grievances redressal system.⁶³

Point of Sale⁶⁴

Notwithstanding anything mentioned in regulation 2(e) above, a prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with-profits) or non-participating (without-profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and in no case, the premium relatable to all the riders put together shall exceed 30% of the premium of the main product.

Explanation: The rider or riders attached to a life policy shall bear the nature and character of the main policy, viz. participating or non-participating and accordingly the life insurer shall make provisions, etc., in its books.

An insurer or its agent or other intermediary shall provide all material information in respect of a proposed cover to the prospect to enable the prospect to decide on the best cover that would be in his or her interest. Where the prospect depends upon the advice of the insurer or his agent or an insurance intermediary, such a person must advise the prospect dispassionately. Where, for any reason, the proposal and other connected papers are not filled by the prospect, a certificate may be incorporated at the end of proposal form from the prospect that the contents of the form and documents have been fully explained to him and that he has fully understood the significance of

⁶³ The insurance Regulatory and Development Authority (protection of Policyholders Interests) Regulations , 2002 see, introduction

⁶⁴ *Ibid*, Regulations 3,

the proposed contract. In the process of sale, the insurer or its agent or any intermediary shall act according to the code of conduct prescribed by:

- i) the Authority
- ii) the Councils that have been established under section 64C of the Act and
- iii) the recognized professional body or association of which the agent or intermediary or insurance intermediary is a member.

Proposal for insurance⁶⁵

Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.

The Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India. In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act. Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover. Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the facility. Proposals shall be processed by the insurer with speed and efficiency and all decisions thereof shall be

⁶⁵ *Ibid.* Regulation 4

communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer.

Grievance Redressal Procedure⁶⁶

Every insurer shall have in place proper procedures and effective mechanism to address complaints and grievances of policyholders efficiently and with speed and the same along-with the information in respect of Insurance Ombudsman shall be communicated to the policyholder along-with the policy document and as maybe found necessary.

Matters to be stated in life insurance policy⁶⁷

A life insurance policy shall clearly state:

- (a) the name of the plan governing the policy, its terms and conditions;
- (b) whether it is participating in profits or not;
- (c) the basis of participation in profits such as cash bonus, deferred bonus, simple or-compound reversionary bonus;
- (d) the benefits payable and the contingencies upon which these are payable and the other terms and conditions of the insurance contract;
- (e) the details of the riders attaching to the main policy;
- (f) the date of commencement of risk and the date of maturity or date(s) on which the benefits are payable;
- (g) the premiums payable, periodicity of payment, grace period allowed for payment of the premium, the date the last instalment of premium, the implication of discontinuing the payment of an instalment(s) of premium and also the provisions of a guaranteed surrender value.
- (h) the age at entry and whether the same has been admitted;
- (i) the policy requirements for (a) conversion of the policy into paid up policy, (b) surrender (c) non-forfeiture and (d) revival of lapsed policies;

⁶⁶ *Ibid*, Regulation 5

⁶⁷ *Ibid*, Regulation 6

- (j) contingencies excluded from the scope of the cover, both in respect of the main policy and the riders;
- (k) the provisions for nomination, assignment, and loans on security of the policy and a statement that the rate of interest payable on such loan amount shall be as prescribed by the insurer at the time of taking the loan;
- (l) any special clauses or conditions, such as, first pregnancy clause, suicide clause etc.; and
- (m) the address of the insurer to which all communications in respect of the policy shall be sent.
- (n) the documents that are normally required to be submitted by a claimant in support of a claim under the policy.

While acting under regulation 6(1) in forwarding the policy to the insured, the insurer shall inform by the letter forwarding the policy that he has a period of 15 days from the date of receipt of the policy document to review the terms and conditions of the policy and where the insured disagrees to any of those terms or conditions, he has the option to return the policy stating the reasons for his objection, when he shall be entitled to a refund of the premium paid, subject only to a deduction of a proportionate risk premium for the period on cover and the expenses incurred by the insurer on medical examination of the proposer and stamp duty charges. In respect of a unit linked policy, in addition to the deductions under sub-regulation (2) of this regulation, the insurer shall also be entitled to repurchase the unit at the price of the units on the date of cancellation. In respect of a cover, where premium charged is dependent on age, the insurer shall ensure that the age is admitted as far as possible before issuance of the policy document. In case where age has not been admitted by the time the policy is issued, the insurer shall make efforts to obtain proof of age and admit the same as soon as possible.

Matters to be stated in general insurance policy⁶⁸

A general insurance policy shall clearly state:

- (a) the name(s) and address(es) of the insured and of any bank(s) or any other person having financial interest in the subject matter of insurance;
- (b) full description of the property or interest insured;
- (c) the location or locations of the property or interest insured under the policy and, where appropriate, with respective insured values;
- (d) period of Insurance;
- (e) sums insured;
- (f) perils covered and not covered;
- (h) any franchise or deductible applicable;
- (i) premium payable and where the premium is provisional subject to adjustment, the basis of adjustment of premium be stated;
- (j) policy terms, conditions and warranties;
- (k) action to be taken by the insured upon occurrence of a contingency likely to give rise to a claim under the policy;
- (l) the obligations of the insured in relation to the subject matter of insurance upon occurrence of an event giving rise to a claim and the rights of the insurer in the circumstances;
- (m) any special conditions attaching to the policy;
- (n) provision for cancellation of the policy on grounds of mis-representation, fraud, non-disclosure of material facts or non-cooperation of the insured;
- (o) the address of the insurer to which all communications in respect of the insurance contract should be sent;
- (p) the details of the riders attaching to the main policy;
- (q) proforma of any communication the insurer may seek from the policyholders to service the policy.

⁶⁸ *Ibid*, Regulation 7

Every insurer shall inform and keep informed periodically the insured on the requirements to be fulfilled by the insured regarding lodging of a claim arising in terms of the policy and the procedures to be followed by him to enable the insurer to settle a claim early.

Claims procedure in respect of a life insurance policy⁶⁹

A life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim. A life insurance company, upon receiving a claim, shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piece-meal manner, within a period of 15 days of the receipt of the claim. A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurance company, it shall initiate and complete such investigation at the earliest. Where in the opinion of the insurance company the circumstances of a claim warrant an investigation, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim. Subject to the provisions of section 47 of the Act, where a claim is ready for payment but the payment cannot be made due to any reasons of a proper identification of the payee, the life insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information). Where there is a delay on the part of the insurer in processing a claim for a reason other than the one covered by sub-regulation (4), the life insurance company shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

⁶⁹ *Ibid*, Regulation 8

Claim procedure in respect of a general insurance policy⁷⁰

An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss/ claim, it shall be so done within 72 hours of the receipt of intimation from the insured. Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report. If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.⁷¹ The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer. On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be

⁷⁰ *Ibid*, Regulation 9

⁷¹ Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be. Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

Policyholders' Servicing⁷²

An insurer carrying on life or general business, as the case may be, shall at all times, respond within 10 days of the receipt of any communication from its policyholders in all matters, such as:

- (a) recording change of address;
- (b) noting a new nomination or change of nomination under a policy;
- (c) noting an assignment on the policy;
- (d) providing information on the current status of a policy indicating matters, such as, accrued bonus, surrender value and entitlement to a loan;
- (e) processing papers and disbursement of a loan on security of policy;
- (f) issuance of duplicate policy;
- (g) issuance of an endorsement under the policy; noting a change of interest or sum assured or perils insured, financial interest of a bank and other interests; and
- (h) guidance on the procedure for registering a claim and early settlement thereof.

The requirements of disclosure of "material information" regarding a proposal or policy apply, under these regulations, both to the insurer and the insured. The policyholder shall assist the insurer, if the latter so requires, in the prosecution of a proceeding or in the matter of recovery of claims which the insurer has against third parties. The policyholder shall furnish all information that is sought from him by the insurer and also any other information which the insurer considers as having a bearing on the risk to enable the latter to assess properly the risk sought to be

⁷² *Ibid*, Regulation 10

covered by a policy. Any breaches of the obligations cast on an insurer or insurance agent or insurance intermediary in terms of these regulations may enable the Authority to initiate action against each or all of them, jointly or severally, under the Act and/or the Insurance Regulatory and Development Authority Act, 1999.

3.3. INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (INSURANCE ADVERTISEMENT AND DISCLOSURE) REGULATIONS, 2000

With the increasing competition in the insurance market, new rules and regulation has come up for the protection of consumer. To restrict the unfair trade practices and competition amongst the insurance companies in the exercise of the powers conferred by section 26 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Authority in consultation with the Insurance Advisory committee, makes the regulations called Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000. These regulations apply to all insurers, insurance agents and insurance intermediaries. The regulations on advertisement are intended to protect the policy holders by preventing misleading or unfair advertisement and promotional material. The regulations define and lay down the criteria for an advertisement and also define a misleading advertisement.

“Insurance Advertisement”⁷³ means and includes any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy form the members of the public, and shall include all forms of printed and published materials or any material using the print and or electronic medium for public communication such as: newspapers, magazines and sales talks; billboards, hoarding, panels; radio. Television, website, e-mail, portals; representations by intermediaries; leaflets; descriptive literature/circulars; sales aids flyers; illustrations from letters; telephone solicitations; business cards; videos; faxes; or nay

⁷³ Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000, Regulation 2(b)

other communication with a prospect or a policyholder that urges him to purchase, renew, increase, retain, or modify a policy of insurance.

And the following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modifications, or retention of a policy of insurance: materials used by an insurance company within its own organization and not meant for distribution to the public; communications with policyholders other than materials urging them to purchase, increase, modify surrender or retain a policy; materials used solely for the training, recruitment, and education of an insurer's personnel, intermediaries, counsellors, and solicitors, provided they are not used to induce the public to purchase, increase, modify or retain a policy of insurance; any general announcement sent by a group policyholder to members of the eligible group that policy has been written or arranged.

Every insurance company shall be required to prominently disclose in the advertisement and that part of the advertisement that is required to be returned to the company or insurance intermediary or insurance agent by a prospect or an insured the full particulars of the insurance company, and not merely any trade name or monogram or logo. Where benefits are more than briefly described, the form number of the policy and the type of coverage shall be disclosed fully.⁷⁴

Every advertisement for insurance shall state clearly and unequivocally that insurance is the subject matter of the solicitation and state the full registered name of the insurer/intermediary/insurance agent.⁷⁵

In case of Advertising on the Internet, Every insurer or intermediary's web site or portal shall include disclosure statements which outline the site's specific policies vis-à-vis the privacy of personal information for the protection of both their own businesses and the consumers they serve; display their registration/ license numbers on their web sites. For the purposes of these regulations, except where otherwise specifically excluded or restricted, no form or policy

⁷⁴ *Ibid*, Regulation 5

⁷⁵ *Ibid*, Regulation 9

otherwise permissible for use shall be deemed invalid or impermissible if such form or policy accurately reflects the intentions of the parties in such form or policy as published electronically or transmitted electronically between parties.⁷⁶

Procedure for action in case of complaint: If an advertisement is not in accordance with these regulations the Authority may take action in one or more of the following ways:

- I. issue a letter to the advertiser seeking information within a specific time, not being more than ten days from the date of issue of the letter;
- II. direct the advertiser to correct or modify the advertisement already issued in a manner suggested by the Authority with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified;
- III. direct the advertiser to discontinue the advertisement forthwith;
- IV. any other action deemed fit by the Authority, keeping in view the circumstances of the case, to ensure that the interests of the public are protected.

The advertiser may seek additional time from the Authority to comply with the directions justifying the reasons therefore. The Authority, may, however, refuse to grant extension of time if it feels that the advertiser is seeking time only to delay the matters. Any failure on the part of the advertiser to comply with the directions of the Authority may entail the Authority to take such action as deemed necessary including levy of penalty.⁷⁷

Adherence to advertisement code — Every insurer or intermediary shall follow recognised standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) and discharge its functions in the interest of the policyholders.⁷⁸

Every proposal for an insurance product shall carry the following stipulation, as prescribed in section 41 of the Insurance Act, 1938 (4 of 1938):— "No person shall allow or offer to allow,

⁷⁶ *Ibid*, Regulation, 8

⁷⁷ *Ibid*, Regulation 11

⁷⁸ *Ibid*, Regulation 12

either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer."If any person fails to comply with the same,, shall be liable to payment of a fine which may extend to rupees five hundred.⁷⁹

⁷⁹ *Ibid*, Regulation, 13

CHAPTER IV

INSURANCE LAW & REGULATIONS IN INDIA

4.1. THE INSURANCE ACT, 1938

There are number of Acts which shows the reform in insurance regulation of India.⁸⁰ The preamble of the Insurance Act, 1938 is meant to protect the interest of the policyholder. Whereas, after reading through the sec.45 it doesn't seem to be for the interest of policyholder than the insurer. And again the amendment to the said provision is seems to more arbitrary and unreasonable for the insured. However, it gives more scope to the insurer to repudiate the claim on trivial ground, which is not an expected result of this Act.⁸¹

The object of the Insurance Act, 1938 as expressed in the preamble is to consolidate the Act of 1912, Act of 1925 and the Provident Societies Act into one Act , also to make extensive changes in those Acts. For the first time in the history of insurance in India, the whole business was brought under a unified system of control and its structure strengthened by statutory regulations. Weaker elements were weeded out; indiscriminate promotion was checked and speculative insurance was eliminated. The best proof of the soundness of the law was the effective check on large scale liquidations which had marred the name of insurance in the thirties. In due course, various amendments were made in the Indian Insurance Act, 1938 in subsequent years to improve the regulatory mechanism. The Act of 1938, which in many respects codified and modernized the laws relating to insurance in the country; suggest the same noteworthy changes in regulation and organization of business. It was considerable step forward in the direction to envelop all forms of insurance.⁸²

⁸⁰ E.g. Insurance Act, 1938, IRDA Act, 1999, LIC Act, 1956, GIBNA Act, 1972, Public Liability Insurance Act, 1991, Indian Contract Act, 1872, Companies Act, 1956 and other Subordinate Legislation

⁸¹ See, The Insurance Act, 1938, Sec.45

⁸² BRIJ NANDAN SINGH, " A COMPARATIVE TREATISE ON LAW OF INSURANCE COVERING ALL RISKS EXCEPT MARINE INSURANCE," (Allahabad, The University Book Agency, 1994, 3rd edn,)pp. 491-494

1.2. INSURANCE LAWS (AMENDMENT) BILL, 2008

Law Commission of India one hundred and twelfth Reports on Sec.45 of the insurance Act, 1938

The aim of this module is to provide a knowledge of UK business practice, regulation, legislation and Professional guidance notes relevant to the work of an actuary practising in Life Insurance in the UK. The life Insurance Corporation of India was set-up by the government of India to achieve the following objectives: Spreading Life Insurance much more widely and in particular to the rural areas and to the socially and economically backward classes with a view to reaching all insurable persons in the country and providing them adequate financial cover against death at a reasonable cost. Maximizing mobilization of people's savings by making insurance linked saving adequately attractive. Deploying the funds to the best advantage of investors as well as the community as a whole, keeping in view national priorities and obligations of attractive return. Conducting business with utmost economy and with the full realization that the moneys belong to the policyholders.

Acting as trustees of the insured public in their individual and collective capacities. Meeting the various life insurance needs of the community that would arise in the changing social and economic environment. Involving all the people working in the Corporation to the best of their capability in furthering the interest of the insured public by providing efficient service with courtesy. Promoting amongst all agents employees of the Corporation a sense of participation, pride and job satisfaction through discharge of their duties with dedication towards achievement of Corporate Objective⁸³

Sec.45 of Insurance Act 1938

The insurance contract is a contract of **utmost good faith** and therefore if the assured has not disclosed all the material facts, the insurance company can avoid the contract. It has become the

⁸³ SUMNINDER KAUR BAWA, LIFE INSURANCE CORPORATION OF INDIA, IMPACT OF PRIVATIZATION AND PERFORMANCE,(New Delhi Regal publications, ,2007) pp.4-5

practice of the insurers to insert a clause in the policies and proposal forms as we have already noted, to declare that all the answers stated in the proposal form shall form the basis and form part of the terms of the contract in the policy.

It was held that a policy cannot be avoided on the ground of misrepresentation unless the following are established by the insurer namely, The statement was inaccurate or false. Such statement was on a material matter or that the statement suppressed facts which it was material to disclose. The statement was fraudulently made. The policy holder knew at the time of making the statement that it was false or that fact which ought to be disclosed has been suppressed. By such a declaration, for any variation of the state of things from the representations in the proposal form, whether in fact is material or not, and however slight the variation may be the insurer gets a right to avoid the policy.⁸⁴

Section 45 of the Insurance Act 1938, modified this rule materially and mitigated the rigour of the rule of utmost good faith. It lays down that no policy can be challenged after two years from the date of the policy on the ground that any statement made in the proposal or in any report of the medical officer or any document was inaccurate or false unless it is material to disclose and it was fraudulently made and the policy holder knows at the time that it was false or he suppressed the fact material to be disclosed, provided that nothing in that section prevents the insurer from calling for proof of age of the assured or to adjust the rate of premium according to the correct age proved subsequently.

LIC challenged a policy after two years after its issue. It was in evidence that the assured fraudulently suppressed facts. It was held that the LIC was not liable.⁸⁵

LIC v. Janaki Ammal, AIR 1968 Mad 324., Following the SC observations of the Mithoolal case referred to above held that if a period of two years has expired from the date on which the policy of life insurance was effected, that policy cannot be called in question by an insurer on the ground that a statement made in the proposal for insurance or on any report of a medical officer

⁸⁴ *New India Insurance Company v. Raghava Reddy*, AIR1961 AP 295

⁸⁵ *Mithoolal v. Life Insurance Corporation*, AIR 1962 SC 814

or referee, or a friend of the insured, or in any other document leading to the assure of the policy, was inaccurate or false.⁸⁶

Present Position

If the policy is questioned after a period of two years the insurer can repudiate the policy only if he knows that such a statement was on a material matter or the insured suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

In a landmark decision the SC has held that the onus of proving that the policy holder has failed to disclose information on material facts lies on the corporation.

In this case the assured who suffered from tuberculosis and died a few months after the taking of the policy, the court observed that it is well settled that a contract of insurance is contract "*uberrimae fides*", but the burden of proving that the insured had made false representation or suppressed the material facts is undoubtedly on the corporation.

The Insurance Laws (Amendment) Bill, 2008 was introduced on Dec 22, 2008 in the Rajya Sabha. The Bill was referred to the Standing Committee on Finance (Chairperson: Shri Ananth Kumar), which is scheduled to submit its report by the first day of the next session. The Bill amends three Acts: the Insurance Act, 1938; the General Insurance Business (Nationalisation) Act, 1972; and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The amendments include raising the maximum limit for foreign equity in Indian insurance companies, permitting foreign re-insurers to open branches and providing for permanent registration of the insurers.

The Insurance Laws (Amendment) Bill, 2008 is ready to be introduced to amend the Insurance Act 1938 along with other Acts. The proposed amendment to section 45 is not consumer friendly. This amendment is completely one sided, i.e. in favour of Insurer. If this amendment

⁸⁶ *Supra note, 42*

came into force then, there will be a lot of exploitation on consumers (insured/ policy holder) by the insurers. In this proposed amendment, they have not considered the observations made in 112th Report of the Law Commission of India and as well as report of K.P. Narasimhan Committee.

Under the Insurance Laws (Amendment) Bill 2008, the proposed amendment to section 45 of Insurance Act, 1938 is as follows;

Section 45 (1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or assignees of the insured the grounds and materials on which such decision is based

Explanation I. - for the purpose of this sub-section, the expression 'fraud' means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy;

- a) *the suggestion, as a fact of what is not true and which the insured does not believe to be true;*
- b) *the active concealment of a fact by the insured having knowledge or belief of the fact;*
- c) *any other act fitted to deceive; and*
- d) *any such act or omission as the law specially declares to be fraudulent.*

Explanation II:

Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer.

Explanation- A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be agent of the insurer.

4) a policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued;

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation- for the purposed of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show the at had the insurer been aware of the said fact no life insurance policy would have been issued to the insure.

5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

4.3. CRITICAL ANALYSIS OF NEW PROPOSED AMENDMENT TO SEC. 45 OF INSURANCE ACT, 1938

After the study of the new proposed Bill, it comes to conclusion that **proposed amendment to section 45 of Insurance Act, 1938 is not consumer friendly because of the following reasons;**

The period during which the insurers can repudiate the contract on any ground whatsoever is increased to 5 years. Presently it is 2 year, which is also unreasonable in point of humanitarian ground because after 2 year insurer cannot repudiate the claim and if it goes on to 5 year then it would be legal ground to LIC and it will give rise to monopoly. Already consumer is being exploited by this provision, there are number of claims which has been repudiated the company on the same ground.

That five years period is being proposed to be counted from the date of insurance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later (presently the policy period is counted from the date of issuance of the policy).

Burden of proof is shifted to insured to prove that insured has not done fraud (presently Burden of proof is on Insurer)

In case of repudiation of the policy within five years on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation. [(presently insurer cant have a right to repudiate the contract on the ground that insured statement or suppression of a material fact, which he himself did not know at the time of entering into the contract(i.e. which was not fraud)]

Is the proposed Insurance laws (Amendment) Bill, 2008 beneficial to Consumer? With specific reference to Section 45

In an open market scenario of Insurance the concept of Social Security fades and business acumen and competition takes importance. Now, or little later the Indian Insurance Industry will be facing such as situation. In mad business competition the interest of the consumer must be protected. His hard earned money should help the beneficiaries at the time of need, failing which the entire concept of Insurance will fail. Keeping this in mind an approach is being made in this study towards that goal. The study will be examining whether the social security through insurance as visualised by our freedom fighters and as enshrined in Article 41 of the Constitution of India is achieved.

It is believed that the study will help legal community and Regulatory Authority to be more equipped and powerful in addressing the needs of the consumer. It will also help in developing insurance in India in a transparent and more scientific way by Regulating rather than controlling. It is also important that the study tries to make an original contribution to the discipline of law.

The notable thing in life insurance of America is the variety of laws for different states. In January 1980 Jimmy Carter the former President of America wrote to the Governor of all the States asking them to ensure that the life insurance market is responsive to the needs of consumers.

In any policy of life assurance it is to be expected that there will be a proposal form, on which the insurer will seek the information it requires about the risk to be insured. Proposal forms require careful attention from both insurer and proposer- from the insurer because failure to ask the necessary questions may lead to the writing of poor risks at un commercial rates of premium; from the proposer because failure to answer all questions fully and accurately may lead to the policy becoming voidable, a fact which is unlikely to be discovered until the time comes to make a claim on the policy.

It is important to understand, however, that as a matter of law the proposer's duties in relation to disclosure of material facts to the insurer do not depend on the existence of a proposal form. The duty to disclose material facts exists independently of the proposal form, though the proposal form may well extend that duty by asking specific questions about matters which would not otherwise be considered material. The effect and status of such additional questions are less clear than they once were, in the light of the case of *pine Top v. Pan Atlantic*, (1994) 3 All E.R.581 which is considered below.⁸⁷

4.4. Life Insurance Act, 1956

The Life Insurance Corporation Act, 1956 (the LIC Act) nationalised the life insurance business in India by transferring all life insurance business to a Corporation, namely, the Life Insurance Corporation of India (LIC), established for the purpose. This Act also provided for the regulation and control of the business of the LIC. The Insurance Act, 1938, however, remained as the principal law to regulate and exercise supervision over all entities transacting insurance business in India. With the enactment of the Insurance Regulatory and Development Authority Act, 1999, the insurance business was opened up to private sector, as a result of which, in addition to LIC, twenty-one private sector companies have started transacting life insurance business in the country.

⁸⁷Supra note, 51,p.34

Before the year 1956 life insurance business was in the hands of private companies which were opening mostly in urban areas. To ensure absolute security to the policy-holders in the matter of life insurance protection and to spread insurance much more widely, particularly in the rural areas of the country, and to mobilize public saving more effectively, Government decided to nationalise life insurance business in India. On 1st January, 1956 an ordinance was promulgated to nationalise insurance business. The management of the life insurance business was vested in the Central Government. A separate Bill was introduced to replace that ordinance and for setting up a Life Insurance Corporation of India as a step for the permanent arrangement for the nationalisation of insurance business.⁸⁸

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. The general insurance business was also nationalised with effect from January 1, 1973, through the introduction of the General Insurance Business (Nationalisation) Act, 1972 ("GIC Act"). Under the provisions of the GIC Act, the shares of the existing Indian general insurance companies and undertakings of other existing insurers were transferred to the General Insurance Corporation ("GIC") to secure the development of the general insurance business in India and for the regulation and control of such business. The GIC was established by the Central Government in accordance with the provisions of the Companies Act, 1956 ("Companies Act") in November 1972 and it commenced business on January 1, 1973. Prior to 1973, there were a hundred and seven companies, including foreign companies, offering general insurance in India. These companies were amalgamated and grouped into four subsidiary companies of GIC Viz. the National Insurance Company Ltd. ("National Co."), the New India Assurance Company Ltd. ("New India Co."), the Oriental Insurance Company Ltd. ("Oriental Co."), and the United India Assurance Company Ltd. ("United Co."). GIC undertakes mainly re-insurance business apart

⁸⁸ See, Statement and object and reasons of Life insurance Act, 1956

from aviation insurance. The bulk of the general insurance business of fire, marine, motor and miscellaneous insurance business is under taken by the four subsidiaries.

Directions to the Corporation

Although the corporation has been made an autonomous body under the Act to perform its functions as enjoined in Sec.6 of the Act and to manage its affairs and business according to Ss.18 to 20, still the Central Government has been given certain powers over its functions and management in directing matters of policy concerning public interest and in case any question arises as to whether a direction relates to matter of policy involving such interest the decision made by the Central Government thereon has been made final. Such directives of policy has to be given by the Central Government in writing and the Corporation has no option but to carry out those directives.⁸⁹

When we have such a powerful provision for the protection of interest of insurers namely consumers then why the government attitude is not consumer oriented than Companies favour.

⁸⁹ See, the Life Insurance Act, 1956, Under Sec.21 provides power to Central government regarding direction to the Corporation

CHAPTER V

INSURANCE DISPUTE AND SETTLEMENTS

Dispute block development, hamper peace and dispute without resolution leads to a conflict beyond control under normal circumstances. The need for resolving disputes and inefficiency of transitional litigation mechanism to adjudicate disputes is obvious. The study and analysis of reasons of delay, in dispensation of justice, will continue till the problem is solved.

Like any other service industry, the insurance industry too has disputes. The policy holders are sometimes forced to approach the mechanism provided by law for redressal of their grievances.

The following are the dispute settlement resolution mechanism for insurance related disputes at present.

Insurers' own grievances redressal cells and Grievances Redressal Cell of IRDA: As claims/policy contracts in dispute require adjudication and IRDA does not carry out any adjudication, the insured are advised to approach the available quasi-judicial, channels, i.e., the insurance Ombudsman, Consumer Fora and the Civil Courts for such complaints.⁹⁰

- Directorate of Public Grievances;
- Consumer Forums;
- Ombudsman
- Arbitration on quantum;
- Civil Courts; and
- Lok Adalats

Each one of them is clogged with numerous insurance related disputes to a disproportionate extent. It is relevant to point out that the insurers neither publish information nor are they aware

⁹⁰ Information from Web Notice dated September 21, 2006 on IRDA Website www.irdaindia.org, April 26, 2007

of how many cases they have won and how many cases they have lost in each of the various forums in a financial year.⁹¹

Rule 5 of the IRDA(Protection of Policyholders Interests) Regulations 2002 imposes upon insurers the responsibility to have in place, proper procedures and effective mechanism ' to address complaints and grievances of policyholders efficiently and with speed. Insurers must establish a ' grievance cell' at heir office in order to address the grievances and problems of their policyholders. Above these, the IRDA has established its own grievance cell at its headquarters for discontented insurance customers. The IRDA transfers the complaints it receives to the concerned insurance companies with proper direction. The Annual Reports of the IRDA contain information about the number of grievance settlements made by the insurance companies. Dissatisfied policyholders could further knock the doors of justice by way of litigation which is complex, time consuming and cumbersome; at the end of it even if the court of law gives a foorable verdict, the consumer has little positive impact because of the delay. In order to improve grievance redressal system of insurers and suggest modifications to the regulations for the protection of policyholders.

Most of the insurance policy insurance policies include an arbitration clause which prohibits parties from approaching courts for settlement before exhausting other alternative methods of dispute settlements. The assistance of agents may be taken to solve disputes through arbitration. Sometimes the arbitration proceedings may also extend for long periods of time due to various reasons. Also, as arbitration is appointed by the companies, during settlement, they may have an inclination towards the companies; if the arbitration is appointed with the consent of the consumer, the company may not abide by the word of the arbitrator. Finally, there is a possibility for the dispute to end in litigations.

Some of the insurance companies have followed the above-mentioned regulations to establish grievance mechanisms such as Jalad Rahat Yojana, in addition to their own existing schemes though there is little substantial evidence that this is actually helping policyholders. The second part of the 'Insurance Ombudsman' which has the territorial jurisdiction. This provision helps the insurance consumers reinforce their right to approach other grievance settlement mechanism in addition to those established by insurance companies.⁹²

5.1. ROLE OF COURTS

The Indian Insurance industry has growing like other developed countries and got the reputation in the international market. But while growing with the speed some aspects are lacking behind, which are very important for the purpose of Insurance business. In its origin, life insurance has the object of securing some support to the members of the family of the assured who were depending on the salary or other income of the assured which ceases on his death and with this object life policies are taken by agreeing to part with a small portion of the annual income in favour of the insurer as premiums.⁹³ Life insurance has both short and long term advantages. Primarily it encourages saving in the individual and serves also to form capital. It protects the potential estate of the policy holder as distinguished from acquired estate. It saves the insured from worry and makes him a little less burdened. For the purposes of insurance he has to be medically examined and such examination may reveal some latent ailment which may be to put a stop to something that is still in its early phase. If everyone looks after his family, there will be no dependants on society and the public expenditure on orphanages and charities will be saved. By life insurance, if insurer dies prematurely, his family need not depend on the charity of relatives or of the government. If he survives the period, the insurance amount will be useful in his old age and period of disablement. If he wants money for an emergency, he can raise loan without worry.

⁹² www.ombudsmanindia.org, April 26, 2007

⁹³ *Supra note*, 50

Huebner Says;

“A life insurance policy is a callable sinking-fund bond, issued upon the life of the policy holder. It will be paid promptly if providence sees it fit to call away the policy holder. In case there is no call the bond will be paid through the accumulation of its sinking-fund provision, or reserve at the time of maturity. Therefore, Life insurance is a husband’s privilege, a wife’s right and a child’s claim”.⁹⁴

Insurance offers the safest and surest means of establishing a Socialistic pattern. It also stabilises the economic security of the policy holder and at the same time contributes its might to promotion of industry by providing the necessary capital and also Social Security measures.

However, in an open market scenario of insurance the concept of Social Security fades and business insight and competition takes importance. In mad business competition the interest of the consumer must be protected. His hard earn money should help the beneficiaries at the time of need, failing which the entire concept of insurance will fail. Keeping this in mind an approach of judiciary should be in favour of Consumer/ Insurers and should not violate the concept of Social and Economic Security because the whole purpose of insurance is to protect the interest of consumer. Moreover, what we see most of the judicial pronouncements at the initial stages are in favour of the consumer i.e. in District and State Commission but when it goes to National Commission and to Supreme Court then this decision got reversed and hence the critical study of judicial pronouncement in the field of insurance sector is very important to focus on the purpose of insurance. The following some of the Supreme Court and National Commission judgement will through light on the role of judiciary in protection of Consumers/Insurers interest.

In the case of *Asha Goel*,⁹⁵ which is considered as landmark decision of the decades, where B.N.Kirpal & D.P.Mohapatra J. Held that the question of repudiation of claim of insured or

⁹⁴ *Ibid*, p.137

⁹⁵ *Life Insurance Corporation of India and others Vs. Smt. Asha Goel and another*, AIR 2001 SC 549,

nominee by the Corporation, the provisions of Section 45 of the Insurance Act is of relevance in the matter. The section provides, inter alia, that no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

The proviso which deals with proof of age of the insured is not relevant for the purpose of the present proceeding. On a fair reading of the section it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the section namely:

- (a) the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the policy-holder; and
- (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

Mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient. The **burden of proof** is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on ground of misstatement of facts. The contracts of insurance including the contract of life assurance are contracts *uberrima fides* and every fact of material must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract

and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts *it may be necessary to also examine whether the suppression relates to a fact* which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person. In this connection we may notice the decision of this Court in *Mithoolal Nayak v. LIC of India*,⁹⁶ in which the position of law was stated thus; the three conditions for the application of the second part of Section 45 are:

- a) The statement must be on a material matter or must suppress facts which it was material to disclose,
- b) The suppression must be fraudulently made by the policy-holder and
- c) The policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

Where the policy-holder, who had been treated, a few months before he submitted a proposal for the insurance of his life with the insurance company by a physician of repute for certain serious ailments as anaemia, shortness of breath and asthma, not only failed to disclose in his answers to the questions put to him by the insurance company that he suffered from those ailments but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailment: Held (i) that, judged by the standard laid down in Section 17, Contract Act⁹⁷, the policy-holder was clearly guilty of a fraudulent suppression of material facts when he made his statements, which he must have known were deliberately false and hence, the policy issued to him relying on those statements can be vitiated.

⁹⁶ *Supra note*, 83

⁹⁷ Section 17 of Indian Contract Act, 1872

The principle underlying the Explanation to Section 19⁹⁸ of the Contract Act is that a false representation, whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract. That principle did not apply in the instant case. The terms of the policy made it clear that the averments made as to the state of health of the insured in the proposal form and the personal statement were the basis of the contract between the parties and the circumstance that the policy-holder had taken pains to falsify or conceal that he had been treated for a serious ailment by a physician only a few months before the policy was taken showed that the falsification or concealment had an important bearing in obtaining the other party's consent. A man who has so acted cannot afterwards turn round and say, 'it could have made no difference if you had known the truth'. In the circumstances no advantage could be taken of the Explanation to Section 19 of the Contract Act."

This decision was relied upon in *LIC of India v. G. M. Channabasamma*, in which the following observations were made:⁹⁹

"It is well settled that a contract of insurance is contract *uberrima fides* and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act has made special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years from the date on which it was effected. Having regard to the facts of the present case, learned counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed

⁹⁸ *Ibid*

⁹⁹ *Supra note*, 42

in *Mithoolal Nayak v. LIC of India*, must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case."

Lastly court come to conclusion that Life Insurance Corporation was created by the Life Insurance Corporation Act, 1956 with a view to provide for nationalisation of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. The said Act contains various provision regarding establishment of Life Insurance Corporation of India; the functions of the Corporation, the transfer of existing life insurance business to the Corporation, the management of the establishment of the Corporation, the finance, accounts and audit of the Corporation and certain other related matters. Section 30 of the Act, provides that except to the extent otherwise expressly provided in this Act, on and from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance business in India. With the above discussion and observations court come to conclusion that sum should be paid expeditiously to the claimant.

The widow of the deceased insured had filed writ petition assailing the action of the Life Insurance Corporation of India in repudiating all liabilities under the insurance policy on the ground that the deceased insured had withheld correct information regarding his health at the time of effecting the insurance policy with L.I.C accordingly the petitioner has prayed for quashing of the letter of repudiation & to direct payment of the same assured under the said policy.

The deceased insured was suffering from Gastritis with superficial Stomach Ulcer & was under medication for some time, as evident from the Doctor's report to the counter affidavit. Admittedly, the deceased insured died of viral Encephalitis & Cardic Respirator arrest & suffered from the same only ten hours before his death, as would be evident from the Medical Attendant Certificate to the Writ Petition. The considered view that as the deceased insured was suffering from minor ailments like Gastritis with superficial Stomach Ulcer, which is not a

serious disease having any bearing on the risk undertaken by the L.I.C., the non-disclosure of the same cannot be said to be material, especially when the same did not affect the life expectancy of the deceased insured. Moreover, as the cause of death of the insured was admitted due to Viral Encephalitis coupled with Cardio Respiratory arrest, which had no nexus with the previous ailments of the deceased insured, the repudiation of the policy & rejection of the claim by the L.I.C. was not proper & justified.¹⁰⁰

The LIC has repudiated claim of Mediclaim Policy on the ground of suppression of material fact.¹⁰¹ The appellant's husband insured by a Mediclaim policy and died because of ill. The LIC has repudiated by the Respondent on ground that deceased was known case of Chronic Renal Failure and Diabetic Nephropathy. The deceased wife filed complaint in District Forum and District Forum decided in favour of the Appellant. Then LIC went on appeal to State Commission and got Set aside the order of the District forum and subsequently revision petition to National Commission which was dismissed and hence appellant went to Supreme Court on appeal stating that whether the fact that at the time of taking out the mediclaim policy, the policy holder was suffering from chronic Diabetes and Renal failure was a material fact and, therefore, on account of non-disclosure of this fact in the proposal form. An appeal was dismissed due to no merit found in this case. The entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a Contract of Insurance. Bearing in mind the legal position insurer has given the following information:

¹⁰⁰ *Kuni Lata Sahoo Vs. Senior Divisional Manager, L.I.C. of India and Anr.* 109(2010)CLT94

¹⁰¹ *Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.* (2009)8SCC316,

10. *Details of illness/would* : *Sound Health*

*which may require treatment in
near future*

11. *Details of Treatment/surgical* : *Nil*

operation in the last two months

Details of Treatment

Duration of Treatment

From... to...

Doctor / Hospital

If fully recovered, attached

certificate

For attending Doctor/Surgeon

Answers given by the proposer to the two questions were "Sound Health" and "Nil" respectively. It would be beyond anybody's comprehension that the insured was not aware of the state of his health and the fact that he was suffering from Diabetes as also chronic Renal failure, more so when he was stated to be on regular haemodialysis. There can hardly be any scope for doubt that the information required in the afore- extracted questions was on material facts and answers given to those questions were definitely factors which would have influenced and guided the respondent - Insurance Company to enter into the Contract of Mediclaim Insurance with the insured. It is also pertinent to note that in the claim form the appellant had stated that the deceased was suffering from Chronic Renal Failure and Diabetic Nephropathy from 1st June, 1990, i.e. within three weeks of taking the policy. Judged from any angle, we have no hesitation in coming to the conclusion that the statement made by the insured in the proposal form as to the state of his health was palpably untrue to his knowledge. There was clear suppression of material facts in regard to the health of the insured and, therefore, the respondent - insurer was fully justified in repudiating the insurance contract. We do not find any substance in the contention of

learned Counsel for the appellant that reliance could not be placed on the certificate obtained by the respondent from the hospital, where the insured was treated. Apart from the fact that at no stage the appellant had pleaded that the insured was not treated at Vijaya Health Centre at Chennai, where he ultimately died. It is more than clear from the said certificate that information about the medical history of the deceased must have been supplied by his family members at the time of admission in the hospital, a normal practice in any hospital. Significantly, even the declaration in the proposal form by the proposer authorises the insurer to seek information from any hospital he had attended or may attend concerning any decease or illness which may affect his health. Before parting with the case, we may also deal with the submission of learned Counsel for the appellant that the order of the National Commission is flawed because it has declined to interfere on a wrong premise that both the Fora below had arrived at "concurrent findings", which was not so. It is true that there is an apparent error in the order of the National Commission, inasmuch as the State Commission had, in fact, disagreed with the view taken by the District Forum but having regard to the fact that on our independent examination of the material on record, the claim by the appellant has been found to be fraudulent, we are of the opinion that no useful purpose would be served by remitting the matter to the National Commission for fresh adjudication on merits

In one another case of *L.I.C. of India Vs. Mohinder Kaur*,¹⁰² it was again in favour of insurer. Briefly, the facts of the case are that the late husband of the respondent/complainant had obtained a life insurance policy from the petitioner, which was issued on 30.11.1995 with a commencement date mentioned as 28.8.1995. When unfortunately the insured died on 3.3.1996 and upon a claim being preferred by the complainant who was the nominee as per insurance Policy--it was repudiated on the ground that at the time of taking policy the insured had concealed information on the existing ailments like cirrhosis of lever and diabetic mellitus. It is in these circumstances that the respondent before us, filed a complaint before District Forum

¹⁰² *L.I.C. of India Vs. Mohinder Kaur*, II (2003) CPJ 30 (NC)

who after hearing the parties and material produced dismissed the complaint holding, the 'repudiation' in order. On an appeal filed by the complainant, the State Commission allowed both the appeal and the complaint, hence this petition by the revision petitioner. Upon issue of notice to the respondent/complainant a reply was filed rebutting grounds of revision. There can be no dispute that repudiation letter was issued after expiry of two years from the date of insurance being effective i.e. 28.8.1995 hence exceeding the period mentioned in Section 45 of the Insurance Act. In order to avoid Section 45 or to circumvent the provisions of this section. 'Fraud' had to be proved. What we see on record is a document signed by one Doctor containing reference to the insured having the said ailments. This document is not proved by any method nor supported by any affidavit leaving it at best, an unproved document. It is no doubt understood that evidentiary value of such a document is little, as the report of Dr. Hardev Singh was challenged at all Forums by the complainant. If fraud or deliberate withholding of information, which was within the knowledge of the insured, has to be made the ground of repudiation or revision petition before us, than this has neither been alleged much less proved by the petitioner. On this point of law alone, which goes against the petitioner, we must reject this revision petition as being devoid of merits. This revision petition is dismissed. Parties to bear their own costs.

Life Insurance policy, it was submitted is a requirement of social security. In that view of the matter, a suppression could not have been led to repudiation of policy, particularly when the doctor who examined the insured was appointed by the respondent - Corporation itself. Our attention in this behalf has been drawn to the decision of the Madras High Court in *All India General Insurance Co. Ltd. and another vs. S. P. Maheshwari* : AIR 1960 Madras 484 for the proposition that there exists a distinction between a "representation" and a "warranty."¹⁰³

"The well-settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts *uberrima fides* and every fact of materiality must be

¹⁰³ *P.C. Chacko And Another, Vs. Chairman, Life Insurance Corporation of India and Other*, 2008-(001)-SCC-0321,

disclosed otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance.¹⁰⁴

Any unilateral repudiation of the Contract by the Insurance Company under the policy of insurance will not disentitle the policy holder from approaching the redressal forum to adjudicate the question whether said repudiation was justified by law.¹⁰⁵

The Insurance Company rejected a claim on the ground that there was suppression of material facts. It contended that the policy holder was suffering from cough, expectoration, breathlessness for the last 2 to 3 years. policyholder did not get these disease recorded in the proposal form. The claim filed by the legal representatives was therefore repudiated. The District Forum had dismissed the Complaint upholding the plea of the insurance company. In appeal the state Commission allowed the appeal and directed the insurance company to pay the entire amounts due to the insured. National Commission upheld the order of the State Commission allowed appeal and held that there was no suppression of any relevant fact. It found that the nature of ailment was not known to the insured as well as the insurer and in fact was not known to the doctor of the insurance company despite detailed examination. Revision petition of insurance company was therefore dismissed.¹⁰⁶

In most of cases insurer has to make Several requests to the Insurance Company to make the payment of the amount insured but the Life Insurance Corporation of India did not grant the benefits of the Insurance Policy. And it is true that some of the disease exists inside the body, the person may not be in know of the same. Some disease cannot be detected at an early stage and generally no symptom appears for the disease. Generally such disease is detected at a very late stage, sometime when it reaches third stage when the patient is about to die. Instances are

¹⁰⁴ In *Ratan Lal & Anr. v. Metropolitan Insurance Co. Ltd.* [AIR 1959 PAT 413], a distinction was made between as to what is material and what is not material. In regard to the disclosure of facts in that case itself, it was opined :

¹⁰⁵ See, *Life Insurance Corporation Ltd., V. Bhavanam Srinivas Reddy*, 1991 (2) CPR 587 (NC)

¹⁰⁶ See, *Life Insurance Corporation of India V. Dr.P.S. Agarwal*, 2005 (1) CPJ 41 (NC)

there in the medical history where the person dies from a first heart attack, even though he may be suffering from the blockage of heart arteries. Therefore, unless the symptom of the disease appear in a person he cannot know as to whether he is suffering from that disease or not. Migrain, Spondylitis, ulcer, jaundice and many other diseases when they start to appear give out their own indication on the body. They cause pain and suffering. During the fever, the body temperature rises and the person comes to know about the disease at the first stage. In that situation when insurer dies without knowing the facts of his disease, the LIC used to reject the claim on the basis of Sec 45 and suppression of material fact. So, this attitude of LIC has to be changes in the interest of such persons.

The consumer forums like the traditional courts are plagued with problems like expenditure, delay on account of work load, possibility of appeals, procedural delays, etc. Further, insurance being a typical kind of service industry and being different from a routine contract sometimes requires insurance expertise to dispose the complaints. Therefore, there is a need to have an Alternative Dispute Mechanism to deal specifically with insurance disputes. This need led to the passing of Redressal Public Grievances Rules, 1998 under which the insurance Ombudsman was created and is functioning.

Default in payment of the premium by the complainant. The complainant was given sufficient opportunity to revive the policies. However, he failed to do. The claim having been barred by limitation and the complainant having failed to build up the case in his favour on merits, the State Commission dismissed the complaint as barred by limitation. The Commission also observed as follows:

We find that the complainant miserably failed to overcome this (limitation) basic requirement. However, on merits also, the complainant has failed to build the case in his favour and therefore, we conclude that this complaint is dismissed as being barred by limitation. Hence, we pass the

following order. The complaint is dismissed. The complainant has to pay a sum of Rs.250 to the opposite party.¹⁰⁷

LIC of India Vs. Anr. Vs. Kusum Lata, in this case, Although the policy had lapsed for non-payment of premiums, the District Forum directed payment of 50% of the sum assured, stating that it was being done “on a broad view of the case”, the State Commission confirmed the order of the District Forum” on humanitarian and compassionate grounds. Although it resisted that as per the terms of contract of insurance, no amount is payable.

It was held that the grounds on which the Corporation repudiated the claim are perfectly valid and relief can be given under the Consumer Protection Act only for deficiency in service. Hence the direction given by the forum is without jurisdiction.¹⁰⁸

The consumer law provides protection to all affected consumers whose insurance services suffer from deficiencies and defects. Policyholders are recognised as consumer for any kind of dispute that arises during the enforcement of their insurance contract, and hence, may seek protection under the consumer protection law. The dispute may be related to the settlement of claims, formation of a contract or exercising for the rights of the parties. The disputes relating to settlement of claims include the repudiation of claims, delays in setting claims and not providing required information during the conduct of the proceeding of the claims settlements. The other types of disputes can be brought under deficiency of services, unscrupulous exploitation and unfair practices. Thus, there is wide range of issues and grounds on which the consumer may seek protection under the law.

¹⁰⁷ *Shri B K Bojani Vs. LIC of India*,

¹⁰⁸ *LIC of India Vs. Anr. Vs. Kusum Lata*,

5.2. INSURANCE OMBUDSMAN

As the insurance sector has opened up in the country, a need has been felt for a dispute settlement mechanism focusing exclusively on the insurance sector. In recognition of this need, the Central Government created the institution of the Insurance Ombudsman. The Government of India framed the “Redressal of Public Grievances Rules, 1998” in exercise of powers conferred on it under Section 114 (1) of Insurance Act, 1938. These Rules came into force with effect from 11th November, 1998. The Insurance Ombudsman was established under these rules. These Rules aim at resolving insured’s complaints relating to the settlement of disputes, delay, repudiation etc., with insurance companies in accost effective, efficient and impartial manner. The Rules apply to all insurance companies, whether they are operating in the general insurance business or the life insurance business.¹⁰⁹ These Rules apply to companies in both the public and the private sectors. The ombudsman functions within a set geographical jurisdiction.¹¹⁰

The institution of Insurance Ombudsman created by Government of India, Finance Ministry notification dated November 11, 1998 could listen and adjudicate on;

- Any partial or total repudiation of claims by insurance companies
- Dispute in the legal construction of the policy wording in case such dispute relates to claim; and
- Delay in settlement of claims. Ombudsman’s power are restricted to insurance contracts not exceeding Rs.20 lakh. The insurance companies are required to honor the awards passed by an insurance ombudsman within three months.¹¹¹

The insurance consumer have the option to select the appropriate authority and forum, be it the Insurance Ombudsman or the Consumer Councils, to settle their disputes. Both the institutions have their own set of strength and weaknesses as discussed earlier. In order to get benefits they may opt for Consumer Council, as they are widely spread and located. The process of settlement

¹⁰⁹ See, Redressal of Public Grievance Rules, 1998; Regulation 13

¹¹⁰ *Ibid*, Rule 2

¹¹¹ www.irdaindia.org

of disputes is easy and inexpensive like that of the Ombudsman. The other advantages of Consumer Councils is the legal binding upon the parties, which is lacking in the case of Ombudsman. The limitations of Ombudsman, such as the pecuniary jurisdiction, geographical spread, and appeal against the awards, are the strengths of the Consumer Councils. Though the Consumer Councils do suffer from the lack of expertise in the field, this shortcoming may be addressed by providing a specialized bench with experienced members, to deal with insurance cases; this will certainly help the consumers to mitigate their sufferings and have access to immediate justice. The institution of Ombudsman has to be further strengthened by removing its limitations and also establishing it's offices at urban places, especially where there is an insurance Company, this will give the consumers on easy access to justice.

CHAPTER VI

A COMPARATIVE STUDY OF UK, US AND INDIA

6.1.UNITED KINGDOM

The need to protect individual against changes in fortune is as old as civilisation. People throughout the world and throughout history have developed different organisations and structures. Policies offering insurance on lives were available from the late 16th century. The earliest recorded example in the UK dates from 1588 but, in other countries, such as the Netherlands and France, insurance of lives was prohibited until much later. Life assurance as a corporate business did not really develop until 1799 with the establishment in England of the Society of Assurance for Widows and Orphans, followed a year later by the second society of assurance for Widows of Orphans, followed in 1706 by the Amicable Society.

Although some were prudently making provision for dependents on their death, it is estimated that in the 1830s and 1840s between 30 and 50 per cent of lives in the UK were assured by a third party either as business indemnities, partners protecting their interests or as a Speculation. This form of betting on lives was outlawed in 1774, after which time anyone insuring the life of another person had to prove that they had an interest in the life or death of the person insured.

The Life Assurance Act 1774 was an Act of Parliament of the Parliament of Great Britain, which received the Royal Assent on 20 April 1774. The Act prevented the abuse of the life insurance system to evade gambling laws. It was extended to Ireland by the Life Insurance (Ireland) Act 1866, and is still in force. Prior to the Act, it was legally possible for any person to take out life insurance on any other person, regardless of whether or not the beneficiary of the policy had any legitimate interest in the person whose life was insured. As such, the system of life insurance provided a legal loophole for a form of gambling: an insurance policy could be taken out on an unrelated third party, stipulating whether or not they would die before a set date, and relying on chance to determine if the "insurer" or "policy-holder" would profit by this event.

In 1852, industrial policies were introduced by the Family Friendly Society that provided life cover in exchange for small weekly payments and made life insurance accessible to all. Lloyd's of London is neither a company nor a corporation. It is basically a British insurance market. It serves as a meeting place where multiple financial backers or "members", whether individuals, who are known as "Names" or corporations, come together to pool spread risk. Their main business is in the reinsurance market.¹¹²

In 1838 the Exchange burned down and , although rebuilt, any of Lloyd's early record were lost. In 1871, the first Loyds Act was passed in parliament which debated the business to a legal footing. The Lloyd's Act of 1911 set out the Society's objective, which include the promotion of its members interests and the collection and dissemination of information.

Now coming to the Indian scenario we can say that the Industry has come to full circle, the Insurance industry was nationalised in the Year 1956, before that there were about 245 companies which included provident Societies also. During that period many of the Companies did not meet their commitments and there was large scale division of funds whereby many companies were closed down, this in turn affected the small things of insured person.

There are number of legislation to protect the interest of consumers in the United Kingdom.¹¹³

The development of the legislations and the enactment of the Consumer Protection Act 1987 is a result of consumer awareness and role of courts in various cases.¹¹⁴

The following important principle of life insurance, Suppression of material fact, Principle of utmost good faith, Breach of contract, Onus on complainant, Relevancy of material facts, Non disclosure of casual ailments and Rate of compensation etc. When anyone of the principle gets violated, then the reaction would be the repudiation of claim. And there the suffering of consumer starts, therefore the consumer protection Act, has to play a vital role for the protection of interest of consumer.

¹¹² *Supra ntoe*, 51, pp.2-3

¹¹³ Consumer Credit Act 1974; Consumer Safety Act 1978; Food and Drugs Act 1955; Poisons Act 1972; Weight and Measures Act 1963, 1976 & 1979; Supply of Goods (Implied Terms) Act 1973; Unfair Contract Terms Act 1977; Prices Act 1974; Price Commission Act 1977 and Price Commission Amendment Act 1979.

¹¹⁴ V BALAKRISHANA ERADI, CONSUMER PROTECTION JURISPRUDENCE, (NewDelhi LexiesNexies Butterworths, 2005),pp.15-16

It is regularly and reverently said that an insurance contract is, or is of, "uberima fides", utmost good faith. The classic statement of the principle was by Lord Mansfield in *Carter v. Boehm*. Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie more commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds upon confidence that he does not keep any circumstances in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if did not exist. The keeping back of such a circumstances is a fraud, and therefore the policy is void. Although the suppression should happen through a mistake, mistake, without any fraudulent intention; yet still the underwriter is deceived, and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement, the governing principle if applicable to all contracts and dealings. Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believing to the contrary.

REGULATORY AUTHORITY IN U.K.

The Regulatory authority is the Department of Trade and Industry (DTI) and the Principal Statute governing insurers is the Insurance companies Act 1982. A series of regulations have been issued under the Insurance Companies Acts of which the following are particularly important:¹¹⁵

- The insurance Companies Regulations 1981, as amended, which prescribe rules regarding, inter alia, solvency margins, authorizations, the valuation and matching of assets and the determinations of liabilities.
- The insurance Companies (accounts and statements) Regulations 1983, which stipulate the form and content of annual returns to be submitted to the DTI.
- In addition, The Lloyd's Act 1982 gives Lloyd's power of self regulation.

¹¹⁵ COOPERS & LYBRAND, INTERNATIONAL INSURANCE INDUSTRY GUIDE, (London, Lloyd's of London Press Ltd., 1985, 3rd edn.) p.132

Life assurance business is taxed on what is known as the "Income minus Expenses" Basis. This enables the Revenue to tax both the investment income and gains accruing to policyholders and the shareholders profits. Because of the complexity of the law there are considerable variations in its detailed application to particular companies. Under the I-E basis, life assurance is regarded as consisting of the three separate trades of ordinary life, general annuity and pension business.

The profits charged to corporation tax are computed as follows:

- The investment income of the ordinary life business and general annuity business
- The capital gains of the ordinary life business
- The general annuity and pension business profits. Calculated in the way described below;
- Policyholders' Servicing

An insurer carrying on life or general business, as the case may be, shall at all times, respond within 10 days of the receipt of any communication from its policyholders in all matters, such as:

- (a) recording change of address;
- (b) noting a new nomination or change of nomination under a policy;
- (c) noting an assignment on the policy;
- (d) providing information on the current status of a policy indicating matters, such as, accrued bonus, surrender value and entitlement to a loan;
- (e) processing papers and disbursement of a loan on security of policy;
- (f) issuance of duplicate policy;
- (g) issuance of an endorsement under the policy; noting a change of interest or sum assured or perils insured, financial interest of a bank and other interests; and
- (h) guidance on the procedure for registering a claim and early settlement thereof.

INSURANCE AUTHORIZATION IN U.K

No insurance company may carry on any insurance business in the United Kingdom unless authorised by the Secretary of state for Trade and Industry. Obtaining authorization is likely to take up to six months. Although companies carrying on both life and non-life business continue to exist in the United Kingdom, the DTI Has stated that now new authorization for composite companies will be granted. A company seeking authorization must submit the information specified in the Insurance Companies Regulations 1981 which includes:Details of the company, it's directors, controller, managers and main agents. The scheme of operations, including the sources of business, the nature of commitments to be undertaken, and the guiding principles as to reinsurance. Projection for each of the first three years following authorization, including forecaste balance sheets, estimates of income and expenditure, and of the Company's financial resources. Details of types of investment to be held of reinsurance treaties and of agreements with mangers brokers and agents Companies carrying on life business will also be required to submit a certificate by the proposed actuary of his agreement with certain of the items submitted to the DTI.¹¹⁶

In England, earlier there were Protection of Policyholders Act, 1975 but it was amended and new Policyholders protection Act, 1997, for the protection of consumer, this is one which is effective and it clearly states in its objective regarding protection of policyholders.

The new 1997 Act, described as a 'Complex and somewhat technical Bill' by Viscount Chelmsford when introducing it in the House of Lords, has three principles aims:

- a) To restrict coverage to exclude risks outside the European Economic Area (EEA include Iceland, Norway and Liechtenstein)
- b) To update the 1975 Act to reflect the development of the single European market in insurance and the associated changes to the insurance regulatory regime throughout the European Union;

¹¹⁶ *Supra note.*, 113,p.133

c) To provide greater certainty for consumers and speedier settlement by the policyholders protection Board.¹¹⁷

The law regarding the disclosure of material facts was operating harshly in the U.K. because the insured did not realise that the particular facts were in law material.¹¹⁸ English law has not yet come to a definite decision about the general question of the existence of a continuing duty of utmost good faith. It is noticeable that all the cases in which the question has been considered have been marine insurance cases, where, because the policy is not a long-term policy, the consequences of allowing avoidance for a breach of post-contractual duty are not as severe as they might be in a life policy. It is also noticeable that in none of the cases did the decision turn on a finding that such a duty existed, far less that it had been breached. In principle it seems desirable that some notion of fair dealing be imported into the ongoing management of insurance relationships, though it may be doubted whether the very strict rules of utmost good faith are the appropriate mechanism for doing this. A point of especial importance and difficulty is to identify what sanction should follow from a breach of the duty, for it is clear, particularly in the case of life policies, that automatic voidability of the policy is too harsh a consequence in most cases. It may be that the re-interpretation of pre-contractual utmost good faith exhibited by the House of Lords in *pine Top v. Pan Atlantic*¹¹⁹ will help lead a due course to the development of a sensible concept of the post-contractual duty.

KNOWLEDGE AND OPINION OF THE PROPOSER

The question of the knowledge or the opinion of the proposer for insurance raises three further questions; his knowledge of the duty to disclose, secondly, whether his opinion as to materiality is relevant, and thirdly, what knowledge of the material facts on his part is required. As to the first point, it is clear that whether or not the proposer knows that he is under a duty to disclose is

¹¹⁷ RAY HODGIN, INSURANCE LAW: TEXT AND MATERIAL, (London, Cavendish Publishing Ltd. 1998), pp.14-17

¹¹⁸ *Supra note*, 6

¹¹⁹ [1994] 3 All E.R. 581, H.L. See, also for detail information, *Supra note*, 15 p. 36

totally irrelevant. Innocent non-disclosure is actionable as negligent non-disclosure or fraudulent concealment, as all the cases assume. Similarly, the insured's opinion as to the materiality of non-disclosed facts is irrelevant even though he may well have acted in good faith. As has been pointed out, it is the law that a man may act in perfect good faith within the ordinary meaning of the phrase, yet still be held not to have acted in the utmost good faith in the legal sense.¹²⁰

CONSTRUCTIVE KNOWLEDGE

More problematic is the question as to whether or not the insured is bound to disclose only those material facts that he actually knows or whether his "Knowledge" includes facts that he ought to know. Clearly he is not bound to disclose what he does not know, and some cases, particularly in the life insurance field, have assumed that only actual knowledge imposes a duty.¹²¹

SUGGESTED REFORMS IN INSURANCE CONTRACTS IN THE U.K.:

"Practice in And Reform Of Non-Disclosure And Misrepresentation The point that law is capable of operating harshly regarding the disclosure of material facts in particular has already been made earlier in this chapter. Indeed it has been often been said that a proposer for insurance may act with perfect good faith and yet not satisfy the duty of disclosure which the law requires because he did not realise that particular facts were in law material, or did not realise that he had to do any more than truthfully complete the answers to questions on a proposal form. It could be argued that there is no real need for a duty of disclosure in modern conditions other than one requiring the insured to answer honestly questions expressly put to him."¹²²

Until fairly recently it seemed as though the law would be reformed in this respect. This was because recommendations for reform have been made by both the Law Reform Committee on

¹²⁰ See, MC Nair J. in *Roselodge Ltd v Castle* [1966] 2 Lloyd's Rep. 113 at 129

¹²¹ *Supra note*, 6 p.110

¹²² *Ibid*

1957 and by the Law Commission in 1980. The important and carefully considered recommendations of the Law Commission, which in practice would probably have meant the withering away of a pure duty of disclosure, were accepted by the government, but were strongly opposed by the insurance industry particularly in respect of their application to business insurance. The unfortunate result of this has been that actual legal reform seems unlikely at present. Instead, the government has accepted "reform" by way of self-regulation by the insurers themselves. For this reason, it is felt that detailed description of the Law Commission's proposals would be inappropriate in a 'book of this size'.¹²³

6.2. UNITED STATES OF AMERICA

Consumer awareness in America started at the end of the 19 Century. In 1890, the United States enacted the first anti-trust Act. The Act declared legislation namely the Sherman Anti-trust Act. The Act declared every contract, combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce, to be illegal. However, this Act could not respond to the widespread pressure for increased protection of consumers. The Federal Trade Commission Act and the Clayton Act were the two major legislations passed in 1914. The Federal Trade Commission Act is the oldest and the most prominent statute for the protection of the consumers. The Act authorised the Federal Trade Commission to correct unfair methods of competition and for this purpose the commission under the Act was given double authority. In 1938 this Act was amended by the Wheeler-Lea Act 1938 extending the scope of the Act to cover unfair or deceptive act of practices as well as unfair methods of competition. In 1975, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act 1975 further strengthened the Commission's rule making and other authority over unfair and deceptive acts and practices. The Commission is organised into two principal operating bureaus, the Bureau of Consumer protection and the Bureau of Competition. The Bureau of Consumer Protection has the principal responsibility of monitoring advertising and labelling and deceptive practice. There are

¹²³ *Ibid*

numerous other legislations of consumer protection in addition to these which cover Consumer Credit Protection Act, 1968, Consumer Leasing Act, 1998 Fair Packaging and Labelling Act, Consumer product Safety Act. These Acts provide protection to the consumers in several ways. Finally, Uniform Commercial Code attempts to protect purchaser of the goods through a requirement of 'good faith' and a prohibition of 'unconscionable' practice. The provisions of the Code have been widely incorporated in subsequent Uniform Consumer Sales Practices Act, Uniform Residential Landlord and Tenant Act, Uniform Land Transaction Act, Uniform Simplification and Land Transfers Act, Uniform Condominium Act, Uniform Planned Community Act, Model Real Estate Co-operative Act, and Uniform Common Interest Ownership Act.¹²⁴

The U.S. insurance industry was build on the British model. The year 1735 saw the birth of the first insurance company in the American colonies in Charleston, SC. The Presbyterian Synod of Philadelphia in 1759 sponsored the first life insurance corporation in America for the benefit of ministers and their dependents. And the first life insurance policy for the general public in the United States was issued, in Philadelphia, on May 22, 1761.

In the United States a variety of laws at both the federal or state levels to regulate consumer affairs. Federal consumer protection are mainly enforced by the Federal Trade Commission and the U.S. Department of Justice.

At the state level, many states have a Department of Consumer Affairs devoted to regulating certain industries and protecting consumer who use goods and services from those industries.

For example, in the U.S. State of California, the California Department of Consumer Affairs regulates about 2.3 million professionals in over 230 different professions, through its forty regulatory entities.

In addition, California encourages its consumers to act as private attorneys general through the liberal provisions of its Consumers Legal Remedies Act, California has the strongest consumer

¹²⁴ *Supra note*, 112

protection laws of any US state, partly because of rigorous advocacy and lobbying by groups such as Utility Consumers Action Network.¹²⁵

Policy reserves for life insurance and annuities are valued in accordance with provisions of the insurance law of the state in which the company is domiciled, theoretically, the policy reserve represent the present value domiciled. Theoretically, the policy reserve represent the present value of future guaranteed benefits reduced by the present value of future net premiums. However, present values are determined at rates lower than current interest rates, and thus reserves may be conservatively stated. Two major valuation methods are net level or modified preliminary term. The two most significant factors in determining policy reserve are the mortality and interest rate assumptions. Published reserve are based on various interest rates and mortality tables are available for most plans of insurance.

In 1835, the infamous New York drew people's attention to the need to provide for sudden and large losses. Two years later, Massachusetts became the first state to require companies by law to maintain such reserves. The great Chicago fire of 1871 further emphasized how fires can cause huge losses in are spread among several companies, was devised specifically for such situations. More advancement was made to insurance during the process of industrialization. In 1897, the British government passed the workmen's Compensation Act, which made it mandatory for a company to insure its employees against industrial accidents.

INSURANCE REGULATION IN USA

Insurance is primarily regulated at the state level. The federal McCarran-Ferguson Act, passed in 1945, established that federal acts that do not expressly purport to regulate the "business of insurance" do not preempt state laws and regulations that regulate the "business of insurance." Each state operates independently to regulate their own insurance markets, typically through a state department of insurance. Model acts and regulations promulgated by the National Association of Insurance Commissioners (NAIC) provide some degree of uniformity between states. These models do not have the force of law and have no effect unless they are adopted by a

¹²⁵ *Supra note*, 12

state. They are, however, used as guides by most states, and some states adopt them with little or no change. In recent years, some have called for a dual state and federal regulatory system for insurance similar to that which oversees state banks and national banks.¹²⁶

In the state of New York, which has unique laws in keeping with its stature as a global business center, former New York Attorney General Eliot Spitzer was in a unique position to grapple with major national insurance brokerages. Spitzer alleged that Marsh & McLennan steered business to insurance carriers based on the amount of contingent commissions that could be extracted from carriers, rather than basing decisions on whether carriers had the best deals for clients.¹²⁷ Several of the largest commercial insurance brokerages have since stopped accepting contingent commissions and have adopted new business models.¹²⁸

CONSUMER PROTECTION: THE ROLE OF THE COURTS, THE LAW AND THE INSURANCE COMMISSIONER

If one feels that all that the insurance company promised has not been received and that all that the contract guaranteed was not provided. One has the opportunity to bring the case to court. The court, if it is convinced that the consumer has not been dealt with fairly, can force the insurance company to correct the situation. However, most consumer grievances against insurance companies are not so serious as to require courtroom litigation. The usual reason for litigation is denial by insurer of a claim for payment by the insured.¹²⁹

An insurer has many legitimate reasons for denying claims. The insured may have been involved in fraud against the insurer. The contract might not be in force because premiums were not paid currently. The insured might have suspended the coverage by breaching a condition of the contract. The cause of the loss might not have been a covered peril. The possibilities for a legitimate denial of a claim are numerous. However, most of these grounds for denial raise

¹²⁶ *Ibid*

¹²⁷ *Ibid*

¹²⁸ *Ibid*

¹²⁹ *Ibid*

questions of fact. Were the premiums paid promptly? When was the notice of cancellation mailed? What, in fact, was the proximate cause of the loss? Questions of fact such as these must be resolved in a court. It is the function of a court to protect the legitimate rights of both the insured and the insurer. If an insurer were to pay claims that legitimately should be denied, it would hurt the interests of all the members of the insurance pool by increasing the costs. On the other hand, the illegitimate denial of valid claims by an insurer is an intolerable denial of a consumer's rights, and courts can prevent such an insurance contract.

In regard to the role of the courts, mention must be made of the legal doctrine of *stare decisis*, which translates literally into to stand by decisions. In practice, the doctrine means that current court decisions will be consistent with previous decisions will be consistent with previous decisions involving the same, or essentially similar, facts. That is, past court decisions will generally follow the past precedent. Thus, for example, if one state court decides that the term "animals" includes "birds," the first time the issue is raised in litigation that precedent will generally be followed in that state. If a court in another state decides that, if a contract means to exclude, or include, bird damage, it must specify "birds" and "animals," that decisions will be precedent setting in that state. Stare decisis adds certainty to the outcome of litigation, but it also greatly enhances the role and power of the court in the area of consumer protection.

The insurance law of the various states provides the consumer with essential protection. For instance, Article 9-D of New York state's insurance law is entitled "unfair Methods of Competition and Unfair and Deceptive Acts and Practices. One part of this article states that "no person shall engage in this state in any trade practice which defined. To be an unfair method of competition or unfair or deceptive act or practice in the business of insurance. The article then goes on to define several prohibited unfair or deceptive acts or practices. The list includes (1)

issue or circulation of false literature, (2) making false statement or rumors as to insurance institutions, and (3) making incomplete comparisons between insurance contracts.¹³⁰

New York's Article 9-D is an example of a law that prohibits direct abuse of consumer's interest. In some broad sense, all the insurance law is designed to protect the consumer's interest. Rules and regulations governing company solvency, licensing of agents, approval of policy forms, licensing of insurance companies, and rate regulation are all designed to promote and protect consumer rights. The law, however, is fairly rigid thing. It can deal only with issues in general. It can mark out boundaries of acceptable and unacceptable actions. But for dealing with particular problems on a daily basis, a more flexible institution is needed. The state insurance commissioner is this flexible institution. The combination of a state's insurance law and the actions of the state's insurance commissioner provide state with insurance regulation.

Every state has an administrator in charge of insurance regulation. The job of this individual is to interpret and enforce the provisions of the state's insurance law or code. This administrator is know as the commissioner of insurance, or the director of insurance, the superintendent of insurance, or the insurance commissioner.

Since, in the broad sense, all the insurance law can be seen as providing protection for consumers, in this same broad sense all insurance law can be seen as providing protection for consumers, in this same broad sense all the commissioner's duties can be seen as providing protection for consumers. More specifically, consider again the wording of New York's Article 9-D.

The superintendent shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person is engaged in any unfair method of competition.

¹³⁰ *Ibid*

In each state a **life insurance commissioner**, who has the primary responsibility of protecting insurance consumers, is charged with the administration & enforcement of that State's life insurance laws.

In the State of California the job of the Insurance Commissioner is describe in Sections 12900-12906 of the California Insurance Code. The California Insurance Commissioner is elected to a four year term & cannot serve as Insurance Commissioner for more than two terms. Section 12905 requires the Insurance Commissioner to maintain offices in San Francisco, Sacramento, Los Angeles, and San Diego.¹³¹

Insurance commissioners receive their authority from the insurance code. They then must interpret and apply the code to individual problems. When consumer complaints come to their attention or to the attention of deputies they must determine whether or not a violation of the insurance code has taken place. If a violation has occurred, appropriate action must then be taken.

Many authorities give great weight to the insurance regulation of New York state, which has long been recognized as a leader in this area. Insurance companies operating in New York must obey New York regulations in whatever state they transact business. This comment should not be construed to mean that companies not transacting any business in New York are not good, financially sound companies; they well might be. But for the consumer having little other information, the knowledge that accompany can meet the strict requirements of the New York insurance regulations should be a reassuring fact. One example of an area in which New York regulations provides important protection to the consumer Section 213 of the New York Insurance Code. This section provides a limit on the acquisition expenses that a company can incur in obtaining new business. A survey by the U.S. senate found that Section 213 has had a significant effect in reducing one of the costs of acquiring new business.

¹³¹ For information about life insurance regulation in other states you can access a Map of Insurance Regulators that will give you access to insurance Commissioners across the United States.

Insurance regulation is no absolute guarantee of the solvency or of the future performance of an insurance company. Regulated insurance companies, even those doing business in New York, have become insolvent. While insurance regulators do make great effort, and usually do succeed, in protecting the consumer, companies have become delinquent in the past. In fact, one of the largest frauds of all time, the case of the Equity funding corporation of America is destined to be long remembered because of the scope of the misdeeds involved.¹³²

DIFFERENCE BETWEEN ROLE OF COURTS AND ROLE OF COMMISSIONER

There is an important difference between role of courts and role of commissioner. The court will decide if the very Mean Insurance Company has been unfair in denying the claim for payment of John Consumer. However, if the insurance commissioner becomes convinced that the very Mean Insurance Company is unfairly denying numerous consumers claims, it is his duty to correct this situation or to withdraw this company licence to do business in his state. The court protects individual consumer from injustice the commissioner protects all the states consumers from injustice.

In recent years number of state Insurance Commissioners have taken innovative steps to protect consumers rights. The state of ohio, for instance, has made available a toll free telephone number so that any resident of ohio can call the Insurance Commissioner's office with questions or complaints.¹³³

6.3. LIFE INSURANCE IN INDIA

During the 19th century, many societies were founded to insure the life and health of their members, while fraternal orders provided low-cost, members only insurance. Even today, such fraternal orders continue to provide insurance coverage to members as do most labour organisations. Many employers sponsor group insurance policies for their employees, providing

¹³² *Supra note*, 12

¹³³ *Ibid*, pp.82-86

not just life insurance, but sickness and accident benefits and old-age pensions. Employees contribute a certain percentage of the premium for these policies.

After experiencing the Monopoly and nationalization, due to international pressures and treaties the government of India has opened the insurance sector to private players including the Multi Nationals.

The business of insurance essentially means defraying risks attached to an activity including life and sharing the risks between various entities, both persons and organizations. The important benefit offered by insurance is Protection to Beneficiaries in time of Contingency, Accumulation of saving and Channelling these savings into sectors needing huge long term investments for development of the Nation.

There are various forms of insurance and can be classified as life insurance, marine insurance, fire insurance and Miscellaneous insurance. In recent years Health Insurance has taken very important steps and there is growing demand for the same.

Life insurance plays insurance a pivotal role it is usually a long term contract, and as life is to end one day claim payment is certain. But in the case general insurance it is only term assurance for a specific period or journey , there may not be any claim. As the Life Insurance is long term contract the income over a period has to be judicially invested so that when there is a claim it can be honoured, normally insurance companies invest their money in long term investment and which do not have much implications to marked fluctuations.

Even though there are certain reference of concept of Insurance in Ancient Indian History the recorded history began in 1914 when the government of India started publishing returns of Insurance Companies in India. The Life Assurance Companies Act 1912 was the first statutory measures to regulate life insurance business. In 1938 with the view to protecting the interest of insuring public the earlier legislation was consolidated and amended by the Insurance Act 1938 with comprehensive provisions detailed and effective control over the activities of insures.

Insurance is a welfare measure, the role played by the Union of India in protecting its citizen in case of old age, sickness, and hence it requires more cases of undeserved want is not sufficient,

and hence it requires more concentrated attention. In Insurance contract intermediaries play an important role, whether the consumer is affected by the **directions** of Insurance Company to its intermediaries and the commission received by the intermediaries in selling a particular product.

In India, the need for consumer protection is paramount in view of the fact that there is an ever-increasing population and the need for many goods and services of which is no matching supply.

In India the consumer exploitation is mere because of lack of education, poverty, illiteracy, lack of information, traditional outlook of Indians to suffer in silence and ignorance of their legal rights against the remedy available in such case. It was therefore necessary that the a forum created where a consumer not satisfied with the goods supplied or services(including insurance) rendered may ventilate his grievance and machinery devised to afford him adequate protection.¹³⁴ The new law in the form of the Consumer Protection Act, 1986(COPRA) was enacted with this end in view. The provisions of COPRA shall be in addition to and not in derogation of the provisions of any other law for the time being in force.¹³⁵

As far Consumer Protection Act, is concerned it gives immense scope to the Consumer to ask for remedy. Consumer forums are bodies which function like courts in order to settle the consumer disputes. Their Composition is so made as to best represent the interests of the consumers, and they have specified jurisdiction. The next question is as to what procedure these forums adopt in order to deal with the consumer disputes. Section 13 of the Consumer Protection Act has detailed the procedure in context of district forum only. The state commission, under sec.18 of the Act, will follow the same procedure as followed by district forums with such modifications as necessary, and Sec.22 of the act empowers the Central Government to make rules with regard to the National Commission. The Consumer Protection Rules 1987, in turn, have included therein the procedure stated under Sec.13 of the Act.

¹³⁴ DR. ASHOK R. PATIL, "Consumer protection in life insurance Sector", INDIAN BAR REVIEW, Vol., XXXV(1 to 4) 2008, pp.247-276

¹³⁵ The Consumer Protection Act, 1986:Sec.4

The most important provision is Sec.25 of the Consumer Protection Act, every order made by the district forum or state commission, or the National Commission may be enforced in the same manner as if it were a decree of the court.

The trader, or complainant, or the opposite party, are supposed to comply with the orders. When any such person fails or omits to comply with the order, the district forum, or state commission, or the National Commission, as the case may be, may punish him with:

- (1)Imprisonment for a term ranging between one month and three years, or
- (2)With fine ranging between Rs 2000 and Rs 10000, or
- (3)With both

With the help of this provision, consumer can check the arbitrary act of the Insurance Company. And in most of the cases it happened that Branch Manager of LIC held liable and paid the compensation to the insurer.¹³⁶

¹³⁶ *Supra note*, 112, p.105

CHAPTER VII

CONCLUSION AND SUGGESTIONS

It is not new thing to introduce that LIC don't have weaknesses, as LIC is multi billion business they least bother about the poor insured or policyholder. With the beautiful slogans they attract the market and the LIC appears to lose interest in the policyholders soon after signing the insurance papers. This is what generally happening in India.

The LIC also caves into the onslaught of demands of agents, development officers & others. It is also agreed fact that Business with competition creates many problems like giving extra cover or triple benefit policies, but with that attractive plan they also puts some terms and conditions which generally consumer do not read or neglect. As a consequence of it when he approach after the maturity or death of the insured (by their legal representatives) then he come to know that conditions, which were defeats his claim easily. "Therefore the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner."¹³⁷

The establishment of IRDA and formulation of regulations by it is a very good effort to protect not only the policyholders and to control, encourage healthy environment in insurance business. But there is a need for better and proper implementation of these regulations. Under some of the regulations like regulations on protection of the policyholders, most of the times there is no effective check to ensure that the regulations are being followed. Even though the policyholders are more aware and informed than earlier, when they did not know all their rights. Hence, there is a need to make certain amendments to ensure better implementation of these regulations.

¹³⁷ See, *Life Insurance Corporation of India and Others V. Asha Goel Smt. and Another*, 2001 AIR(SC) 549, In this Landmark Judgement it was held that the authorities in charge of management of the affairs of the Corporation Should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.

As regards Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulations, 2000, it is important to increase the punishment for violation of the regulations as such a low punishment will not be sufficient to deter large companies from publishing advertisements which are not in accordance with the rules.

The insurance Ombudsman was established in 1998, but the achievement is very less because of many reasons. This is partly due to lack of awareness about the existence of this system and mostly due to the vast jurisdiction covered by the Ombudsman. There may be a case for creating this post in each State Headquarters and to give wide publicity about the role of the Ombudsman. And also there is a need for active participation in real sense of insurers in the dispute settlement process. The offices of the twelve insurance Ombudsman's are located at (1) Bhopal, (2) Bhubaneswar, (3) Cochin, (4) Guwahati, (5) Chandigarh, (6) New Delhi, (7) Chennai, (8) Kolkata, (9) Ahmedabad, (10) Lucknow, (11) Mumbai, (12) Hyderabad. Which shows that there are very less number of Ombudsman in India and most of the policyholders are not aware about such redressal procedure. Therefore, there is a need to appoint more Insurance Ombudsman and to intimate all the policyholder while making the proposal that they have scheme like quick redressal mechanism and they can directly make complaint to Insurance Ombudsman.

The additional solution for insured is to settle the dispute by approaching Consumer Dispute Reddressal Forum at the different level, i.e. District Forum, State Commission and National Commission depending on the territorial jurisdiction and pecuniary jurisdiction. Consumer Forum decides the dispute with nominal fees, quickly and summarily.

The amendment to section 45 of the Insurance Act, 1938 under the Insurance Laws (Amendment) Bill, 2008 is not necessary because as we know that, in India majority of people are uneducated, poor, and unaware of their rights. By looking into the present Indian situation, the scope of insurance companies to suppress the interest of consumer should be minimising by the more lenient laws towards insured.

To deal with the complaints of the policyholders, the existing system of Ombudsman under the Redressal of Public Grievances Rules, 1998, is found not satisfactory from the point of view of policyholder. The remedy under the Consumer Protection Act, 1986 has also not proven to be effective in the large number of cases pending decision. Therefore, the Commission has recommended that Grievance Redressal Authorities (GRA) should be constituted to deal with (a) disputes between the Insured and the Insurer; (b) disputes between Insurer and the Intermediaries and (c) disputes between Insurer and Insurer. However, the GRA shall have no jurisdiction in cases relating to third party motor vehicle insurance and marine insurance. The GRA shall consist of one judicial member who will be the Chairman and the other two technical members. Apart from the GRA, it has been recommended that an Insurance Appellate Tribunal (IAT) should also be constituted to hear the appeals from the order of GRA. The IAT shall also hear the appeal against the orders passed by the IRDA and all orders passed after the adjudication by investigating officers appointed by the IRDA. There will have to be a further statutory appeal to the Supreme Court from the decision of the IAT.

In respect of the repudiation of life insurance policy, the existing section 45 of the Insurance Act, 1938 provides that within two years from the date of policy, an insurer can repudiate the policy on the ground that any material fact in the proposal or document is inaccurate or false. After the expiry of two years an insurer can repudiate the policy on fulfilling all three conditions mentioned in second part of section 45. The Life Insurance Corporation of India made an important suggestion that if a life policy had been accepted for about six years, its validity should not be allowed to be questioned thereafter, though under the present provision in section 45, the LIC could question the validity after two years, without any time limit.

While balancing the interests of policyholders and the insurers and keeping in view the earlier recommendations of the Law Commission made in its 112th Report, the Commission has now recommended taking into account the suggestion of the Life Insurance Corporation of India, that after the expiry of five years, no policy of life insurance can be repudiated on any ground

whatsoever. However, an insurer can repudiate a policy before the expiry of five years on the ground that the insured has made a mis-statement of or suppressed a material fact. Accordingly, the Commission has recommended that section 45 should be substituted.

Why always consumer/insured has to suffer? There are many countries where consumer awareness is high and the best example is United States of America. The concept of "*Bad faith*", which is called as Insurance bad faith, is a legal term of art that describes a tort claim that an insured person may have against an insurance company for its bad acts. Under the law of most jurisdictions in the United States, insurance companies owe a duty of good faith and fair dealing to the persons they insure. In turn, the development of the modern cause of action for insurance bad faith can be traced to two landmark decisions of the Supreme Court of California: *Comunale v. Traders & General Ins. Co.*, 50 Cal. 2d 654, 328 P.2d 198, 68 A.L.R.2d 883

That's what we want in India, why should insurance company acts like arbitrator and rejects claim on the trivial ground. Therefore, there should be some duty on the Insurance Company to give speedy justice to the insured. The delay in settlement of dispute is also another issue of concern and therefore there is a need to create posts like Insurance commissioner in America. Insurance Commissioner is supposed to be the best method for consumer grievance redressal and to strengthen the efficacy and effectiveness of Life insurance business. Otherwise, what would happen that the Insurance sector would be contributing 8 % to country's GDP and on the other hand policyholders/consumers has suffering throughout the life and after the death as well.

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