INSURANCE AND CONSUMERS

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ABSTRACT

Insurance plays a crucial role in mitigating risks and providing financial security to individuals and businesses. Insurance is a risk pooling and risk-sharing mechanism. Insurance is a contract between an insurer and the insured whereby one party called the insurer undertakes in exchange for a fixed sum called a premium to pay the other party called the insured a fixed amount of money after happening of a certain event. Insurance inculcates the habits of savings and access to social security norms. Insurance is a risk transfer mechanism by which one organization can exchange its uncertainties and losses to ascertain contribution and thereby receive compensation for loss suffered by it from the common fund of the insurer. As the economy grows the living standards of people increase, and as a consequence demand for insurance increases. Sir C. Rangarajan, former Governor of RBI stated that "As the asset of people and business enterprises increase in growth process widening the economy demand for new types of insurance products emerges." Insurance plays a multifaceted role in society as it protects against vulnerabilities like health, accidents, disasters, and many other losses caused to assets and people on happening uncertain events. Insurance aids Economic development through its financial intermediation function by providing low-cost and long-term funds for development activities. Emerging startups will increase the demand for Insurance. Insurance promotes Economic efficiency through risk transformation, risk pooling, and risk-sharing techniques. It helps to increase public savings and deployment of funds as investments for development under a cooperative system. It mobilizes resources and supplies for the economic growth of a country. Parliament enacted IRDAI(Insurance Regulatory and Development Authority) Act,1999 for swift and effective management in Insurance Sector. IRDAI regulates Insurance Business in India. IRDAI formulated various schemes to solve the grievances of the consumers. Insurance companies provide various services to their consumers. They include Life Insurance, General Insurance, Health Insurance, Property Insurance, etc. This article includes a brief study of the relationship between Insurance and consumer behaviour, the Consumer grievance redressal system, COVID-19's effect on consumers and Insurance Companies, Legislation/Statutes ruling Insurance, and its impact on Insurance Companies and

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Consumers. Further, we will study the Evolution of Insurance Law, the Functions of IRDAI, and the important objectives of Insurance law.

INTRODUCTION

Insurance is a contract between two parties Insurer and the Insured to indemnify future uncertain losses or damages caused to the insured. The insurer is the one who indemnifies the loss or damage and the Insured is the one who claims the Insurance. The insured should pay a premium to the Insurer every year at a rate prescribed by the insurance company (Insurer). These days especially after the pandemic Insurance sector had a boom in the market as many people got themselves insured. As startups are increasing rapidly in India the number of Insurance seekers is also increasing. Businesses are getting themselves insured so that the loss faced by them due to uncertain risks in the future will be covered by the Insurance companies. Insured are considered consumers under the Consumer Protection Act, of 1986. The consumer is anyone who buys goods and avails services for consideration. If there is any deficiency of service a consumer can sue the Insurer (Insurance Company) under section 2(1)(g) of the Consumer Protection Act, 1986. Consumer Protection Act, of 1986 was enacted by the Parliament to protect the rights of consumers and ensure that the rights of the consumers are not violated. With the changes in consumer behavior a new Consumer Protection Act, 2019 was enacted. It is not in derogation rom any law/statute enacted by the Parliament. IRDAI(Insurance Regulatory Authority of India) has also taken a few steps and enacted a few schemes for grievance redressal to maintain good relations with consumers. IRDAI has its redressal mechanism. A policyholder (Consumer) has 2 options for grievance redressal either they can opt for suit under Consumer Protection Act or solve their problem through the IRDAI grievance mechanism.

Insurance companies offer various types of Insurance Policies for Insurance seekers. An Insured must be very careful while opting for the Policy and make sure that he/she submits all the relevant documents to the company and claim the Insurance. Not having relevant documents or non-payment of premiums regularly helps Insurers (Insurance Companies) to escape their liabilities. Insured must make sure that they read all the terms and conditions of the policies thoroughly before claiming the Insurance. Nowadays many banks are tying up with Insurance companies while offering the loan. People can claim Insurance with all types of loans. Many people opt for a loan with Insurance to avoid the burden on the family if any unforeseen circumstance arises in the future like unemployment, disability, sudden death, etc the Insurance Company will pay off the loan and the family will not have any burden to pay off the loan. In this article let's also study the liability of Insurance companies for banks and consumers.

EVOLUTION OF INSURANCE LAW

There are three phases in the evolution of Insurance law

1) Pre-Nationalized-: British established Insurance Company under respective Royal Characters to undertake the Insurance business in India. Provisions of Companies Act,1857, Customs and Practices of Insurance Business provided guidance to form Insurance Contracts.

2) Post-Nationalised-: On the recommendation of the S.Ranganathan Committee Government of India decided to nationalize the Insurance business and an ordinance was issued to establish LIC(Life Insurance Corporation). Control of the Insurance company was initially given to the Ministry of Commerce of the Central government and later transferred to the Ministry of Finance, Government of India.

3)Liberalized phase-: In 1983 R. N.Malhotra Commission recommended a strong body on the lines of SEBI(Security Exchange Board of India) with sufficient powers of control and the Interior Insurance Regulatory Authority was established to undertake the control system temporarily till the legislative body is formed. Later Parliament enacted IRDA(Insurance Regulatory Development Authority) Act,1999 to regulate Insurance Business in India for swift and effective management of Insurance Business.

IMPORTANT PRINCIPLES ASSOCIATED WITH INSURANCE CONTRACT

UbberimaFedi (Utmost Good Faith): A contract of Insurance should be made in utmost good faith. The insured should disclose all the facts and be transparent with the insurer to make sure that the contract doesn't become void. If any fact is hidden and disclosed later it will be a void contract and the insurer will not be held liable to compensate the loss suffered by the insured. However, Caveat Emptor(Let the buyer beware) is an exception.

Insurable Interest: This principle says that the Insured need not necessarily be the owner of the property but they should suffer the financial loss to claim the policy.

Law of Indemnity: Insurance Contracts are covered under Section 124(Indemnity) of the Indian Contract Act.[1]

[1]Indian Contract Act, 1872; Section 124

Proximate cause: According to this principle if the loss is caused to more than one property mentioned in the policy then the property to which the maximum loss is suffered will be considered and compensated according to the policy.

Subrogation: According to this principle the ownership of the property will be transferred to the Insurer once it is compensated by the insurer and the insured will not be able to claim any profits of the property or doesn't have the right to sell the property the ownership is transferred.

RIGHTS AND DUTIES OF INSURER AND INSURED

Rights and DutiesofInsurer

- Duty to defend: The insurer has to defend you or indemnify you from uncertain circumstances.
- Insurance Contract: The responsibilities in the insurance contract are bound by the insurer to follow. If any term of the policy is ambiguous it will be interpreted by court.
- Claim Adjustment: The claim adjuster should see reasons to compensate the policyholder and not deny compensating the policyholder.
- General Duties: The Insurance Company has a legal duty to respond to the insured and pay the claimed amount if the claim is found valid.
- Fair Deal: Insurance Company's important principle is ubberimafedi(utmost good faith) which occurs through fair and transparent deals.
- Payment: The insurer should pay the amount claimed to the insured.

Rights of Insured

- If the company accepts the proposal of the insured then the insured should receive the policy bond within a reasonable period.
- If in case the policy bond is lost by the insured then the insured can get a duplicate copy of the same which confers the rights as in the original policy.
- The insured can change the nominee details even after the issuance of the policy by informing the insurer.

Duties of Insured

- Fill up the proposal correctly.
- To pay premiums on time.

- Be transparent.
- Insured should be careful with confidential information like policy numbers and make sure that they don't say it to anyone.
- The insured should inform the Insurance company immediately if they lost the documents so that the company can provide them with a duplicate copy that contains the rights same as in the original copy.

LAWS RELATED TO INSURANCE

1. Indian Contract Act, 1872

The provisions applicable in the Indian Contract Act are:

a) Essentials of Contracts[2]
b) Discharge of contract[3]
c) Payment of damages[4]

Civil Procedure Code, 1908[5]

Insurance Act,1938

IRDA(Insurance and Regulatory Development Authority) ACT, 1999

Consumer Protection Act, 1986

Public Liability Insurance Act, 1991, etc

IMPORTANT OBJECTIVES OF INSURANCE LAW

1. To control and regulate transactions of the Insurance Business
2. Avoid Payment of avoidable claims
3. Proper channelization of funds
4. Monitor the whole range of activities of the Insurance Industry
5. Promotion and Perseverance of high standards of professionalism in the conduct of the Insurance business.
6. Coordination of Investments and activities of insurers
7. Provide fair treatment to the policyholders and regulate the reinsurance business.

[2] The Indian Contract Act, 1872 Section 10
[3] The Indian Contract Act, 1872 Section 63
[4] The Indian Contract Act, 1872 Section 73
[5] CPC,1908 Section 60

DOUBLE INSURANCE

Double Insurance: Where two or more policies are affected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act the assured is said to be over-insured by double insurance. [6]Double Insurance arises when the same party is insured with two or more insurers in respect of the same interest on the same subject matter against the same risk and for the same period. Double Insurance applies to all Insurance contracts based on the concept of Indemnity.

There are different clauses through which the Insurance Company tries to escape its liability. They are:

Liability Exemption Clause: According to this clause if one person is insured under two insurers the insurance company escapes its liability by inserting this clause. According to this clause, the Insurance company inserts a clause stating that the company will not be held liable if the insurance holder is insured with the other insurer.

Notification Clause: According to this clause the insurer needs to give written notice immediately if he gets some risk. Failure of issuing such written notice may lead to non-issuance of compensation by the Insurance Company.

Relatable Proportion Clause: This clause aims to prevent the insured from claiming more amount when the insured has 2 policies.

Excess Clause: According to this clause the liability of the insurer will arise only in case when the loss suffered crosses the limit of the other insurance.

The compensation for the damage or risk which is uncertain will not increase more than how much loss you have suffered irrespective of how many policies you claimed from how many insurers. Having multiple Insurers will make you pay more premiums than required. It will also be a disadvantage for you when you opt for two or more policies together because Insurers will mostly look to escape their liability. Having many Insurers will cause a lack of insurers' trust. There are many chances that when a dispute will arise and if any of the parties approach the court for justice then Insurance Companies take the help of the clauses mentioned above to escape their liability and you will not be able to get even the compensation. A quick note to be noted, having two different policies under two different insurers doesn't amount to double Insurance whereas having the same policy under two

[6]The Marine Insurance Act, 1963 Section 60

different insurers will amount to double insurance. For there to be double Insurance the policies, subject, and risk need not be identical necessarily while the essential element is a common liability to indemnify the same insured in respect of a specified loss.

FUNCTIONS OF INSURANCE COMPANIES

Financial Aid: The primary function of the Insurance company is to provide financial help against unforeseen future risks, uncertainties, accidents, etc.

Evaluate Risks: Insurance Companies provide financial aid by evaluating and calculating risks on various factors that cause the risk.

Collecting Premium: Insurance companies generate finance by collecting funds from the general public in the form of premiums.

Develops Industries/Business: Insurance provides an opportunity for businesses/industries to grow as it makes sure that future uncertain losses are covered by the insurer.

Medical Risk: Insurance Companies make sure to provide financial aid when a person faces a threatening disease unexpectedly.

Sharing of Risk: The Insurance companies share the risk of the insured when the damage, loss, accident, etc occurs and provides financial aid according to its policies.

Provides Capital: In an economy where capital is needed badly and lacks capital Insurance helps the economy. The funds accumulated by the Insurance Companies are used during the uncertainties faced by the economy in the future and they financially aid the economy to be stable. The inflation rate decreases when Insurance increases. Further, it also helps in economic progress.

GRIEVANCE REDRESSAL MECHANISM

Insurance is coverage by contract whereby one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril. The laws related to Insurance are:

Indian Contract Act,1872[7], CPC,1909, Insurance Act,1938, IRDA Act,1999, etc.

In case of any complaint/grievance, a consumer can approach GRO (Grievance Redressal Officer) and file a complaint with the relevant documents. If the matter isn't resolved within 15 days by GRO (Grievance Redressal Officer) the consumer can approach IGMS (Integrated Grievance Management System) and file a complaint. If the dispute is still not settled then the

[7]Indian Contract Act,1872 Section 124

consumer can escalate to the Ombudsman or the IRDAI (Insurance Regulatory Development Authority). Ombudsman and IGMS (Integrated Grievance Management System) are the schemes formulated by IRDAI (Insurance Regulatory Development Authority) to regulate the grievances of consumers.[8]

In case of any grievance/dispute with the Insurance Company or any violation of consumer rights, Consumers can approach Consumer forums under the Consumer Protection Act, of 1986. The consumer should approach the consumer forums according to the consideration paid under the Consumer Protection Act, of 1986. There are three Consumer grievance redressal commissions.

1) District Commission (upto 50Lakhs)

2) State Commission (50 lakhs-2crores)

3) National Commission (above 2 crores)[9]

- **The Insurance Ombudsman Scheme**

Insurance Ombudsman Scheme was created in 2017 by the Government of India (GOI) for systematizing the procedure of handling grievances. It is a cost-effective and hassle-free redressal system.

IMPORTANCE OF CONSUMER PROTECTION AND INSURANCE SERVICES

Insurance is included in the central list of the Indian Constitution. The central government has all the powers to legislate and enforce Insurance laws. Insurance laws are uniform across all the states and Union Territories of India. The Insurance Act doesn't define the term Insurance but it defines various types of Insurance like Life Insurance, General Insurance, Marine Insurance, and miscellaneous. The Insurance Companies (Insurers) need to build trust with the Policy Seekers (Insured) to maintain the business. Trust will be maintained when the Insured is happy with the policies offered and when they are aided financially as per the policy. Insured see for the legal protection of the policy while seeking the Insurance. A healthy Insurance sector is very important for a developing economy for its economic growth. The legal protection for the insured is given under the Consumer Protection Act, of 1986. As

[8] NLSIU "Procedure for Complaint"<https://clap.nls.ac.in/wp-content/uploads/ConsumerGuide/11INSURANCE.pdf> accessed 18-06-2023

[9] Ministry of Consumer Affairs, Food & Public Distribution, "pecuniary jurisdiction for entertaining consumer complaints"<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1786342#:~:text=District%20Commissions%20shall%20have%20jurisdiction,not%20exceed%2050%20lakh%20rupees.>accessed on 18-06-2023

stated above the insured can sue the insurer under section 2(1)(g) of the Consumer Protection Act, 1986. The insured should make sure that all the relevant documents and information are provided for the insurer and has read the terms and conditions of the policy thoroughly. The consumer is also protected under the IRDAI(Insurance Regulatory and Development Authority of India) Act, 1999. Apart from the mentioned statutes, consumers are also protected under various statutes like the Motor Vehicle Act, of 1988. Under this act, a consumer can sue the insurer if they aren't getting compensation for the loss suffered due to an accident. However, the insured should make sure that he is claiming the compensation according to the terms and conditions. Consumers are further protected under LIC (Life Insurance Corporation) Act, 1956; General Insurance Business(GIB) (Nationalization) Act, 1972; Marine Insurance Act, 1963; Employees State Insurance Act, 1948; Public Liability Insurance Act, 1991. If an insured is initiating a suit they should make sure that the suit is filed within the limitation period of 3 years as mentioned under the Limitation Act, 1963.[10]A few landmark cases of consumer disputes with Insurance are as follows

National Insurance Company Ltd. Vs. Hindustan Safety Glass Works Ltd. & ANR: In this case, the National Insurance Company claimed that it is not liable to compensate the insured by stating a term of the policy. National Commission held that the insured as the claim is functional and according to the policy. [11]

K.P.Desai vs United India Insurance Company (2013): In this case, the United Insurance Company denied to pay the relief stating that the surgery done was purely for cosmetics and it is not covered under the policy. The District Commission held the United Insurance Company Liable to compensate. The United Insurance Company further appealed to State Commission and the State Commission upheld the order of the District Commission. Further, the United India Insurance Company appealed in Supreme Court and Supreme Court upheld the order of the District Commission as there was no evidence to demonstrate Lasik surgery is not a correct therapy and the complainant was suffering from a serious eye problem. Hence Supreme Court upheld the order of the District Commission/ Forum.

Further, as stated above nowadays banks are collaborating with Insurance companies and offering insurance along with the loan which makes the insured work easier. When a person is claiming Insurance for a loan they are protected under both Banking laws and Insurance

[10]Limitation Act, 1963
[11]National Insurance Company Ltd v. Hindustan Safety Glass Works Ltd. and Anr.(2017) 5 SCC 776

laws. Banks are regulated by RBI (Reserve Bank of India). Two key statutes protecting consumers in banking are the Banking Regulation Act, of 1949 and the Reserve Bank of India Act, of 1934. RBI (Reserve Bank of India) has its own Ombudsman Scheme under the act for consumer protection like IRDAI.

- **Should insurance be a party in professional indemnity cases to compensate?**

The issue of an Insurance company becoming a party arises in the case of Professional Indemnity, especially in the medical profession. Many insured professionals claim their insurance when there arises a case of medical negligence. The National Commission gave two controversial orders on this issue. The two controversial cases are:

Bajaj Allianz General Insurance co ltd vs Devendra Mohan Anand &Anr:[12] National Commission held that the insurance co can't be a party because it's a dispute between doctor and patient and the COA of the Insurance Co is contingent and hypothetical. If the insurance co becomes a party then it causes delays in the case and it's against consumer laws.

Dr.Tarunjit Dutta Roy vs Branch Manager New India insurance company ltd &Ors:[13] The National Commission held that if Insurance isn't a party and the insurance company denies compensation then it is justified. There are a few other rulings that were held by National Commission where it stated that the Insurance Company is a proper/ necessary party. The rulings are as follows:

Dr. C.C Choubal vs Pankaj Srivastava:[14] National Commission set aside the orders of the district commission and state commission and held that the Insurance may not be a necessary party but it would be more appropriate if the Insurance company is made co-respondent. It disposed of the complaint stating to file a fresh memo of the parties shall be filed by the petitioner and thereafter a notice shall be issued to the respondent and the complaint will thereafter be disposed of in accordance with law.

Ram Kumar Sharma vs Columbia Asia Hospital &Anr:[15] National Commission held that the Insurance company should be made as a party and ruled the case in FAVOUR of the respondent.

[12] Bajaj Allianz General Insurance co ltd vs Devendra Mohan Anand &AnrCivil Misc. Appeal No. 1785/2018
[13] Dr.Tarunjit Dutta Roy vs Branch Manager New India insurance company ltd &Orsrevision Petition no. 1341 of 2010
[14] Dr. C.C Choubal vs Pankaj SrivastavaIV (2003) CPJ 111 NC
[15] Ram Kumar Sharma vs Columbia Asia Hospital &AnrCC.NO. 589 OF 2015

R G Stone Urological Research Institute &Ors vs Col. YP Singh:[16] National Commission held that the Insurance Company should be the party and ruled in favour of the defendant/ respondent.

Considering the above-mentioned orders/judgments of the National Commission having the Insurance Company (Insurer) as a party would be suggestable. Being transparent with the insurer, disclosing the relevant information to the insurer, and having an Insurance company as a party doesn't only help in getting the compensation but also helps to build trust which is the most important between two parties.

IMPACT OF COVID-19 ON INSURED

Is COVID-19 considered a disaster/ calamity/ accident, etc under the Insurance policy? Are Insurance companies liable to compensate the employees who went unemployed due to unforeseen circumstances during COVID-19? Are insurers liable to compensate the people who underwent treatment for COVID-19?

In many cases, during COVID-19 the employees claimed their insurance under the Employee's State Insurance Act, of 1948. Insurance Companies had a lot of stress on them to compensate all the employees who went unemployed due to COVID-19. Insurance Companies argued that COVID-19 was not mentioned in their policies. But, the nature of the disasters or accidents mentioned in their policy like hurricanes, floods, etc is similar to the nature of COVID-19. Suffering, loss of life, substantial loss of property, and hardships were faced during COVID-19 which are similar in nature to the disasters/ accidents mentioned in the policy. According to Section 2(8) of the Employee's State Insurance Act, 1948 employee injury means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.[17]Considering the above-stated provision and the nature of COVID-19 the Insurer (Insurance Company) should be held liable.

During COVID-19 there was a lot of stress even on insurers (Insurance Companies) to provide insurance to the insured. Most of the insured who fell sick due to covid-19 and need to have treatment and couldn't afford the treatment claimed their insurance. Many doctors claimed their professional indemnity during Covid-19 as there were many medical negligence

[16] R G Stone Urological Research Institute &Ors vs Col. YP SinghCC NO: 92/2001
[17] Employee's State Insurance Act, 1948 Section 2(8)

cases and consumer forums/ commissions in some cases held doctors to compensate the patients. Many employees claimed their insurance under the Employee's State Insurance Act, of 1948. Many businesses went to losses and claimed insurance. Everything was piled up on the companies and some insurance companies were lack of funds and couldn't provide sufficient financial aid. Many people realized the importance of Insurance at the time of covid-19 and many businesses and people who weren't insured started getting insured. The number of policy seekers increased after COVID-19 and there was a boom in the Insurance sector.

CONCLUSION

Insurance plays a crucial role in the economy. It protects the insured from unforeseen risks/ damages/uncertainties/ vulnerabilities/ accidents, etc. The risks of uncertainties covered by the Insurance are Physical risks of assets, Financial risks, and Commercial risks and are met with Insurance. Insurance is a risk transfer mechanism by which one organization can exchange its uncertainties and losses to ascertain contribution and thereby receive compensation for loss suffered by it from the common fund of the insurer. The common fund is collected through premiums from the insured. An Insurance Company offers various types of Insurance. The insured are legally protected under various statutes. Insurance is listed in the central list of the constitution. The central government has the power to legislate and enforce the laws. Double Insurance gives an advantage for the insurer to escape their liability and hence, having single insurance is preferred. Being transparent with the insurer and sharing all the relevant information/notifications helps to build trust between the parties. Making the insurance company a party while indemnifying professional insurance is preferred. Having an insured loan is preferable to an uninsured loan to avoid the burden on the family to pay off the loan.

With technological developments, e-insurance is emerging. With the increase in online startups and online businesses, e-insurance started booming. With the technological advancements there is also an advancement in law. Parliament enacted Consumer Protection Act, 2019 deals with e-commerce and protects the interests of consumers.