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INSURANCE SCENARIO SANS INTERMEDIARIES: WHETHER TENABLE?

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Abstract

Insurance companies do the business of insuring people against perils, whose main business is to club people sharing the same risk; collect the share of contribution from all of them, and then payout the compensation to the sufferers. The business of insurance companies both life and non-life is procured through an individual who is appointed as an agent. Intermediaries play a critical middleman role in the distribution and operations of insurance. Besides bringing insured's and insurers together, intermediaries also provide advice to insured's, gather underwriting information for insurers, and generally help facilitate the relationship between insured and insurers all the way through the claims process. Despite the critical importance of intermediaries, judicial decisions considering the duties, obligations, and loyalties of intermediaries have left the law muddied and insured's largely unprotected.

Keywords: Insuring, Perils, Risk, Agent, Information, Critical importance.

ALL ABOUT INSURANCE

UNDERSTANDING THE CONCEPT OF INSURANCE

Hindu philosophy gives the axiomatic truth of the nature of insurance 'Yat bhavathi tat nasyathi' which means whatever is created will be destroyed. The universe as a whole is created, as a thing created it is but natural that it will be destroyed. Creation is inevitably followed by destruction, which involves risk. Risk is therefore inevitable in life. So in life and business there lie a variety of risks. Risk is closely connected with ownership. The owners want to save themselves from risk and out of this desire, is the business of insurance born.[1]

Insurance is an assurance that if a particular kind of event happens, the insured[2] will be paid the money by the insurer[3].[4] However it is to be remembered that insurance does not avert happening of the event. For instance when a person insures a ship or a house, he does not get an assurance that the ship would not be lost or that the house would not be destroyed by fire. What he gets is an undertaking that a sum of money is to be paid to the insured on the happening of the event insured against.[5] The assurance is that his loss would be made good by payment of money.[6]

MEANING

Insurance is a contract by which the one party in consideration of a price (called the premium) paid to him adequate to the risk becomes security to the other that he shall not suffer loss, damage or prejudice by the happening of the perils specified to certain things which may be exposed to them.[7] Insurance is meant to protect men against uncertain events which may otherwise be of some disadvantage to them.[8] It is an assurance that a sum of money will be paid to the person insured if a particular event happens.

Objectives of the study

- To understand the concept of insurance.
- To study and understand the impact of privatization in insurance sector.
- To examine the relevance of insurance intermediaries in insurance sector.
- To develop conceptual understanding of regulatory measures for insurance intermediaries under different laws.
- To examine the effective ways of examining the insurance police sans insurance intermediary.

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[1] Prof KSN Murthy and Dr KVS Sarma, *Modern Law of Insurance* 3, (LexisNexis Butterworths Wadhwa, Nagpur, 4th edn., 2010).
[2] Insured is a person who seeks protection against the risk.
[3] Insurer or underwriter is the one who undertakes to protect the insured from financial loss or mishappening.
[4] Dr Naresh Mahipal and Ms Samta Soni, *An Introduction to Insurance Laws* 1, (Central Law Publications, Allahabad, 1st edn., 2012).
[5] *Prudential insurance Co v. IRC*, (1904) 2 KB 658.
[6] *Beresford v. Royal Insurance*, (1938) 2 All ER 602; *Scottish Union & National Insurance Co v. Craufurd*, ILR (1945) 20 Luck 194.
[7] Lawrence J in *Lucena v. Craufurd*, (1806) 2 Bos & PNR 269 at 301: 127 ER 42 (HL).
[8] Ibid.

Research Methodology

The present paper is based on the secondary sources of data such as books, research articles, journals, newspaper articles, bare-acts, web-portals and internet etc. Various books have been referred to get extensive detail about the understanding the concept of insurance and critically examining the role of insurance intermediaries and the need thereof. Further, newspaper articles have also been reviewed.

GLIMPSE AT THE PAST

The origin of insurance is as old as historical society. The oldest forms of insurance contracts traced are found in the form of bottomry contracts which were practiced by the merchants of Babylon as early as 4000-3000 BC. Bottomry was also practiced in India by the Hindus during 600 BC. Under the contract of bottomry, loans were granted to the merchants with the provision that if the shipment was lost or robbed by pirates or got sunk in the deep water the loan didn't have to be repaid. The interest on the loan covered the risk.

The development of insurance sector in India has been phenomenal. The insurance industry has undergone massive change over the last millennium extending to nearly 200 years. There are numerous private and governmental insurance companies in India that offered a diversified product portfolio and excellent services. As a result, many of the insurance companies in India have managed to make their presence into every Indian household by one way or the other.[9]

PERIOD OF NATIONALISATION

The life insurance business was first nationalized in 1956 by passing of Life Insurance Corporation Act 1956. The Life Insurance Corporation was created on 1 September 1956 conferring on it the exclusive privilege of carrying on life insurance business in India except to the extent otherwise expressly provided in the Act. The controlled business of all the insurers whose business was nationalized was taken over by the Corporation along with their assets and liabilities. The creation, control and extension of the corporation is in the hands of Corporation.[10]

ERA OF PRIVATISATION AND ESTABLISHING A REGULATORY AUTHORITY

For recommending changes in insurance sector, the government appointed a committee in April 1993 under the chairmanship of Sri RN Malhotra, ex-governor of Reserve Bank of India. The committee on reforms of the insurance sector submitted its report on 7 January 1994 to the then Union Finance Minister recommending many changes including its privatization. It recommended far reaching amendments to regulate the insurance sector to adjust with the economic policies of privatization. With the privatization of insurance sector it was also felt necessary to have a regulatory authority since the smooth functioning of business depends upon the trust and confidence reposed by the customers in the solvency of the entity now permitted to enter the scene of insurance market. So to achieve this end the recommendation for the establishment of the Insurance Regulatory and Development Authority was implemented by the passing of Insurance Regulatory and Development Authority Act 1999.[11] The regulatory framework in relation to insurance is desired to take care of three major concerns, i.e.

a) The protection of interest of consumers;

b) To ensure the financial soundness of the insurance industry, and

c) To pave the way to help the healthy growth of the insurance market, where both the government and private parties play simultaneously.

<u>INSURANCE WITH INSURANCE INTERMEDIARIES</u>

CONCEPT, ROLE AND IMPORTANCE

The concept relating to insurance agents is of special and practical importance because in fact all insurance business is conducted through the medium of agents since most of the insurers are corporate bodies.[12] The term insurance intermediaries include insurance agents, insurance surveyors and loss assessors. Agents often play an important role between the insurer, before and at the earlier stages of forming the policy and surveyors and loss assessors at the final

[9] Dr Naresh Mahipal and Ms Samta Soni, *An Introduction to Insurance Laws* 14, (Central Law Publications, Allahabad, 1st edn., 2012).
[10] Prof KSN Murthy and Dr KVS Sarma, *Modern Law of Insurance* 9, (LexisNexis Butterworths Wadhwa, Nagpur, 4th edn., 2010)
[11] (Act 4 of 1999). The Preamble of the Act reads, "An Act to provide for the establishment of an authority to protect the interest of holders of insurance policies, to regulate, promote and ensure orderly growth of the Insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act 1938, the Life Insurance Corporation Act 1956, and the General Insurance Business (Nationalization) Act 1972".
[12] Prof KSN Murthy and Dr KVS Sarma, *Modern Law of Insurance* 129, (LexisNexis Butterworths Wadhwa, Nagpur, 4th edn., 2010)

stages. In most insurance transactions, there is an intermediary, commonly known as an insurance agent or broker, between the buyer and the insurer helping buyers to identify their coverage and risk management needs and matching buyers with appropriate insurers. The role of intermediary is to scan the market, match buyers with insurers who have the skill, capacity, risk appetite, and financial strength to underwrite the risk, and then help the client select from competing offers. Although some insurers market insurance directly to buyers by mail, telemarketing by company employees, the vast majority of insurance sales involve an intermediary.[13]

'INSURANCE INTERMEDIARIES' INCLUDES….

According to Section 2 (1) (f) of the IRDA Act, 1999, the term 'insurance intermediaries' includes:

"Intermediary or insurance intermediary includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors"

INSURANCE AGENTS, SURVEYORS, LOSS ASSESSORS AND OTHERS.

INSURANCE AGENTS:

An insurance agent acts between the buyer and the insurer helping buyers to identify their coverage and risk management needs and matching buyers with appropriate insurers. At the time of nationalization of the life insurance business there were three categories of agents designated as chief agents, special agents and agents. By the passing of LIC Act of 1856 all the contracts subsisting between insurers and their chief or special agents were terminated.[14] Over 12,000 agents came over to LIC as direct agents and this number increased to 52,080 by 1992-93.[15]All these agents were appointed in life and general insurance in a routine manner and Malhotra committee recommended that the marketing apparatus requires a thorough review to promote and sustain professionalism.

LICENSING PROVISION FOR AGENTS

The agents were not regulated by law before 1938 and before the passing of the Insurance Act 1938. Their act of malfeasance and misfeasance exposed both the insurers and the insured to risk of loss.[16] Commenting on this Mr SC Sen observed:

It has been pointed out from various sources that some provision should be made in the statute to protect the public from the vagaries of the persons who pose to act as agents of insurance companies. It has been said that various sorts of misrepresentations are made by persons purporting to act as agents for procuring business with the result that innocent persons often victimized. It has therefore suggested that provision should be made in the statute for a licensing of agents and misstatement made by any person acting as agents.[17]

Proactive role played by 'Insurance Act 1938 and IRDA' in regulating 'Insurance Agents':

Sections 40 and 42-42C[18] provided for licensing of agents which were further streamlined by the IRDA in its regulation[19]. Section 40(1)[20] stipulates that only authorized agents are entitled to solicit business for insurance companies. According to section 42(4) of the same Act insurance agent must have the minimum educational qualification and must not suffer from any disqualification. Section 42 provides for issuing of licenses to the insurance agents, which shall be valid for three years subject to renewal under the regulation. Practical is also prescribed. Acting as an agent without holding a license is made an offence punishable with Rs 500 and a fine of it is also provided that if an insurer appoints a person having no license, the insurer is liable to punishment by a fine which may extend to Rs 1000 under the regulation. Minimum business required to be done by an agent in a year is prescribed and the commission rates and rebates which he can give are regulated.

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[13] Dr Naresh Mahipal and Ms Samta Soni, *An Introduction to Insurance Laws* 62, (Central Law Publications, Allahabad, 1st edn., 2012).
14Section 36 LIC Act 1956.
15 Prof KSN Murthy and Dr KVS Sarma, Modern Law of Insurance 130, (LexisNexis Butterworths Wadhwa, Nagpur, 4th edn., 2010)
16 Ibid. at 132.

17 SC Sen, Report on the Laws of Insurance, paras 211-12.
18 Insurance Act 1938
19 'Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations 2000'.
20 Supra at 18.

INSURANCE SURVEYORS AND LOSS ASSESSORS

Surveyors are professionals who assess the loss or damage and serve as a link between the insurer and the insured. Their job is to assess the actual loss and avoid false claims and report to the insurer, within specified time or if no time is specified by him, within reasonable time. Based on surveyors report the company settles the claim. Surveyors like agents, are not employees but are independent professionals hired by the insurance company.

LICENSING PROVISION FOR INSURANCE SURVEYORS AND LOSS ASSESSORS

Section 64-UM (1) (BA) of the Insurance Act, 1938 provides that every person who intends to act as surveyor, loss assessor after the expiry of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall make an application to the Authority within such time and in such manner and on payment of such fee as may be determined by Regulations made by the Authority. But where any license has been issued immediately before the commencement of this Act of 1999, it shall be deemed to have been issued under the provision of this Act. Every surveyor and loss assessor shall comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as may be specified by regulations made by the Authority.[21]

LEARNING TO DEAL WITHOUT INSURANCE INTERMEDIARIES[22]

Often there has been a scenario where the agent cannot be reached or is missing. In such a case, the insured or the policyholder should be self-sufficient to reach out to the company to query resolved. While investing in insurance, one should understand important features of the policy such as investment options, policy charges, claim process and procedures, etc. so as enable the insured to react in the right manner in case of immediate action when the agent (intermediary) is out of reach.

EFFECTIVE WAYS OF MANAGING POLICY-RELATED REQUIREMENTS:

I) Keep insurance documents organized: since insurance documents are at most times required at short notices, it is necessary to keep the insurance paper work organized and handy for quick perusal. The dependants and beneficiaries of the insured need to know the policy details as all correspondences to with the insurer require policy number for quick action. It is advisable to keep the information relating to premium payment bills, maturity date, etc. at easy reach to avoid any concerns while submitting the claims.

II) Update all information: ensure that contact details and other personal information are frequently updated and remain current with the insurer, as there are host of services which one can avail of by updating mobile and landline numbers, email-id and mailing address. Policy updates, including tax certificates, policy account statements, service information, premium payments receipts, etc. are emailed to insured or policyholders.

III) Premium payment options: in the event of agent being absent, an insured needs to be more open to different approaches to paying the premiums. It has been seen that insured is more comfortable in dealing with single familiar face (the agent) when paying the premium rather than meet new faces each time or doing it by himself for fear that thing might go wrong.

IV) Availing benefit of online payment: timely premium payments can be made anytime and anywhere utilizing the online payment options. This includes electronic payment transfers (NEET) through bank's website, online payment via net banking facilities at selected banks or even using credit card.

V) Direct remittance at branch offices: premium payments can be made by depositing crossed cheques or demand drafts at the insurer's branch offices. If premium is under certain specified limit, it can also be paid by depositing cash at the branches. Always collect acknowledgement for all cash receipts. Receipts in case of cheques and bank drafts are provided once the payment is honored.

VI) Policy management on the web: most policies can now be managed online through the insurer's website with the help of unique username and password. It is easy to get a username and password and enable online policy access by registering your email-id with the insurer or contacting to the insurer's customer care.

CONCLUSION

Several dominant themes emerge in the examination of insurance intermediaries that lead to a single conclusion. First, the public knows little about the intermediary who sells them a product or processes or investigates their claims on behalf of insurers. In the case of intermediaries brokering insurance, fundamental questions include: Who does he

[21] Avtar Singh, *Law of Insurance* 404, (Eastern Book Company, Lucknow, 2nd edn., 2010)
[22] Mayank Bathwal, "*Dealing with insurance policy without agent*" The Tribune, 14 April 2014.

work for? To whom does he owe his allegiance? Who is paying him? Is he a professional or a salesperson? What recourse is there if he fails to carry out his duties? In the case of downstream intermediaries, similar questions arise, such as: What independent responsibilities and liabilities to the insured does he shoulder for his negligence? That these basic questions are so difficult to answer should compel us to re-think how we regard the intermediary. The second theme is how relatively low the standard of care is for intermediaries considering the important work they do to facilitate the insured-insurer relationship.[23] Following conclusions may be drawn[24]:

- The concept of broker is very well entrenched in the developed countries and more than40% of the insurance business is conducted through brokers as compared to India.
- Agents present eligibility conditions to be certainly being made more stringent and theminimum qualification level for rural and urban agents needs to be raised. This is necessary because insurance is not a simple product but a complex service that will require a certaindegree of understanding to ensure correct sale.
- In general insurance, the claims are settled on the basis of the report submitted by the independent agency which is known as surveyor or loss assessors and they are qualified persons, having expertise in this field. If an insurance company employs its own experts then they may be biased toward the claim, as they are an employee of insurance company. Therefore, to avoid any conflicts of interest independent surveyors are necessary.
- Third party administrators in health services also play an important role in insurance sector but health insurance is not very popular in India because it is a costly proposal. Further more there is lack of awareness among the people about the benefits they can derive from health insurance. At present, health insurance purchased by those who are affluent and can afford to pay the medical bills whereas it is actually required by those who cannot afford the costly medical treatment.

REFERENCES

1. Prof KSN Murthy and Dr KVS Sarma, Modern Law of Insurance 3, (LexisNexis Butterworths Wadhwa, Nagpur, 4th edn., 2010).
2. Dr Naresh Mahipal and Ms Samta Soni, An Introduction to Insurance Laws 1, (Central Law Publications, Allahabad, 1st edn., 2012).
3. Avtar Singh, Law of Insurance 404, (Eastern Book Company, Lucknow, 2nd edn., 2010)

[23] Hazel Beh, Amanda M. Willis, INSURANCE INTERMEDIARIES, available at https://www.researchgate.net/publication/268052733_INSURANCE_INTERMEDIARIES, accessed 01/04/19 at 1;15 p.m.
[24] Role of Intermediaries in Insurance Sector-1Uploaded by Prakash Kumar, available at https://www.scribd.com/document/105015595/Role-of-Intermediaries-in-Insurance-Sector-, accessed 04/04/19, at 1:18 p.m