

A Socio-Legal Aspect of Life Insurance in India

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Abstract: 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. The author has explained the life insurance and its development in India and also its socio legal aspect is imbibed in this paper.

Key Words: Life Insurance, IRDA, Ombudsman.

I. INTRODUCTION

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. The insurance can broadly be divided into two parts- First, the life insurance and the other, the general insurance¹. The life insurance, as the name suggests, covers the risks on life. The assured amount is payable on natural death or on death due to accident, whereas the general insurance covers fire insurance, the marine insurance, the insurance of vehicle and other properties etc. and the loss or damage is indemnified on the happening of an insured peril. In traditional societies such as India, the joint family system itself provided an insurance umbrella and assistance to surviving family members². 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 for such a contractual arrangement and the insurance company in turn, provides compensation if a specified event occurs. Thus the life insurance provides for accumulated small savings and security for old age and for the family members in case of premature death of the assured. The assured feels secured that in case of a premature untimely death his family would not be put to financial difficulty³ and if the assured survives he gets an accumulated sum of his savings.

Life insurance in modern times also provides protection against other life related risks, such as risk of diseases and sickness (health insurance). In practice, it also cover what has come to be known as endowment insurance by which the sum assured is payable either on the death of the person insured or on his attaining a particular age while alive.

A contract of Life Insurance is defined by Bunyon as follows⁴:

A contract of life insurance may further be defined to be that in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life in consideration of immediate payment of a smaller

¹ Ajeet Ranade and Rajeev Ahuja, *Life Insurance in India, Emerging Issues*, Economic and Political Weekly, Jan. 16-23, 1999, P.203

² A simple mathematical device that explains why joint families would require less market insurance could be as follows. Imagine a joint family household of n earning individuals, whose income generation is given by independently (and say identically) fluctuating random variables x_1 to x_n . The per capita income of this household is

$(x_1+x_2+\dots+x_n)/n$ which is much more stable (less variance) than all the individual x 's when such a household breaks up into n households, there is increased risk (greater variance) & hence a greater need to buy market insurance.

³ See, *Santosh Kumar Gupta v. L.I.C.* AIR 2000 Raj. 337.

⁴ Bunyon on Life Insurance, 4th edition, page 1 quoted in *Joseph v. Law Integrity insurance Co.* (1912) 82 L.J. Ch.187: (1912) 2 Ch 581: 107 L.T. 532, *Per Cozens Hardy, M.R.*

sum or other equivalent periodical payments by the other.

The term of Life Insurance has not been defined in The Insurance Act 1938. The Act only defined 'Life Insurance Business'⁵ as 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) or 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:-

1. the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,
2. the granting of annuities upon human life, and
3. 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 person⁶.

There are some essentials of life insurance such as (1) that it should be in relation to a human life, (2) that it provides payment of the assured amount in a lump sum & (3) that the amount is payable either on happening of ascertained event, i.e. that death or on expiry of a specified period. Keeping these essentials in mind, a definition of life insurance could be evolved thus, life insurance is a contract in which the insurer agrees, for a consideration of periodical payments known as premium, to pay an assured sum on happening of sum event. A definition of Life Insurance could be found in English case⁷ according to which a life insurance is a contract where the insured agrees to pay a certain amount by way of premium in lieu of which the insurer agrees to pay the assured money on the happening of a particular event, viz., the death of the assured or on expiry of specified period.

⁵ Section 2(ii) of The Insurance Act, 1938.

⁶ Jaiswal, J.V.N., *Law of Insurance*, P. 244

⁷ *Dalby V. Indian & London Life Insurance Co.* (1854) 15 CB 365: 139 ER 465.

II. Development of Life Insurance

Life insurance made its first appearance in England in 16th century, the first recorded evidence in England being the policy of life of William Gybbons on June 18, 1653. Even before this date annuities had become quite common in England and marine insurance had, in fact made its appearance three thousand years ago. The life insurance developed at 'Exchange Alley'. The first registered life office in England was the Hand-in-Hand Society established in 1696. The famous 'Amicable Society' for a Perpetual Assurance Office started its operation since 1706. Life insurance did not prosper in the United States during the 18th century, because of serious fluctuations in death-rate, but soon after 1800 some active interest began to be shown in this enterprise because of the application of level premium plan which had by then been in operation in United Kingdom for more than a generation. In India, some Europeans started the first life insurance company in Bengal Presidency, viz, the Orient Life Assurance Company in 1818. The year 1870 was a year of a landmark in the history of Indian Insurance separating the early period of pioneering attempts at life insurance from the subsequent period of steady development at the establishment of Indian Life Office, viz., Bombay Mutual Life Assurance Society in 1871. The next important life office was Oriental Government Security Life Assurance Co. Ltd., which started its operation since 1874. Since then several officers developed in India⁸.

Insurance provides financial protection for individuals, families and businesses. Insurance assists in making savings possible and helps to furnish a safe and profitable investment. In case of death of the insured, the family is saved from financial crisis by timely payment of the insured amount. It saves the family from destitution. If the policy matures and the insured is alive, the money received from the insurer gives a better security for

⁸ Mishra, M.N., *Insurance Principles and Practice*, Ed. 2006, p. 11

old age. A life policy of the insured also provides difficulties for loan which he can avail of in case of need from the Bank against the policy⁹. This encourages thrift, minimizes worry and increases personal initiatives. Life insurance is also helpful in reducing the financial burden on state. Insurers can accumulate money to be invested in the public and private sectors and thus create source of financing for new businesses, new homeowners and for farmers and their equipments. The insurance filed is creating new vistas for attracting talent and in this process has reduced unemployment. Within the national economy, two measures are used to define insurance. One is insurance density which is average annual per capita premiums within a country and the other is insurance penetration which is a ratio of yearly direct premiums written to gross domestic product.

III. Social aspect of Life Insurance

In India too many people are not in employment. Several millions are part-time, self-employed and low-earning workers living under pitiable circumstances where there is no security cover against risk. A new source of insecurity which includes the changing demands of family life, separation, divorce and elderly dependents-are tormenting the society. Risk has become central to one's life. It is within this background life insurance policy has been introduced by the LIC covering risks at various levels¹⁰.

Life insurance coverage is against disablement or in the event of death of the insured, economic support for the dependents. It is a measure of social security to livelihood of the insured or dependents. This is to make the right to life meaningful, worth living and right to livelihood a means for sustenance¹¹. Therefore, it goes without saying appropriate life insurance policy within the paying capacity and means of the insured to *pay premia* is

of the social security measures envisaged under the Indian Constitution. Hence, right to social security, protection of the family, economic empowerment to the poor and disadvantaged are integral part of the right to life and dignity of the person guaranteed in the Constitution¹². Social security is a facet of socio-economic justice to the people in particular to the middle class and lower middle class¹³.

IV. Judicial approach in Working of the Insurance Corporation

The LIC is a 'State' within the meaning of Article 12 of the Constitution¹⁴. It is created under an Act, viz., The Life Insurance Corporation Act, 1956. It is charged with the duty to carry on the life insurance business, within and outside India. It is further charged with the duty to so, exercise its powers under the Act as to secure that life insurance business is development to the best advantage of the community¹⁵. It is therefore, obvious that the LIC must function in the best interest of the community. The community is, therefore, entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the LIC.

In *LIC of India v. Consumer Education Research Centre*¹⁶, the Supreme Court has sent shock waves to the LIC by holding the view that the rates of premium must be reasonable and accessible. The Court without any hesitation held that while prescribing terms and eligibility conditions in issuing a general life insurance policy of any type, public element is inherent. The LIC owes a public duty to evolve policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. Generally those terms and conditions are contained in an insurance contract in a standard form. Therefore, the eligibility

⁹ *Supra* Note 6.

¹⁰ A Raghunanda Reddy, *Life Insurance as a measure of Social Security*, Supreme Court Journal, 1999 vol. 2, p. 16.

¹¹ See, *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

¹² *Muralidhar Dayandeo Kasekar v. Viswanath Pandu*, (C.A. No. 952/77) on Feb. 22, 1995

¹³ See, *LIC of India v. Consumer Education and Research Centre*, AIR 1995 SC 181

¹⁴ *Sukhdev Singh v. Bhagatram Sardar Singh*, AIR 1975 SC 1331

¹⁵ See, section 6(1) of the LIC Act, 1956

¹⁶ *Supra* Note 13

conditions must be conformable to the Preamble, Fundamental Rights and Directive Principles of the Constitution.

Thus upon the study of above judgment one can witness the social consciousness and concern of the Supreme Court and its activist role in upholding and safeguarding the preamble message of socio-economic justice. Certainly this trend would go a long way in promoting socio-economic justice which is very essential in strengthening the roots of political democracy of the country. It is to be noted here as to how the Supreme Court as the watch-dog of the Constitution is constantly watching and managing the risk against which the lives of many common men are insured¹⁷.

V. Legal aspect of Life Insurance

As a welfare dispensing scheme, insurance must not only provide social security measures to the needy, but also ensure that the enforcement mechanism is effective and that the incumbents have easy access to such mechanisms either judicial or quasi-judicial. As social security is based on the principle of social justice, which is the mandate of the Indian Constitution, it is the duty of the courts to take care of the interests of those people who are the beneficiaries of such concept, by providing an “easy access to justice”, to ventilate their grievances¹⁸.

Thus aggrieved person has an option to approach the courts for legal remedies. Some of the legal remedies are:

(a) Civil Courts:

Before the setting up of the Consumer Dispute Redressal Authority (CDRA) under the Consumer Protection Act, 1986, the only legal remedy available to the consumers of insurance services was to file a suit in the civil courts. Most of the litigation with regard to deficiency of service now takes place in CDRA. These Agencies, however, do not have the power to decide on the validity of terms and conditions of the insurance policy or validity of the rules framed by the Corporation. For

disputes of this kind, the civil court will continue to be the proper forum.

(b) Legal Service Authority Act, 1987:

This Act also provides for referring the pending disputes before any court or tribunal on a joint application to the Lok Adalats for compromise or settlement. The District Authority may refer such disputes to the Lok Adalats for determination. The award of the Lok Adalats thereafter will be binding like a decree of the civil court and no appeal will lie to a higher court against the award.

(c) Insurance Regulatory and Development Authority Act, 1999:

In 1994 the Malhotra Committee was set up to frame insurance sector reforms. Keeping in view the recommendations of the Committee, the Insurance Regulatory and Development Authority (IRDA) Bill was introduced in December, 1999 which was passed and IRDA came up as a statutory body and it has framed a number of regulations. One piece of law (Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002) is of particular interest to the small, isolated and defenseless individual policyholders against the big, powerful and monolithic insurance companies.

(d) The Insurance Ombudsman:

In exercise of powers conferred by the Insurance Act, 1938, the Government has framed the Redressal of Public Grievances Rules, 1998, which apply to life and general insurance. These rules provide for the appointment of an ombudsman. There is no cost involved in taking the grievances to the ombudsman and generally the decisions are very quick, unlike the district forum where, due to heavy backlog of cases and certain unavoidable court formalities, petitions are difficult to be disposed of in quick time.

VI. Conclusion

The Indian Constitution envisages the establishment of a welfare state. In a welfare state the primary duty of the government is to secure the welfare and promote the prosperity and well being

¹⁷ *Supra* Note 10

¹⁸ G. Gopalkrishna, *The Small Man's Best Friend*, IRDA Journal, June 2005 vol. 3 p. 15

of the people¹⁹. A welfare state is to ensure social, economic and political justice, equality, freedom and dignity of life to every citizen²⁰. Life Insurance is essential to make the life meaningful and worth living. It is to make livelihood a means for sustenance. It is therefore, a measure of social security covering risk at all levels. Thus there are some suggestions to remedy the situation:

1. As every common man has right to know any information, so LIC should ensure free flow of information to the public. So that, the public will come to know whether or not LIC is functioning in the best interest of the community.
2. The scheme of Life Insurance Policy should be easily accessible to whole of the society. So it should be duty of the LIC to impart the

education regarding the benefits of the life insurance scheme.

3. LIC should keep in mind whether the terms and eligibility conditions contained in an insurance contract in a standard form a reasonable or not. Because of these terms and conditions must be conformable to the Preamble, Fundamental Rights and Directive Principles of the Constitution.

Therefore, it is suggested that there is need for rebuilding the social security system in the country upon a modernized social insurance scheme protecting the people. The modern social insurance scheme is to be taken up by the government itself by enacting an appropriate legislation to mitigate the sufferings of the dependents.

¹⁹ See Directive Principles laid down in part IV, of the Indian Constitution.

²⁰ See Preamble of the Constitution.