

**BASIC INTRODUCTION
TO LAWS OF INSURANCE**

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**ANURAG HAZARIKA
&
ANKITA SINGH**



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PREFACE

Basics Introduction to Laws of insurance is based on the underlying rules and format regulating the insurance principles and practices as well as the law related to insurance practice in India. The book has been divided into four Units and written comprehensively in a lucid language intelligible to any student pursuing B.Com, M.Com, BBA, LL.B. and B.A., LL.B. courses. The book shall be a reference text for the students to understand the basic theories and concepts related to principles of insurance and its practices in a very easy manner.

**ANURAG HAZARIKA
AND
ANKITA SINGH**

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UNIT—1

1

INTRODUCTION TO INSURANCE

Insurance is a contract, represented by a policy, in which an individual or entity receives financial protection or reimbursement against losses from an insurance company. It is basically a contract in form of a policy where one party agrees to pay a certain amount for consideration to make the other party liable to recover the amount of damage caused to that party. Insurance gives a way to manage the financial risks caused to the person or the businesses. Insurance policies are made to recover the amount of loss/damage caused to the people at a point of time where they are in need of financial assistance. Insurance is concerned with the protection of the economic value of assets. Tangible assets are human beings, house, furniture, motorcycle etc. and intangible assets are liabilities. Insurance can be termed as an agreement by mutual consent between the insured and the insurance company which is enforceable by law wherein insurance company promises to the insured on receipt of premium, the payment of money as per terms and conditions of the policy.

Kinds of Insurance

The different kinds of Insurance can be described as below:

1. Life Insurance

Life Insurance refers to a policy or cover whereby the policyholder can ensure financial freedom for his/her family

members after death. Suppose you are the sole earning member in your family, supporting your spouse and children.

In such an event, your death would financially devastate the whole family. Life insurance policies ensure that such a thing does not happen by providing financial assistance to your family in the event of your passing.

Types of Life Insurance Policies

There are primarily seven different types of insurance policies when it comes to life insurance. These are:

- **Term Plan** - The death benefit from a term plan is only available for a specified period, for instance, 40 years from the date of policy purchase.
- **Endowment Plan** - Endowment plans are life insurance policies where a portion of your premiums go toward the death benefit, while the remaining is invested by the insurance provider. Maturity benefits, death benefit and periodic bonuses are some types of assistance from endowment policies.
- **Unit Linked Insurance Plans or ULIPs** - Similar to endowment plans, a part of your insurance premiums go toward mutual fund investments, while the remaining goes toward the death benefit.
- **Whole Life Insurance** - As the name suggests, such policies offer life cover for the whole life of an individual, instead of a specified term. Some insurers may restrict the whole life insurance tenure to 100 years.
- **Child's Plan** - Investment cum insurance policy, which provides financial aid for your children throughout their lives. The death benefit is available as a lump-sum payment after the death of parents.
- **Money-Back** - Such policies pay a certain percentage of the plan's sum assured after regular intervals. This is known as survival benefit.
- **Retirement Plan** - Also known as pension plans, these policies are a fusion of investment and

insurance. A portion of the premiums goes toward creating a retirement corpus for the policyholder. This is available as a lump-sum or monthly payment after the policyholder retires.

Benefits of Life Insurance

If you possess a life insurance plan, you can enjoy the following advantages from the policy.

- **Tax Benefits** - If you pay life insurance premiums, you are eligible for tax benefits in India, under Section 80(C) and 10(10D) of the Income Tax Act. Thus, you can save a substantial sum of money as taxes by opting for a life insurance plan.
- **Encourages Saving Habit** - Since you need to pay policy premiums, buying such an insurance policy promotes the habit of saving money.
- **Secures Family's Financial Future** - The policy ensures your family's financial independence is maintained even after your demise.
- **Helps Plan Your Retirement** - Certain life insurance policies also act as investment options. For instance, pension plans offer a lump-sum payout as soon as you retire, helping you to fund your retirement.

Now that you know all about life insurance policies read on to understand the various facets of other general insurance policies.

2. Motor Insurance

Motor insurance refers to policies that offer financial assistance in the event of accidents involving your car or bike. Motor insurance can be availed for three categories of motorised vehicles, including:

- **Car Insurance** - Personally owned four-wheeler vehicles are covered under such a policy.
- **Two-wheeler Insurance** - Personally owned two-wheeler vehicles, including bikes and scooters, are covered under these plans.

- **Commercial Vehicle Insurance** - If you own a vehicle that is used commercially, you need to avail insurance for the same. These policies ensure that your business automobiles stay in the best of shapes, reducing losses significantly.

Types of Motor Insurance Policies

Based on the extent of cover or protection offered, motor insurance policies are of three types, namely:

- **Third-Party Liability** - This is the most basic type of motor insurance cover in India. It is the minimum mandatory requirement for all motorised vehicle owners, as per the Motor Vehicles Act of 1988. Due to the limited financial assistance, premiums for such policies also tend to be low. These insurance plans only pay the financial liability to the third-party affected in the said mishap, ensuring that you do not face legal hassle due to the accident. They, however, do not offer any financial assistance to repair the policyholder's vehicle after accidents.
- **Comprehensive Cover** - Compared to the third-party liability option, comprehensive insurance plans offer better protection and security. Apart from covering third party liabilities, these plans also cover the expenses incurred for repairing the damages to the policyholder's own vehicle due to an accident. Additionally, comprehensive plans also offer a payout in case your vehicle sustains damage due to fire, man-made and natural calamities, riots and others such instances. Lastly, you can recover your bike's cost if it gets stolen, when you have a comprehensive cover in place. One can also opt for several add-ons with their comprehensive motor insurance policy that can make it better-rounded. Some of these add-ons include zero depreciation cover, engine and gear-box protection cover, consumable cover, breakdown assistance, etc.
- **Own Damage Cover** - This is a specialised form of motor insurance, which insurance companies offer to

consumers. Further, you are eligible to avail such a plan only if you purchased the two-wheeler or car after September 2018. The vehicle must be brand new and not a second-hand one. You should also remember that you can avail this standalone own damage cover only if you already have a third party liability motor insurance policy in place. With own damage cover, you basically receive the same benefits as a comprehensive policy without the third-party liability portion of the policy.

Benefits of Motor Insurance Policies

Cars and bikes are increasingly more expensive with each passing day. At such a time, staying without proper insurance can lead to severe monetary losses for the owner. Listed below are some advantages of purchasing such a plan.

- **Prevents Legal Hassle** - Helps you avoid any traffic fines and other legalities that you would otherwise need to bear.
- **Meets All Third-Party Liability** - If you injure a person or damage someone's property during a vehicular accident, the insurance policy helps you meet the monetary losses, effectively.
- **Financial Assistance to Repair Your own Vehicle** - After accidents, you need to spend considerable sums on repairing your own vehicle. Insurance plans limit such out of pocket expenses, allowing you to undertake repairs immediately.
- **Theft/loss cover** - If your vehicle is stolen, your insurance policy will help you reclaim a portion of the car/bike's on-road price. You can expect similar assistance if your vehicle is damaged beyond repair due to accidents.

Additionally, individuals who own a commercial car/two-wheeler can also avail tax benefits if they pay premiums for that vehicle.

3. Health Insurance

Health insurance refers to a type of general insurance, which

provides financial assistance to policyholders when they are admitted to hospitals for treatment. Additionally, some plans also cover the cost of treatment undertaken at home, prior to a hospitalisation or after discharge from the same.

With the rising medical inflation in India, buying health insurance has become a necessity. However, before proceeding with your purchase, consider the various types of health insurance plans available in India.

Types of Health Insurance policies

There are eight main types of health insurance policies available in India. They are:

- **Individual Health Insurance** - These are healthcare plans that offer medical cover to just one policyholder.
- **Family Floater Insurance** - These policies allow you to avail health insurance for your entire family without needing to buy separate plans for each member. Generally, husband, wife and two of their children are allowed health cover under one such family floater policy.
- **Critical Illness Cover** - These are specialised health plans that provide extensive financial assistance when the policyholder is diagnosed with specific, chronic illnesses. These plans provide a lump-sum payout after such a diagnosis, unlike typical health insurance policies.
- **Senior Citizen Health Insurance** - As the name suggests, these policies specifically cater to individuals aged 60 years and beyond.
- **Group Health Insurance** - Such policies are generally offered to employees of an organisation or company. They are designed in such a way that older beneficiaries can be removed, and fresh beneficiaries can be added, as per the company's employee retention capability.
- **Maternity Health Insurance** - These policies cover medical expenses during pre-natal, post-natal and

delivery stages. It covers both the mother as well as her newborn.

- **Personal Accident Insurance** - These medical insurance policies only cover financial liability from injuries, disability or death arising due to accidents.
- **Preventive Healthcare Plan** - Such policies cover the cost of treatment concerned with preventing a severe disease or condition.

Benefits of Health Insurance

After assessing the various kinds of health insurance available, you must be wondering why availing such a plan is essential for you and your loved ones. Look at the reasons listed below to understand why.

- **Medical Cover** - The primary benefit of such insurance is that it offers financial coverage against medical expenditure.
- **Cashless Claim** - If you seek treatment at one of the hospitals that have tie-ups with your insurance provider, you can avail cashless claim benefit. This feature ensures that all medical bills are directly settled between your insurer and hospital.
- **Tax Benefits** - Those who pay health insurance premiums can enjoy income tax benefits. Under Section 80D of the Income Tax Act one can avail a tax benefit of up to Rs.1 Lakh on the premium payment of their health insurance policies.

There may be additional advantages, depending on the insurance provider in question.

4. Travel Insurance

When talking about the different types of insurance policies, one must not forget to learn more about travel insurance plans. Such policies ensure the financial safety of a traveller during a trip. Therefore, when compared to other insurance policies, travel insurance is a short-term cover.

Depending on the provider you choose, travel insurance may offer financial aid at various times, such as during loss

of baggage, trip cancellation and much more. Here is a look at some of the different types of travel insurance plans available in the country:

- **Domestic Travel Insurance** - This is the kind of travel insurance policy that safeguards your finances during travels within India. However, if you plan to step outside the country for a vacation, such a policy would not offer any aid.
- **International Travel Insurance** - If you are stepping out of the country, ensure you pick an international travel insurance plan. It allows you to cover the unforeseen expenses that can arise during your trip like medical emergencies, baggage loss, loss of passport, etc.
- **Home Holiday Insurance** - When you are travelling with family, your home remains unguarded and unprotected. Chances of burglary are always significant, which may lead to significant losses. Thankfully, with home holiday insurance plans, which are often included within travel policies, you are financially protected from such events as well.

Benefits of Travel Insurance

The following aspects are covered under travel insurance plans:

- **Cover Flight Delay** - Flight delays or cancellations can lead to significant losses for the passenger. If you buy travel insurance, you can claim such financial losses from the insurer.
- **Baggage Loss/Delay** - Travel insurance lets you claim monetary assistance if there is a delay or you happen to lose your luggage during the trip. With this amount, you can purchase some of the necessary items.
- **Reclaim Lost Travel Documents** - Visa and passport are essential documents during an international trip. Opting for international travel insurance ensures that you have the necessary

financial backing to reapply for interim or replacement documents as and when necessary.

- **Trip Cancellation Cover** - A sudden death in the family or a medical emergency may play spoilsport with your travel arrangements. Thankfully, international travel insurance plans support trip cancellations in such events. You can claim financial assistance to pay penalties and cancellation charges for flights, hotels, etc.

Make sure that you choose an insurer carefully, especially a company that is reliable and available 24x7 to assist you.

5. Property Insurance

Any building or immovable structure can be insured through property insurance plans. This can be either your residence or commercial space. If any damage befalls such a property, you can claim financial assistance from the insurance provider. Keep in mind that such a plan also financially safeguards the content inside the property.

Types of Property Insurance in India

Here are some types of property insurance policies available in India:

- **Home Insurance** - With such a policy, you remain free from all financial liabilities that may arise from damage to your home or contents inside due to fires, burglaries, storms, earthquakes, explosions and other events.
- **Shop Insurance** - If you own a shop, which acts as a source of income for you, it is integral to protect yourself from financial liability arising from the same. Whether the liability occurs due to natural calamities or due to accidents, with these plans, you can immediately undertake repairs to the shop.
- **Office Insurance** - Another type of property insurance policy, office insurance ensures that the office building and all the equipment inside are significantly protected in the event of unforeseen events. Generally, office spaces include expensive

equipment, such as computers, servers and much more. Thus, availing these plans is essential.

- **Building Insurance** - If you own a complete building, opting for home insurance may not be sufficient. Instead, you can purchase building insurance to cover the entire premises.

Benefits of Property Insurance

If you still think that property cover is not one of the types of insurance plans you need to avail, take a look at some of the advantages from the same.

- **Protection against Fires** - While the insurance policy cannot prevent fires, it can prevent financial liabilities from such an event.
- **Burglaries** - If your property exists in an area prone to theft and burglaries, such a policy is vital to ensure financial security.
- **Floods** - In certain parts of India, floods are common. These floods can ravage your property leading to substantial losses. Property insurance also protects against such events.
- **Natural Calamities** - The plan also offers financial aid against damage arising from earthquakes, storms and more.

Rebuilding or renovation of a property is immensely expensive. Thus, property insurance policies are the best option to ensure long-term financial health.

Key terms in Insurance Contract

Proposer (also known as Policy Owner) - Purchases the policy and pays the premium.

Insured – Person whose life is being insured. If this person dies, it triggers the death benefit payout. The insured may or may not be the same person as the policy owner.

Beneficiary – Person(s) who will receive the death benefit in the event of the death of the insured.

Insurer – The life insurance company who collects the premiums and pays out the death benefit to the beneficiary.

Life insurance agent – Assists the proposer/policy owner in selecting the right type of policy with the right insurance company while getting the lowest rates (premiums).

Underwriter – Works for insurer. Reviews and evaluates the application for insurance.

Consideration — Need for utmost good faith

Principle of Utmost Good Faith is one of the basic features of an insurance policy. It means that both the policyholder and the insurer need to disclose all material and relevant information to each other before commencement of the contract. It means that both the **Proposer** (who wishes to buy the insurance plan) and the **Insurer** will be honest and not withhold critical information which is required to issue the insurance policy. It is the name of a legal doctrine which governs insurance contracts. Insurance contracts are the most common type of *uberrimae fidei* contract.

It is a class of agreements (such as insurance contracts) in which one party (the promisee, such as the applicant) is under a fundamental duty to disclose all material facts and surrounding circumstances that could influence the decision of the other party (the promisor, such as an insurance company) to enter agreement. Non-disclosure or partial-disclosure makes such agreements voidable.

The principles of *Uberrimae Fidei* were first expressed by Britain's Lord Mansfield in the case of **Carter v Boehm** (1766) in a landmark English contract law case, in which Lord Mansfield established the duty of utmost good faith or *uberrimae fidei* in insurance contracts.

Facts of the Case

Carter was the Governor of *Fort Marlborough* (now *Bengkulu, Sumatra*), built by the *British East India Company*. Carter took out an insurance policy with Boehm against the fort being taken by a foreign enemy. A witness, Captain Tryon,

testified that Carter was aware that the fort was built to resist attacks from natives but would be unable to repel European enemies, and he knew the French were likely to attack. The French successfully attacked, but Boehm refused to honour the indemnifier Carter, who promptly sued.

Judgment

Lord Mansfield held that Mr Carter, as the proposer owed a duty of *utmost good faith* (*uberrimae fidei*) to the insurer, he was required to disclose all facts material to the risk:

Insurance is a contract based 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 the confidence that he does not keep back any circumstance 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 it did not exist. 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 the contrary.

Lord Mansfield went on to hold that the duty was reciprocal and that if an insurer withheld material facts, the example cited being that an insured vessel had already arrived safely, the policyholder could declare the policy void and recover the premium.

Lord Mansfield proceeded to qualify the duty of disclosure

Either party may be innocently silent, as to grounds open to both, to exercise their judgment upon.... An under-writer cannot insist that the policy is void, because the insured did not tell him what he actually knew.... The insured need not mention what the under-writer ought to know; what he takes upon himself the knowledge of; or what he waives being informed of. The under-writer needs not be told what lessens the risk agreed and understood to be run by the express

terms of the policy. He needs not to be told general topics of speculation.

Lord Mansfield found in favour of the policyholder on the grounds that the insurer knew or ought to have known that the risk existed as the political situation was public knowledge:

There was not a word said to him, of the affairs of India, or the state of the war there, or the condition of Fort Marlborough. If he thought that omission an objection at the time, he ought not to have signed the policy with a secret reserve in his own mind to make it void.

Insurable Interest

Definition: Insurable interest is defined as the reasonable concern of a person to obtain insurance for any individual or property against unforeseen events such as death, losses, etc.

Description: A person is expected to have reasonable interest in a longer life for himself, his family, business and hence is in need of acquiring insurance for these. Therefore, insurable interest is often related to ownership, relationship by law or blood and possession. However, it is not an important element of life insurance contracts under modern law.

For eg. in Life Insurance

A person insures their own life against a certain sum insured since their family will be benefited, if anything happens to their life. Thus, they are interested in their own life.

Similarly a person can insure their spouse against a certain sum insured, since they will be directly affected if something happens to the life of their spouse.

Thus in the above two examples, the person has insurable interest in their own life and over the life of their spouse.

On the contrary, any person cannot insure their

friend's life since they don't have a financial relationship.

Eg. in General Insurance.

The *same* principle above applies here but the only difference here is the insured component is a property rather than a person.

Thus if a person own a car and it gets damaged, the person will be the one affected and hence the person have Insurable interest on the vehicle.

Indemnity in Insurance Law

Indemnity is a comprehensive form of insurance compensation for damages or loss. Indemnity is a contractual agreement between two parties. In this arrangement, one party agrees to pay for potential losses or damages caused by another party. A typical example is an insurance contract, in which the insurer or the indemnitor agrees to compensate the other (the insured or the indemnitee) for any damages or losses in return for *premiums* paid by the insured to the insurer. With indemnity, the insurer indemnifies the policyholder—that is, promises to make whole the individual or business for any covered loss.

What are the Types of Indemnity?**1. Express indemnity**

This is a written agreement to indemnify, where the terms and conditions by which the concerned parties must abide are usually indicated. These include insurance indemnity contracts, construction contracts, agency contracts, etc.

2. Implied indemnity

This is an obligation to indemnify that arises, not from a written agreement, but more from circumstances or the conduct of parties involved. One practical example is an agent-principal business relationship. When the principal refuses to accept the goods that the agent supplies him, the agent can sell them to others; however, if the agent sustains a loss while selling, the principal is obligated to pay for it.

UNIT—2

GENERAL PRINCIPLES OF LAW OF INSURANCE

Meaning and Definition

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 shall not suffer loss, damage or prejudice by the happening of the perils specified to certain things which may be exposed to them. There has to be a positive commitment on the part of the insurer to pay a sum of money or money's worth on the happening of an event. According to **J.B. Maclean**, "Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual."

Few authors defined insurance as a social apparatus to accumulate funds to meet the uncertain losses arising through a certain hazard to a person insured for such hazard. According to **Riegel and Miller**, "Thus it serve the social purpose; it is a social device whereby uncertain risks of individual may be combined in a group and thus made more certain; small periodic contribution by the individual providing a fund out of which those who suffer losses may be reimbursed." In insurance one party agreed amount of money to another party to make good the loss, damage or injury to something of value in which the insured has an interest. Being a contract of indemnity, it is based on the principle of utmost good faith.

In modern concept affairs insurance means financial protection against losses arising out of happenings of any uncertain event. In order to protect against such losses the person has to bear some financial burden. This is done by paying certain amount of money, depending on the risk covered and the amount of expected loss in the form of paying premium to any of the insurance.

Some of the Basic Types of Insurance are:

1. Credit Insurance

Credit insurance means of insuring the payment of commercial debts against the risk of non-payment by the borrower because of his insolvency or for some other reason.

2. Group Insurance

Group Insurance is insurance or life insurance obtained by a person as a member of a group, such as a professional organization, rather than as an individual, because in this way better terms can often be obtained. This is because there is an administrative saving for the company, and sometimes also because a particular group has a better life expectancy than people in general.

3. Life Insurance

Life Insurance is a contract by which the insurer undertakes to pay the person for whose benefit the cover is effected, or to his personal representative, a certain sum of money on the happening of a given event, or on the death of the person whose life is assured.

4. Marine Insurance

It is contract by which underwriters engage to indemnify the owner of a ship, cargo or freight against losses from certain perils or sea risks to which their ship or cargo may be exposed.

5. Fire Insurance

Is a contract of indemnity by which an insurance company undertakes to make good any damage or loss by fire to buildings or property during a specific time.

The functions of Insurance can be classified

- (1) Primary Functions
- (2) Secondary Functions

(1) Primary Functions

The primary function of a insurance are

(i) Protection

The Primary function of Insurance is as we think about any insurance. One feels insured and contented about future risks only because one is sure to be compensated for any loss of future. No insurance can arrest the risk from taking place, no insurance can prevent future miss happenings, but can certainly provide some cover for the losses of risk It is therefore Primary function of Insurance to provide protection against future risks, accidents and uncertainty.

(ii) Collective Risk

It is therefore clear that insurance is a method by means of which a few losses are shared by a large number of people. All the people insured contribute by paying annual premium towards a fund out of which the persons exposed to risks are paid as per the terms and conditions of the insurance policy purchased by them. For e.g. The life insurance policies are purchased by so many of people. But only a few become victim of some miss happenings. Like this many people contribute towards insurance and only a few people need its cover.

(iii) Assessment of Risk

The volume of risk is determined by the Insurance companies by assessing diverse factors that may give rise to risk factors . The rate of premium is also decided on the basis of risk involved.

(iv) Certainty

Insurance converts our uncertainty into certainty of bearing future risks.

(2) Secondary Functions***(i) Prevention of losses***

Every Insurance prescribes to take preventive measures

against losses. In simple words we can say precautions are better than the treatment. If such type of preventive measure exist there shall be lower rate of premium for getting insurance cover against risks. If an insured take such steps he saves a lot in form of the amount of premium required to be paid. If prevention techniques have been adopted and applied the Insurance company may rate the risk at lower level and shall prescribe a lower rate of premium otherwise a higher rate of premium shall be charged.

(ii) Covering Larger Risks with small capital

A businessman makes large investments into a business so it is natural to take care of the business investments. There are two methods first one is that the concerned businessman should invest out of his own pocket to create a proper security. The second method is to get his business activities insured. In this case the insurance relieves a businessman from security investments by paying small amount in form of premium against bigger risks and uncertainties.

(iii) Helps in development of larger Industries

The large industries have diversified fields so are the risks of. The activities of large industries are diversified that it goes above any planning to cover every type of risk. It becomes possible only because insurance provides an opportunity to develop to those larger industries which have more risks in their setting ups.

(3) Other Functions

(i) Insurance as a tool used for saving and investments

Once an insurance policy is purchased it assume the compulsory way of savings. Not only savings but such funds collected by insurance companies are further invested to the benefit of insured. Because paying premium is compulsory so it restricts the unnecessary expenses by the insured's on one hand and on the other hand insurance provides them the opportunity to avail Income tax exemption for the amount paid as insurance premium. These savings help growth in national economy.

(ii) As a source to earn Foreign Exchange

The business of insurance has crossed the national borders of any country. It being an international business, any country is free to earn foreign exchange as much as per the policies of insurance devised in a way to attract more and more foreign business. For example, while travelling by air, one needs aviation insurance. It is a good source of earning foreign exchange for any country.

(iii) Risk Free Trade

Insurance promotes export insurance, which makes the foreign trade risk-free with the help of different types of policies under marine insurance cover.

(iv) Subrogation

In its most common usage under insurance, which refers to circumstances in which an insurance company tries to regain the expenses for a claim it paid out when another party should have been responsible for paying at least a portion of that claim.

Nature or Characteristics of Insurance

The following are the characteristics of the Insurance:

1. Contract

Insurance is a contract between the insurance company and the policyholder wherein the policyholder (insured) makes an offer and the insurance company (insurer) accepts his offer. The contract of insurance is always made in writing.

2. Consideration

Like other contracts, there must be lawful consideration in insurance also. The consideration is in the form of premium which the insured agrees to pay to the insurer.

3. Co-operative Device

All for one and one for all is the basis for cooperation. The insurance is a system wherein a large number of persons, exposed to a similar risk, are covered and the risk is spread over among the larger insurable public. Therefore, insurance

is a social or cooperative method wherein losses of one is borne by the society.

4. Sharing of Risks

Insurance is a cooperative device to share the burden of risk which may fall on happening of some unforeseen events, such as death of head of the family, or happening of marine perils or by fire.

5. Evaluation of Risks

For the purpose of ascertaining the insurance premium, the volume of risk is evaluated, which forms the basis of insurance contract.

6. Payment at contingency

An insurer is liable to pay compensation to the insureds only when certain contingencies arise. In life insurance, the contingency — the death or the expiry of the term will certainly occur. In such cases, the life insurer has to pay the assured sum. In other insurance contracts, the contingency — a *fire accident* or the *marine perils*, may or may not occur. So, if the contingency occurs, payment is made, otherwise no payment need to be made to the policyholders.

7. Amount of Payment:

The amount of payment in indemnity insurance depends upon the nature of losses occurred, subject to a maximum of the sum insured. However in case of life insurance a fixed sum is paid on the happening of uncertain event.

8. Large number of insured persons

The success of insurance business depends on the large number of persons insured against similar risk, This will enable insurer to spread the losses of risk among large number of persons, thus keeping the premium rate at minimum.

9. Insurance is not Charity

Charity pays without consideration but in the case of insurance, premium is paid by the insured to the insurer in consideration of future payment.

10. Insurance is not gambling

An insurance contract cannot be considered as gambling as the person insured is assured of his loss indemnified only on the happening of such uncertain event as stipulated in the contract of insurance, whereas the game of gambling may either result into profit or loss.

11. Transfer of risk

Insurance is a plan in which the insured transfer his risk on the insurer.

12. Ascertaining of losses

By taking a life insurance policy, one can ascertain his future losses in terms of money. This is done by the insurer to determining the rate of premium, which is calculated on the basis of maximum risks.

13. Based on certain Principles

Insurance is a contract based upon the certain fundamental principles of insurance which includes utmost good faith, insurable interest, contribution, indemnity, causa proxima, subrogation etc.

14. Regulated by Law

Insurance companies are regulated by statutory laws in almost all the countries. In India, life insurance and general insurance are regulated by Life Insurance Corporation of India Act 1956, and General Insurance Business (Nationalization) Act 1972, and IRDA Regulations etc.

15. Investment portfolio

Since insurers' liability to pay compensation to the insured arises on the happening of certain uncertain event, the insurers do not have to keep the collected premium with them. They invest the premium received in selected securities and earn interest and dividend on them. Thus, the insurers have two sources of income: the insurance premium and the investment income (i.e. interest / dividend) which occurs over time.

History of Insurance

History of insurance can be easily understandable under these categories-

(a) Ancient Era

Basically insurance is an age old phenomenon and has always been a part of the human society. The presence of insurances was known to the ancient societies such as Romans, Phoenicians Rhodians, It is another thing that the business of underwriting commercial risks was not highly developed. The earliest traces of Insurance in the ancient Indian history was in the form of the marine trade loans or carrier's contracts, which can be found in Kautilya's Arthashastra, Yajnyavalkya's Dharmashastra and Manu's Smriti.

1. Marine Insurance

The marine insurance is the oldest form of insurance. Under Bottomry Bond, the system of credit and the law of interest were well developed. It was based on a clear appreciation of hazard involved and all means of safeguarding against it. In case the ship was lost, the loan and interest were forfeited. The contract of insurance was made a part of the contract of carriage, and Manu shows that Indians had even anticipated the doctrine of average and contribution. Travellers by sea and land were very much exposed to the risk of losing their vessels and merchandise. At that time the piracy on the open seas and highway robbery of caravans were very common. The cooperative device was quite voluntarily in the beginning, but now in modern it has been converted into modified shape of premium. The marine form land lending prominence of Lombard's Merchant merchants got a prominent section of the London city. They built homes there and took the name of Lombard Street.

2. Fire Insurance

After marine insurance, fire insurance developed in the present form. It was originated in Germany in the beginning of sixteenth century. The fire insurance got its momentum in England after the great fire in 1666 . About 85 per cent of the houses were burnt to ashes and properties worth over ten crores were

completely burnt off. Fire Insurance Office was established in 1681 in England. With colonial development of England, the fire insurance also spread over the world.

3. Life Insurance

The Life insurance made its first appearance in England in sixteenth century. The first recorded evidence being the policy on life was of William Gybbons on June, 1653 in England. Even before this date annuities had become quite common in England, and marine insurance had in fact made its appearance three thousand years ago.

4. Miscellaneous Insurance

Accident insurance, fidelity insurance, liability insurance and theft insurance were the important form of insurance at that time. Lloyd's Association was the main functioning institution. The scope of general insurance is increasing with the advancement of the society.

(b) British Era

Even though the insurance was an old concept but developed during the regime of British rule. The growth and development of the insurance sector started taking shape in the nineteenth century. But at that time there was neither any regulation nor any monitoring framework existed. The first Life insurance company in India was Oriental Life Insurance Company. It was started by Europeans in Calcutta in 1818, followed by the Bombay Life Assurance Company in 1823, the Madras Equitable Life Insurance Society in 1829 and Oriental Life Insurance Company in 1874. However till the establishment of the Bombay Mutual Life Assurance Society in 1871.

Pre Nationalization/Post Independence Era of the Indian Insurance

The Constitution of India is a federal in nature in as much there is a division of power between Centre and States. Insurance is included in the Union List. The subject included in this list are of the exclusive jurisdiction of the Centre. The Central Legislature is empowered to regulate the insurance industry in India and hence the law in this regard is uniform throughout

the territories of India. The specific legislation passed in the year 1938 is still a comprehensive piece of legislation to deal both life and non-life insurance sector.

The government incorporated so many amendments in this legislation to deal effectively after independence. We will deal separately discussion on Insurance Act, 1938. The insurance business grew at a faster pace after independence. Indian companies strengthened their hold on this business but despite the growth that was witnessed, insurance remains an urban phenomenon and no as such more options and policies were available for the rural people.

Nationalization of the Insurance Business in India

The management of life insurance business of two hundred and forty five Indian and foreign insurers and provident societies then operating in India was taken over by the Central Government on January 19, 1956.

The Life Insurance Corporation (LIC) was formed in September 1956 by the Life Insurance Corporation Act, 1956 which granted the LIC the exclusive privilege to conduct Life Insurance Business in India. However, the LIC Act, 1956 left outside its purview The Post Office Life Insurance Fund, any Family Pension Scheme framed under the Coal Mines Provident Fund, Family Pension and Bonus Scheme Act, 1948 or the Employee's Provident Funds and the Family Pension Act, 1952.

After enactment of Life Insurance Corporation, the life insurance business has been taken out of the purview of 1938 Act and governed by provisions of the LIC Act, the rules made there under in terms of Section 48, and the regulation framed under Section 49 of the LIC Act.

In the case of *LIC of India v. Manoj Kumar*, , the provisions of Section 43 of the LIC Act adopt certain provisions of the Insurance Act, 1938 indicated therein and, therefore, the sections mentioned therein would apply to the affairs of the LIC, but not the ACT as a whole.

The nationalization of General Insurance was late due to some specific reasons but it also nationalized with effect from January 1, 1973 through the introduction of the General

Insurance Business (Nationalization) 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 Indian General Insurance companies were transferred to the General Insurance Corporation 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 in November, 1972 and it, commenced business on January, 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.; The United India Assurance Company Ltd.; New India Assurance Company Ltd.; and Oriental Insurance Company Ltd..

Liberalization of Indian Insurance

Since 1956, with the nationalization of insurance industry, the LIC and GIC held the monopoly in Indian life and non-life insurance sector. Both LIC and GIC played a significant role in the development of the of the insurance market in India and in providing insurance coverage in India through an extensive network. For example, currently the LIC has a wide network of Seven Zones, Hundred Divisions and over Two Hundred Branches. LIC has over 5,50,000 agents nationwide and over 100 million lives were covered.

From 1991 onwards, the Indian Government introduced various reforms in the financial sector paving the way for liberalization of the Indian Economy. Consequently, in 1993, the Government of India set up an eight member committee chaired by Mr. R.N. Malhotra, a Former Governor of India's apex bank, the Reserve Bank of India to review the prevailing structure regulation and supervision of the insurance sector and to make recommendations for the strengthening and modernizing the regulatory system. The committee submitted report to the Indian Government in January, 1994.

Two of the key recommendations of the committee included the privatization of the insurance sector by permitting

the entry of private players to enter the business of life and general insurance and an establishment of an Insurance Regulatory Authority.

The Indian Government took number of years in the implementation of the Malhotra Committee recommendations. The Indian Parliament passed the Insurance Regulatory and Development Act, 1999 (The IRDA Act) on December 2, 1999 with the aim “to provide for the establishment of an Authority, to protect the interest of the policy holders, to regulate, promote and ensure orderly growth of the insurance industry and to amend the Insurance Act, 1938, The Life Insurance Act, 1956 and the General Insurance Business (Nationalization) Act, 1972”.

Role of Private Insurance Companies in Growth and Development of Insurance Sector

The Government opens the sector for the foreign insurance company but limited the investment up to the limit of 26%. Even today the present Government wants to increase the limit of FDI in insurance sector and placed the Bill before the Parliament but still under process to get the assent of the appropriate forums. In the first year of insurance market liberalization (2001) as much as 16 private sector companies including joint ventures with leading foreign insurance companies have entered the India Insurance Sector. Of this, 10 were under the life insurance category and six under general insurance. Thus in all there are 25 players (12 Life Insurance and 13 General Insurance) in the Insurance Industry in general. The IRDA Act has established the Insurance Regulatory and Development Authority as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies. The IRDA Act also carried out a series of amendments to the Insurance Act, 1938 and conferred the powers to the Controller of Insurance on the IRDA.

The Risk-Commencement, Attachment and Duration

Meaning of Risk

In simple words risk is danger, peril, hazard, chance of loss, amount covered by insurance, person or object insured. The

risk is an event or happening which is not planned but eventually happens with financial consequences resulting in loss. There is saying higher the risk more the profit.

A risky proposal can on one hand bring higher profits but on the other hand looming losses. The risk can never be certain or predictable. Therefore there is need for the risk management.

The risk management is nothing but a method to prejudge the risk that may come up sometime in future. It is not prediction but a process of reducing the risk to a minimum level. Risk management involves a number of measures that are used to keep the risk at possible minimum level.

In our day to day life also we take many steps to keep the risk at lower level for example most people do not keep valuables at home and rather prefer to keep them in a bank locker by paying certain locker rent to the bank.

Similarly risk of life, health or property is reduced by purchasing a proper insurance. All these actions of individual persons are done under fear of uncertainty and unpredictability of future. Likewise in business and commerce also an element of fear of loss always exists if the risk components are not managed properly.

Risk is a fear of happening something adverse and in order to restrict such adverse happenings a plan is envisaged to overcome such adverse happenings. Which is called as risk management. In the field of Insurance such fears, uncertainties, prejudgments of forthcoming risks and the size of risk and its potentiality is determined by the Actuary appointed by the IRDA.

The first step towards arrested the risk or fear of risk is to identify the risk. But how to identify it unless it is known what type of risk should looked into. Hence it important to know the nature of the risk.

Types of Risk

The risk can be of many types but it revolves around two main factors:

(i) Pure Risk

Such risks are accidental in nature. Being accidental can bring potentially in losses. Any accident brings in physical loss and therefore a pure loss is a physical loss that the insured faces due to occurrence of an event that has been insured against. Physical loss may be of any type be it a loss in business, due to fire hazards and losing stocked goods, due damage to a property for any reason.

An accident of any type culminating into financial loss or loss of life is some examples of pure risks. All types of physical risks are hard to be avoided. They may occur due to human negligence or by natural calamities, Riots, strikes, sudden breakdown in a manufacturing unit. Fall in prices of goods stored, and so many other reasons that contribute to cause losses As per Prof. M Haller “The possibility that positive expectations of a Goal Oriented System will not be fulfilled”.

This definition of Prof. Haller is although not confined to the definition of pure risk but is applicable to the whole term of “RISK”. It is important to note that the pure risks or risk of trade are such that they can seldom be avoided but can be insured against.

(ii) Speculative Risks

Such types are always speculative may it be profit or loss in both cases speculations works. Mostly speculation is done in the field of trade. There may un accounted reasons for creation of risks in the field of trade may be price rise, inflation, rotting of stock of goods or stagnations of stocks due to strike, terrorists threat, declaration of war or the stock going out of use or fashion.

By the meaning of the word speculation one can understand that speculation is type of purchase or sale of shares on an estimate of whether the share value rise or fall, with intention of making profit, or avoiding a loss It is like gamble on future price movements, whether in share, land, commodity or money. Gambling itself is a speculative risk which cannot be relied upon. A gambler can never be certain of win position and can never be trusted in the business of gambling.

The difference between the two risks is that the pure risks

can be insured but the speculative risks cannot be insured.

Only if for the purpose of going deep into identifying the factor of risk it can be classified in the way depending on the way of how an individual or accompany feels fears for the happenings in future. As such the classification can be divided into as many reasons and as many companies that exist on the earth as on date.

There should be a specific limit of identifying a risk like Pure risk and speculative risk. If one presumes risk can be a certain risk, uncertain risk, a visual risk and un -visual risk, a temporary risk and a permanent risk etc. but there is no end of identifying an actual risk.

It is therefore necessary that the track record of previous happenings in every field of life is taken into account to estimate the future risks in a particular field may it be a risk of life, health, industry, trading, business, commerce, vehicles, home and so on.

Risk Commencement

Risk Commencement Date means the date on which the risk is assumed by the Company and as specified in the Policy Schedule; Normally, the coverage of risk commences from the date of acceptance of the policy or the date of receipt of the first premium in full, whichever is later. But if the acceptance of the proposal is conditional upon the proposer's (that is the person whose life is insured) compliance with any requirements, then the risk under the policy will commence on the date on which all the requirements are satisfactorily complied with, after the receipt of the first premium in full. This means, even if you have made the payment for the first premium, the policy shall cover risk only after you have complied with the requirements to the satisfaction of the particular insurance company.

Conditions Relating to Commencement of Risk

1. Commencement of Risk

The letter of acceptance is not a cover note, it only intimates that the risk will commence when the first premium is offered to and accepted by the insurer. If premium was paid along with

the proposal form, the date of letter of acceptance will be the date of commencement of risk.

After acceptance of risk, policy is issued. The policy contains terms and conditions of the insurance and is a document which can be used as a proof of insurance.

2. Proof of Age

The proof of age must be produced at the time of proposal or immediately after the proposal because the rate of premium depends upon the age of the life assured. The insurer does not withhold the issue of the policy for want of proof of age, but does not admit any claim unless the age is proved to the satisfaction of the insurer.

However, if it is subsequently found that the age at entry was mentioned lower than the correct age, the assured sum is reduced to such amount as would have been purchased at the true age.

If the actual age comes out to be lower than the stated age, the difference is either refunded or adjusted towards future premium or policy amount. The proof of age is very essential at the time of proposal in the term policies.

Multi-purpose policy, children's Differed Endowment Assurance, Immediate Annuity and deferred annuity, where the life assured has not completed 20 years or where the life to be assured has completed 50 years of age or the proposal is under the Salary Saving Scheme.

Attachment of risk

Attachment of risk is the commencement of liability under a contract of insurance to answer for any loss or damage that may result from a risk insured against. The loss or damage should be during the term of the insurance in an amount not exceeding the amount stipulated in the contract.

Attachment of risk is also a stage in a transaction (usually the point of delivery) where the buyer acquires the risk of loss of the purchased item. The risk must attached i.e. the insurer receives the premium in a contract of insurance for running a certain risk. If the risk is not run or not continuous on the

business or the property of the insured then the premium received by the insurer should be returned.

Duration of the Policy

The policy in ordinary course remains in force until expiration of period of insurance. Normally a policy fixes a precise hour at which it is to be expired. Otherwise it expires at the mid night of the last day it is specified.

But there are few conditions upon which a policy may cease to be in force before the specified duration. Such as

- **By payment of full sum insured under policy.**

It is liability of the insurer to pay the sum and no more. Payment of full sum discharges an insurer from further liability and the policy ceases.

- **By consent of parties.**

The parties, at any time during the period of insurance, agree to cancel the policy either for the purpose of putting an end to the contract between them or for the purpose of substituting another policy with different terms. But the policy must contain a express condition enabling the insurer or assured to determine the policy before the expiration of the period of insurance.

- **Under statutes**

If insurer being a company goes under liquidation, the contract of insurance contained in the policy issued by them comes to end. The assured there upon ceases to be protected by the policy, and acquires a right to prove against the insurer for the value of the policy on the footing of a contingent claim at the date of liquidation.

- **By breach of condition**

It is not the breach of every condition that affects the duration of the policy. Where condition is broken is a condition precedent of the policy, the effect of breach, if the insurer elects to take advantage of it, is to avoid the policy ab initio. The period of insurance never

begins to run, and no claim can be made under the policy, even though the loss may have taken place before the insurer has elected to avoid the policy. Hence it is immaterial that the actual avoidance takes place under an express condition of the policy.

ASSIGNMENT AND ALTERATION

Principle of Assignment

The provision regarding assignment and transfer are given in section 38 of the Insurance Act 1938. An assignment is the complete transfer of rights, title and interest in the policy. We can also say that an assignment is an interest through which the beneficial interest, right and title under a policy are transferred. This transfer may be absolute or conditional. In case of life policies, the assignment could be made either by endorsement on the policy itself or through a separate instrument that should be signed either by the assignor or his duly authorized agent and attested by at least one witness.

Insurance Company Assignee, Not a Consumer: In *Vijay Laxmi Transport Co. v/s United India Insurance Co. Ltd.*, the consumer booked certain insured articles through the appellant courier which did not reach the destination. A claim was preferred where in the Insurance Co. paid the insured amount to the insured (consignor) and filed a claim against appellant carrier (Transport Co.) for indemnification of the loss as the loss was occasioned by the deficiency on the part of the Transport Co. The commission dismissed the complainant and observed: "It is settled principle of law as pronounced by the Hon'ble Supreme Court in the ruling *Savani Roadlines v/s Sundaram Textiles Ltd.* that Insurance Company is the assignee. It was not a beneficiary of services hired by consumer from carrier. Insurance Co. is not a consumer vis-à-vis the carrier. In this ruling it has been held that such an assignee cannot file a complaint under the Consumer Protection Act but can file a civil suit for the recovery of the loss. It has been held that the complaint by such assignee would not be maintainable. The same decision has been given in the ruling *Oberoi Forwarding Agency v/s New India Assurance Co. Ltd.*

Features of Assignment

Section 38 of the Insurance Act, 1938 makes it clear that an assignment can be effected either by an endorsement on the policy itself or through a separate instrument. A notice in writing must be given to the Insurance Company by the assignee along with the policy documents. This is also the duty of insurer to register the assignment in the books and give a written acknowledgement of the receipt of such notice.

Important conditions for Assignor and Assignee:

- I. an assignment can be made by a person competent to a contract and the assignee should not have any legal disqualification;
- II. The assignment should also not be in contravention of any law;
- III. It must be in writing under the signature of the assignor and it should be allotted at least by one witness.

Nominees rights after assignment of policy to Bank:

In *K. Sarikala v/s L.I.C of India* the husband of the petitioner died in an accident and the petitioner or being nominee in the insurance policy claimed the insured amount. It was contended by the Insurance Company that the policies were assigned in favour of the Bank (Second Respondent). In discharge of the surely amount due to the Bank by the policy holder and therefore in view of the section 38 (6) of the Insurance Act, 1938 the L.I.C. would recognize the transferee/assignee as the only person entitled to the benefit under the policy. It was further contended that once the policy was assigned and transferred in favour of the Bank, the nomination stands cancelled by the virtue of sub-section (4) 39 of the Act. Thus, it was contended that the corporation (L.I.C.) was not liable to pay any amount to the petitioner who ceased to be a nominee and it is only the Bank that had to pay the amount to the legal representatives of the deceased in accordance with the law. Thus the corporation need not be made a party to such proceeding, as its liability stood transferred to the transferee. The court held that in view of the clear position of law, the stand of the corporation is perfectly legal and writ petition was dismissed.

SETTLEMENT OF CLAIM

When the event insured against happens, the assured becomes entitled to enforce the policy and the insurer becomes liable to pay the amount secured in the policy in accordance with its terms. The operative portion of an Endowment Life Assurance Policy states that the insurer will pay the sum assured with bonuses to the persons to whom it is expressed

- I. of the happening of event on which the sum assured is to become payable in terms of the Schedule,
- II. the title of the person or person claiming payment, and
- III. of the correctness of the age of the life assured stated in the proposal if not previously admitted.

The person who is entitled to claim and receive payments under a life policy and also the proof of age has been dealt with. The rights of the parties are usually defined in the policy. In life insurance, the insurer is bound to make the payment to the rightful claimant on the maturity of the policy or the death of the assured.

Claim by Maturity

In advance of the date of maturity the Life Insurance Corporation sends maturity intimation informing the insured of all requirements which he has to satisfy for enabling him to receive payment under the policy. The requirements for settlement by a maturity claim may be briefly stated as follows:

- I. The policy document must be submitted by the claimant to the corporation office.
- II. If the age is not indorsed on the policy by the company as admitted, the claimant should send the proof of age.
- III. If there has been an assignment or reassignment under the policy by a separate document, the original of such deed of assignment or reassignment should also be submitted along with the policy.

The discharge form is supplied by the insurer and that has to be signed, stamped and attested. The discharge form is

an acknowledgement of receipt of money and so it should bear a 20 paise revenue stamp. He should get it attested by any witness who has seen the assured sign or fix his mark or receive a personal acknowledgement from him. The discharge form has to be sent along with (a) policy, (b) proof of age, and (c) deed of assignment or reassignment, if any. If the policy holder desires payment either by money order or demand draft he should intimate the Corporation by signing at the appropriate place in the discharge form.

Claim on Death

The claimants of the amount due on the policy usually are the heirs, assignees or nominees. They should inform the insurer of the death of the assured within the stipulated time, if any, in the policy and in its absence within a reasonable time.

What is reasonable time? This is a question of fact. On receiving the intimation certain form will be sent by the Corporation to the claimant or claimants informing him or them of the requirements to be satisfied for settling the claim. In case of death of the assured after three years from the date of the policy the requirements are:

- I. The three requirements stated above in the case of a claim on maturity.
- II. Claim Form A which is the statement of the Claimant.
- III. A certificate of death of the policy holder issued by the Municipal Death Registry, or by a Public Record Office which maintains the records of births and deaths in the locality.

Now the question arises what if policies lapsed for non-payment of premium? And the next question is whether any portion of the sum assured is payable depends on the conditions in the policy. The answer is sum payable depends on the period for which premiums have been paid and the current life Insurance Corporation's Endowment Policy contains the following conditions on the back of the policy namely; (a) Nothing is payable if regular payment of premiums has not been made at least for two years; (b) if at least premiums for two years have been paid before the default

occurs, the policy will become paid-up for a proportionately reduced amount which will be payable; provided that, if at least premiums for three full years have been paid and death occurs within six months thereafter from the due date of the first unpaid premium, the sum assured is paid as if the policy has remained in full force, subject to deduction of the unpaid premiums etc and appropriate claim forms are supplied accordingly as indicated above.

On receipt of these forms, the insurer makes his own investigation and if there is no suspicious circumstance, the insurer issues the discharge form to the claimant to be sent back to the insurer after filling it up properly. When the assured dies an unnatural death, such as by accident, suicide or due to unknown cause, the insurer makes further investigations after seeking further information from the claimant.

Even if the policy is in force at the time of death, or on death of the assured, whether a person is entitled to some amount according to the conditions stipulated in the policy, a further question arises whether the death is accidental, or intentional. If the death is by suicide, there is a further clause, usually inserted in the policy that even if death is caused during the subsistence of policy, if it occurs within a period specified therein, the sum assured is not payable and in case it is after that period the insurer will be liable, notwithstanding the death being intentional. Whether death was by accident or by design assumes importance in cases where the policy excludes the liability of the insurer in case of death by suicide during the period of contract or where the full amount assured is not payable in such event. The Life Insurance Corporation policies exclude liability only where suicide is committed within one year from the date of policy. The question becomes complicated especially where conclusive evidence about the cause of death is not available. In such cases the matter rests on legal presumptions.

Principle of Subrogation

According to Federation of Insurance Institutes, Mumbai. "Subrogation is the transfer of rights and remedies of the insured to the insurer who has indemnified the insured in

respect of the loss.” Subrogation is the substitution of one person in place of another in relation to a claim, its rights, remedies or securities. This is also a corollary to principle of indemnity. This principle is applicable to both fire and marine insurance. Having satisfied the claim of the assured, the insurer stands in the place, and subrogated to all the rights of the insured.

According to the principle of subrogation, on the payment of claim of the insured, the insurer steps into the shoes of the insured, to claim the damages/loss caused to the property by third party: For example, the owner of a motorcar having a comprehensive insurance cover, has got two alternative in case of an accident with another car or person (third party) who caused the accident. Firstly, he can claim for the damages from the Insurance Co. or from the third party. If the car owner decides to collect compensation from the Insurance Co., his right against the third party is subrogated to the Insurance Co. so that the company can afterwards claim the damages from the third party.

The right of subrogation arises in the following ways:

- Right arising out of tort – A tort refers to ‘civil wrong’ and a common type of tort may be negligence or nuisance, when a duty owed to a third party is breached, the injured party gets the right of claiming damages from the wrongdoer. Where tort has caused some loss, the insurer will succeed to the policy holder's right of action.
- Right arising out of contract – Where a compensation is imposed on a third person, the obligation of paying compensation to the injured in respect of the loss, shall pass over to the insurer but the right attached to the insured shall be subrogate. Goods damaged while in the custody of a common carrier or tenancy agreement is a suitable example in the case.
- Right to subrogation arising out of salvage – Where an insured is paid for a total loss against a marine policy, a subrogation right arises on the subject-matter (insured article) is not taken into account, on taking

over the salvage by the insurer. For example – a ship is damaged beyond to get it repaired, but still have some scrap value. This value should be taken into consideration when the insurer takes over the salvage.

Essentials of Principle of Subrogation

- I. Corollary to the principle of indemnity – This principle of subrogation is the supplementary principle of indemnity.
- II. Subrogation is the substitution – The insurer according to this principle becomes entitled to all the rights of insured subject-matter after payment because he has paid the actual loss of the property.
- III. Subrogation only up to the amount of payment – The insurer in subrogation all the rights, claims, remedies and securities of the damages insured property after indemnification but he is entitled to get these benefits only to the extent of his payment.
- IV. The subrogation may be applied before payment – If the assured got certain compensation from third party before being fully indemnified by the insurer, the insurer can pay only the balance of the loss.
- V. Personal Insurance – The doctrine of subrogation does not apply to personal insurance because the doctrine of indemnity is not applicable to such insurance. The insurers have no right of action against the third party in respect of the damages. For Example-If an insured dies due to the negligence of a third party his dependent has right to recover the amount of the loss the policy could be subrogated by the insurer.

Limitation on the Doctrine of Subrogation

- (i) Does not apply to life and personal accident policies; Before the doctrine is applied, there must be indemnity. Since life and personal accident policies are not governed by strict principle of indemnity the doctrine applies only to fire, marine and other non-life policies;
- (ii) Insurer must pay before he claim subrogation;

- (iii) Assured must have been able to bring action. For example where two ships belonging to the same owner collided by fault of one of them, the insurers of the ship not at fault have been held not to be entitled to make any claim on the owner of the ship at fault, though the insurers of cargo owned by a third party can claim subrogation. Similarly, where the assured and the wrongdoer are co assureds the doctrine does not apply.

EFFECT OF WAR UPON POLICIES

An alien enemy by law is incapable of contracting. If, after the execution of a policy, the assured becomes an alien enemy by reason of the outbreak of war between his country and Great Britain, the policy, not being unlawful in its inception, is not avoided, but is only suspended in its operation during the continuance of the war.

Where a loss has taken place before the outbreak of war, the assured may, on the conclusion of peace, but not before, sue on the policy. Where the loss takes place after the conclusion of peace, it takes place under a valid contract, and the assured is entitled to recover in respect of it.

Where the loss takes place during hostilities, it is clear that where the loss is directly connected with such hostilities, *e.g.* where, in the case of fire insurance, the fire is occasioned in the course of military operations, whether on the part of the British Forces, or their allies, or of the assureds own countrymen, the assured is, quite apart from any express condition in the policy, prohibited from recovering on the ground of public policy. A similar prohibition applies even where the loss is wholly unconnected with the existence of the hostilities, *e.g.* in

the case of an ordinary loss by fire. The prohibition applies only to claims made by alien enemies. As British subjects are not precluded from enforcing against alien enemies claims arising under contracts which were made before the outbreak of war, provided that the difficulties of service of the writ can be overcome, British insurers are, therefore, entitled in the case of an enemy assured to receive, and if necessarily, to

enforce payment of premiums. Further, in the case of enemy insurers, a British assured may receive payment or enforce a claim under his policy.

In determining whether a person is an alien enemy or not, it is not his nationality, i.e. the fact that he is a subject of a hostile state, so much as his place of business during the war that is important. Although the *prima facie* disability arising from nationality is not removed by mere residence in British Dominions without a license, express or implied, from the Crown, the subject of a hostile state who is carrying on business in British Dominions, or in a foreign country, is not, for the purposes of a contract of insurance, to be deemed an alien enemy. On the other hand, the subject of a neutral, or even a British subject, will, by carrying on business there, or even by voluntarily residing there, be treated for these purposes as an alien enemy. The stringency of this rule, may, however, be released by treaty, order in Council, or license. Where an alien enemy is thus enabled to contract, he acquires the right to enter into contracts of insurance, and to enforce them in his own name during the war.

OVERVIEW OF INSURANCE LAWS IN INDIA

The Insurance Act, 1938

It is the first comprehensive piece of insurance legislation in India governing both life and non life branches of insurance. The Act applies to all type of insurance business-life, fire, marine etc. done by companies incorporated in India or elsewhere.

According to **Sec. 2(C)** of the Act, there is prohibition of transaction of insurance business by certain persons. Save as hereinafter providing, no person shall after the commencement of the Insurance Act, begin to carry on any class of insurance business in India shall after the expiry of one year, from such commencement, continue to carry on any such business unless he is:

- (a) A public company or
- (b) A society registered under the Cooperative Societies Act, 1912 or under any other law for the time being in force in any state relating to cooperative societies or,

- (c) A body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Requirement as to capital

According to **Sec.6**, no insurer carrying on the business of life insurance, general insurance or insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, should be registered unless he has:

- (i) A paid-up equity capital or rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
- (ii) A paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a reinsurer: Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii) the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company should be excluded: Provided further that an insurer carrying on business of life insurance, general insurance or Re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under the Act, should have a paid-up equity capital in accordance with clause (i) and (ii), as the case may be, within six months of the commencement of that Act.

Deposit

According to **Section-7**, every insurer should, in respect of the insurance business carried on by him in India, deposit and keep deposited with the Reserve Bank of India, in one of the offices in India of the bank for and on behalf of the Central Government, the amount hereafter specified, either in cash or in approved securities, estimated at the market values of the securities on the day of deposit or partly in cash and partly in approved securities so estimated.

- (i) In the case of the life insurance business, a sum equivalent to one percent of his total gross premium

written in India in any financial year commencing after the 31st day of March, 2000 not exceeding rupees ten crores;

- (ii) In the case of general insurance business, a sum equivalent to three percent of his total gross premium written in India, in any financial year commencing after the 31st day of March 2000, not exceeding rupees ten crores;
- (iii) In the case of Re-insurance business a sum of rupees twenty crores. Provided that, where the business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section will be one hundred thousand rupees only.

Registration

Registration of insurance companies is covered under **Sec.3** of the Act and the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000. An applicant desiring to carry on insurance business in India should make a requisition for registration application in Form IRDA/R1. An applicant, whose requisition for registration application has been accepted by the Authority, should make an application in Form IRDA/R2 for grant of a certificate of registration.

Every application for registration should be accompanied by :

- (a) A certified copy of the memorandum and articles of association.
- (b) Names, addresses and occupation of directors.
- (c) A statement of the class or classes of insurance business to be done.
- (d) Principal place of business or domicile outside India.
- (e) A certified copy of the published prospectus.
- (f) Documentary proof evidencing the making of deposit required under section 7 of the Act.
- (g) Evidence of having rupees one hundred crore or more paid up equity share capital, in case the

application for grant of certificate is for life insurance business or general insurance business.

- (h) Evidence of having rupees two hundred crore or more paid up equity share capital, in case the application for grant of certificate is for reinsurance business.
- (i) An affidavit by the principal officer and the promoters of the applicant certifying that the requirements of the first proviso to section 6 of the Act to the effect that paid-up share capital is adequate after excluding any preliminary expenses incurred in the formation and registration of the company and the deposit required to be made under section 7 of the Act have been satisfied.
- (j) A statement indicating the distinctive numbers of shares issued to each promoter and shareholder in respect of share capital of the applicant.
- (k) An affidavit by the principal officer and the promoters of the applicant certifying that the paid up equity capital referred to in sub-clause (b) of clause (7A) of section 2 of the Act, calculated is in accordance with regulation 11 does not exceed twenty six percent.
- (l) A certified copy of the standard forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate by an actuary in case of life insurance business that such rates, advantages, terms and conditions are workable and sound.
- (m) A certified copy of the memorandum of understanding entered into between the Indian promoter and the foreign promoter, if any, or amongst the promoters as a whole including details of the support comfort letters exchanged between the parties
- (n) The original receipt showing payment of the fee of Rupees fifty thousand for a class of business.
- (o) A certificate from a practising chartered accountant or a practising company secretary certifying that all the

requirements relating to registration fees, share capital, deposits, and other requirements of the Act have been complied with by the applicant.

- (p) Any other information required by the Authority during the processing of the application for registration. If, on the receipt of an application for registration and after making such inquiry as he deems fit, the authority is satisfied that: a) The financial condition and the general character of management of the applicant are sound; b) The volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate; c) The interests of the general public will be served.

Then the authority may register the applicant as an insurer and grant him certificate of registration in Form IRDA/R3. An applicant granted a certificate of registration should commence insurance business for which he has been authorised within 12 months of the date of registration.

The authority shall *withhold* registration shall, or *cancel a registration already* made if any requirement is not satisfied or in so far as it relates to a particular class of insurance business as the case may be:

- (a) If the insurer fails to comply with the provisions Section – 7 or of deposits, or
- (b) If the insurer is in liquidation or is adjudged an insolvent, or
- (c) If the business has been transferred to any other insured, or
- (d) If the whole of the deposit made in respect of insurance business has been returned to the insurer under Section – 9, or
- (e) When clause 9 of Section – 2 related to insurer's definition ceased of, cancelled or suspended, or
- (f) Defaults in complying with any rules.
- (g) Carries on any business other than insurance business or any prescribed business.

Submission of returns

The audited accounts and balance sheet and actuarial report and abstract and four copies thereof shall be furnished as returns to the authority in the case of the accounts and balance sheet and the actuarial report within six months and in the case of the abstract within nine months from the end of the period to which they refer.

If the principal place is outside India, the period of submission may be extended by three months.

Of the four copies so furnished one shall be signed in the case of company by the Chairman and two directors and by the principal officer of the Company and, if the company has a managing director or managing agent, by the director or managing agent in the case of a firm by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

Where the insurer's principal place of business or domicile is outside India, he should forward to the authority, along with the documents, certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents.

Commission and Rebates

No person should pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or a principal, chief or special agent.

No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, 40% of the first year's premium payable on any policy or policies effected through him and 5% of a renewal premium, payable on such a policy, or, in the case of business of any other class, 15% of the premium.

No person should pay or contract to pay to an insurance

agent, and no insurance agent should receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer and effected through an insurance agent, an amount exceeding:

(a) Where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, 2% of that premium,

(b) Where the policy grants a deferred annuity in consideration of more than one premium, 7½% of the first year's premium, and 2% of each renewal premium, payable on the policy, and

(c) In any other case, 35% of the first year's premium, 7½% of the second and third year's renewal premium, and thereafter 5% of each renewal premium payable on the policy: Provided that in a case referred to in clause (c), an insurer, during the first 10 years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, 40% of the first year's premium payable on the policy. Investments 60 Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of:

- (a) The amount of his liabilities to holders of life insurance policies in India of account of matured claims, and
- (b) The amount required to meet the liability on policies of life insurance maturing for payment in India, less:
 - (i) The amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and (ii) Any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer which business he has acquired and in respect of which he has assumed liability.

In the following manner, namely, twenty-five percent of the said sum in Government securities, a further sum equal to not less than twenty five percent of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any other investment.

No insurer should invest or keep invested any part of his controlled fund otherwise than in any of the following approved investment namely:

- (a) Approved securities;
- (b) Securities;
- (c) Debentures or other securities of Municipality in a State;
- (d) Debentures or other securities issued by a body constituted by any Central Act or Act of State Legislature;
- (e) First Mortgage on immovable property under any housing or building scheme;
- (f) Debentures secured on first charge on immovable property;
- (g) First debentures secured by a floating charge on all its assets;
- (h) Preference shares of any company;
- (i) Shares of any company which have been guaranteed to any by any company;
- (j) First Mortgagee immovable property;
- (k) Immovable property situated in India or in any other country; loans on life interests, or on policies of life insurance within their surrender value;
- (l) Loans on life interests or on policies of life insurance within their surrender values;
- (m) Life interests;
- (n) Fixed deposits with banks;

- (o) Debentures of, or shares in cooperative societies;
- (p) Such other investments as the authority may declare to be approved investment.

Prohibition of loan

No insurer should grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him with their surrender value, to any director, manager, managing agent, actuary, auditor, or officer of the insurer if the company or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds such position.

Insurance Regulatory and Development Authority Act, 1999

The Insurance Regulatory and Development Authority Act, 1999 also known as the IRDA Act was enacted 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 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 IRDAI Act, 1999, established the Insurance Regulatory and Development Authority of India ("IRDAI" or "Authority") as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies. The IRDAI Act also carried out a series of amendments to the Act of 1938 and conferred the powers of the Controller of Insurance on the IRDAI. The members of the IRDAI are appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge

or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration etc. The Authority consists of a chairperson, not more than five whole-time members and not more than four part-time members.

Every Chairperson and member of IRDAI appointed shall hold office for a term of five years. However, Chairperson shall not hold office once he or she attains 65 years while whole time members shall not hold office beyond 62 years. Central Government may remove any member from office if he or she is adjudged insolvent or is physically or mentally incapacitated or has been convicted of an offence involving moral turpitude or has acquired financial or other interests or has abused his position. Chairperson and the whole time members shall not for a period of two years from the date of cessation of office in IRDAI, hold office as an employee with Central Government or any State Government or with any company in the insurance sector.

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 Sec.30A in the Life Insurance Corporation Act, 1956 whereby the exclusive privilege of LIC to carry on life insurance business in India was to cease.

The Third Schedule to the IRDA Act inserted a similar provision, Sec.24A 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.

Under Section 14 of the IRDAI Act, 1999, IRDAI has the following powers:

- (a) Issue of Certificate of Registration to insurance companies, renew, modify, withdraw, suspend or cancel the certificate of registration.
- (b) Protection of interests of policy holders in matters concerning assignment of policies, nomination, insurable interest, claim settlement, surrender value and other terms and conditions of insurance contract.

- (c) Specification of requisite qualifications, practical training and code of conduct for insurance agents and intermediaries.
- (d) Specification of code of conduct for surveyors and loss assessors.
- (e) Promoting efficiency in the conduct of insurance business.
- (f) Promoting and regulating professional organizations connected with insurance and reinsurance business.
- (g) Levying fees and other charges for carrying out the purposes of the Act.
- (h) Calling for information from or undertaking inspection of insurance companies, intermediaries and other organizations connected with insurance business.
- (i) Control and regulation of rates, advantages, terms and conditions that may be offered by general insurance companies.
- (j) Specifying the form and manner in which books of account shall be maintained by insurance companies and intermediaries.
- (k) Regulation of investments of funds by insurance companies.
- (l) Regulation of maintenance of margin of solvency.
- (m) Adjudication of disputes between insurers and insurance intermediaries.
- (n) Supervising the functioning of Tariff Advisory Committee.
- (o) Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations.
- (p) Specifying the percentage of insurance business to be undertaken by insurers in rural or social sectors.

Salient Features of IRDA Act

By now, you must be eager to know the salient features of IRDA Act. Well, let's discuss them. The Insurance Regulatory

Development Authority Act, 1999 marked the end of government monopoly in the insurance business. The IRDA Act received the assent of the President of India on 29 December 1999. The IRDA Act has ramifications on the Insurance Act (1938), the Life Insurance Corporation Act (1956) and the General Insurance Business (Nationalisation) Act (1972).

Salient features of the IRDA Act (1999)

1. The insurance sector in India has been thrown open to the private sector. The second and third schedules of the Act provide for removal of existing corporations (or companies) to carry out the business of life and general (non-life) insurance in India.
2. An Indian insurance company is a company registered under the Companies Act, 1956, in which foreign equity does not exceed 26 per cent of the total equity shareholding, including the equity shareholding of NRIs, FIIs and OCBs.
3. After commencement of an insurance company, the Indian promoters can hold more than 26 per cent of the total equity holding for a period of ten years, the balance shares being held by non-promoter Indian shareholders which will not include the equity of the foreign promoters, and the shareholding of NRIs, FIIs and OCBs.
4. After the permissible period of ten years, excess equity above the prescribed level of 26 per cent will be disinvested as per a phased programme to be indicated by IRDA. The Central Government is empowered to extend the period of ten years in individual cases and also to provide for higher ceiling on shareholding of Indian promoters in excess of which disinvestment will be required.
5. On foreign promoters, the maximum of 26 per cent will always be operational. They will thus be unable to hold any equity beyond this ceiling at any stage.
6. The Act gives statutory status for the Interim Insurance

Regulatory Authority (IRA) set up by the Central Government through a Resolution passed in January 1996.

7. All the powers presently exercised under the Insurance Act, 1938, by the Controller of Insurance (Col) will be transferred to the IRDA.
8. The IRDA Act also provides for the appointment of Col by the Central Government when the Regulatory Authority is superseded.
9. The minimum amount of paid-up equity capital is ' 100 crore in case of life insurance as well as general insurance, and ' 200 crore in the case of re-insurance.
10. Solvency margin (excess of assets over liabilities) is fixed at not less than 50 crore for life as well as general insurance; for reinsurance solvency margin is stipulated at not less than 100 crore in each case.
11. Insurance companies will deposit 10 crore as security deposit before starting their business.
12. In the non-life sector, IRDA would give preference to companies providing health insurance.
13. Safeguards for policy holders' funds include specific provision prohibiting investment of policy holders' funds outside India and provision for investment of funds in accordance with policy directions of IRDA, including social and infrastructure investments.
14. Every insurer shall provide life insurance or general insurance policies (including insurance for crops) to the persons residing in the rural sector, workers in the unorganized or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by IRDA.
15. Failure to fulfil the social obligations would attract a fine of ' .25 lakh; in case the obligations are still not fulfilled, license would be cancelled.

MUTUAL INSURANCE COMPANIES AND CO- OPERATIVE LIFE INSURANCE SOCIETIES

The Mutual Insurance Companies and Cooperative life Insurance Societies has been defined in Section 95(1) in The Insurance Act, 1938. The Section says

- (1) [In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, —]
 - (a) "Mutual Insurance Company" means an insurer, being a company ²[incorporated under the Indian Companies Act, 1913 (7 of 1913) or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866), or under any Act, repealed thereby,] which has no share capital and of which by its constitution only and all policy holders are members; and
 - (b) "Co operative Life Insurance Society" means an insurer being a society registered under the Co operative Societies Act, 1912 (2 of 1912), or under an Act of a ³[State] Legislature governing the registration of co operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy holders' are members: Provided that any Co operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

Provided that any co operative life insurance society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.
- (2) Notwithstanding anything contained in sub section (1), other co-operative societies may be admitted as members of a co operative life insurance society, without being eligible to any dividend, profit or bonus.

- (3) A State Government may, subject to any rules made by the Central Government, empower the Registrar of Co operative Societies of the State to register co operative societies for the insurance of cattle or crops or both under the provisions of the Co operative Societies Act in force in the State.
- (4) A State Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

Mutual Insurance

A mutual insurance company is a privately-held insurance company that is 100% owned by its policyholders. Mutual insurers are established with the sole purpose of providing its members with insurance coverage

History of Mutual Insurance Companies

The mutual insurance company concept originated from 17th century England when individuals sought coverage due to loss from fires. However, the mutual insurance industry officially began in the U.S. in 1752 when Benjamin Franklin founded the Philadelphia Contribution ship for the Insurance of Houses from Loss by Fire.

Understanding Mutual Insurance Companies

Mutual insurers continued to grow since their creation, due to several factors, including:

1. Overall goal

Most insurance companies aim to maximize profits, but the overall goal of a mutual insurance company is to provide insurance coverage to policyholders at or near cost. When profits are generated, they either pay the policyholders a dividend or reinvest the profits into the company.

2. Investment strategy

Mutual insurance companies maintain a certain level of capital to meet the needs of policyholders, so they have a much longer investment view. As such, they usually invest in lower-

yielding conservative investments. It is worth noting that because mutual insurance companies are privately held, it is usually difficult to determine the *solvency* of the company.

3. Income source

The main source of income for a mutual insurance company is the insurance premiums that policyholders pay for coverage. Due to the nature of the business, they are restricted in their ability to diversify income sources.

There is another critical mechanism that is built into a mutual insurance company if the company selects to go public – demutualization. Demutualization is the process in which policyholders become shareholders, and the company begins to trade on a public exchange.

When a mutual insurance company converts to a stock company, they enjoy greater flexibility and access to capital, which allows them to grow more rapidly.

Cooperative Insurance Societies

A co-operative is an organization owned by the members who use its services (a consumer co-operative or credit union), or by people who work there (a worker co-op), or by those who live there (a housing co-operative). When different stakeholder groups share a common interest in the success of an enterprise these groups can use different classes of membership in the co-op's bylaws to organize how they can work together (a multi-stakeholder co-op).

Purchasing cooperative insurance lets policyholders pool together with others who have similar risks to purchase more extensive coverage at a more affordable rate. The typical model for a cooperative is everyone involved in the cooperative that pays for the insurance receives a portion of ownership of the policy that is proportional to how much they pay. So, those who pay for 5% of the total policy would receive 5% ownership.

Co-operatives can provide virtually any product or service and are different from other businesses in that they use profits for purposes that are directed by the board and membership. Co-operatives exist in every sector of the economy and can touch every aspect of our lives.

So, you can work in a worker's co-op, live in a housing co-op, buy your groceries, clothing and other items from retail co-ops, send your children to a child care co-op, do all your banking at a credit union, and insure your life and your assets with an insurance co-op.

Co-ops provide consumers with a distinct values-based and community-owned and controlled alternative. Unlike the private, public, or voluntary sectors, all co-operatives around the world are guided by the same seven principles:

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training, and information
6. Co-operation among co-operatives
7. Concern for Community

Features of Cooperative Insurance Societies

- The most common sort of cooperative insurance is property insurance for residential co-ops, and it covers the common areas of the building.
- By pooling together with others that have similar risks, cooperative insurance allows policyholders to buy more extensive coverage at a more affordable cost.
- The Affordable Care Act (ACA) includes provisions for cooperative health insurance programs.

Example- In the case of residential buildings, it is advisable to find out what the building association's insurance policy covers. When you buy a co-op apartment (a housing unit of which you hold a share of the corporation that owns and manages the unit), the building will already have an insurance policy that protects itself and shareholders from claims resulting from lead paint exposure, sewer backups, earthquake damage, and other events that might affect the entire structure.

An individual shareholder's apartment and belongings aren't directly covered by the co-op association's policy. There

might be exceptions, however, if some sort of damage is caused by an occurrence that does fall under the building's policy. Usually, this is something relating to its infrastructure. For example, if a leaky radiator damages the floor within a unit, or a dripping water pipe causes cracks in the ceiling, the building might shoulder the cost of repairs.

To ensure coverage of their personal belongings and liability for injury or damage to others, individual shareholders should buy their own policies. Basically a type of *homeowners' insurance*, these policies can (confusingly) also be referred to as co-op insurance.

DOUBLE INSURANCE

Where risk connected with a particular subject-matter is insured under more than one policy taken out from different Insurance Co's, it is called "Double Insurance". Double Insurance is possible in all types of Insurance Contracts. A person can insure his life in different policies for different sums. In life insurance the assured can claim the sum insured with different policies on maturity on to his nominee after his death. This becomes possible in life insurance because life insurance is not indemnity insurance. Double Insurance may not be of much advantage in case of indemnity insurance because insured can recover only one amount which is equal to his loss and not more than that.

Same Risk Same Insured Different insurance Companies: In *New India Assurance Co. Ltd. v/s Krishna Kumar*, In this case the truck in question was purchased by the complainant after obtaining loan from the Bank in return, the truck was hypothecated with the Bank. The complainant insured it with Oriental Insurance Co. Ltd. for one year, no information given to the finance (the Bank) and the financier also got the same truck insured. Fortunately no untoward incident happened during the period of insurance. After the expiry of the period of insurance, the complainant allegedly discovered about the Double Insurance and a filed a complaint for the return of the premium. The commission while dismissing the complaint observed: "It would seen that there was a communication gap between the respondent and his financing

bank for which obviously enough the appellant Insurance Co. cannot be penalized.”

RE-INSURANCE

Re- Insurance is dealt under **Section 101-A** of the Insurance Act, 1938. According to the Federation of Insurance Institutes, Mumbai, *“Re- Insurance is an arrangement whereby an insurer who has accepted insurance, transfers a part of the risk to another insurer so that his liability on any one risk is limited to a figure proportionate to his financial capacity.”* In simple words Re-Insurance is a contract between two or more Insurance Companies by which a portion of risk of loss is transferred to another Insurance Company This happens only when Insurance Company has undertaken more risk burden on its shoulder than its bearing capacity.

A Re-Insurance does not affect the contract between the original insurer and the assured. Re-Insurance contracts are contract of indemnity, even though the original policy may not the one of indemnity, such as a life or personal accident policy.

Procedure for Re-Insurance

Chapter – II of the Insurance Regulatory and Development Authority (General Insurance Re- Insurance) Regulation, 2000 prescribes procedure for re insurance or section – 3 reads as under:

Section — 03

1. The Re-Insurance programme shall continue to be guided by the following objectives to:
 - (a) Maximize retention within the country;
 - (b) Develop adequate capacity;
 - (c) Secure the possible protection for the Re-Insurance cost incurred;
 - (d) Simplify the administration of business;
2. Every insurer shall maximum possible retention commensurate with its financial strength and volume of business. The authority any require an insurer to justify its retention policy and may give such directions as considered necessary in order to ensure that the

Indian insurer is not merely fronting for a foreign insurer;

3. Every insurer shall cede such percentage of the sum assured on each policy for different classes of insurance written in India to the Indian Re-Insurance as may be specified by the authority in accordance with the provision of Part IV-A of the Insurance Act, 1938."

Characteristics of Re-Insurance

- It is an Insurance contract between two Insurance Companies.
- The insurer transfers the risk beyond the limit of his capacity to Insurance Company.
- The relationship of the assured remains with the original insurer only. The Re-Insurance is not liable directly towards the assured.
- Re-Insurance does not affect the right of insured.
- The original insurer cannot do Re-Insurance more than the insured sum.
- Re-Insurance is a contract of indemnity.

Difference between Double Insurance and Re-Insurance

1. Double Insurance is the method by which an insured purchases different policies against the same subject-matter. Where as in Re-Insurance an insurer obtain Re-Insurance with another insurer.
2. In Re-Insurance, relationship exists between the Original Insurer and the Re-Insurer. The insured has no relationship with the Re-Insurance but in double insurance always a relationship between insured and insurer.
3. In Double Insurance, every insurer is bound to contribute in proportion to the policies on happening of losses. In Re-Insurance the insurer is required to contribute in proportion to the amount of Re-Insurance.

4. In Double Insurance, the insured has the right to claim from every insurer subject to the limit of actual loss. In the Re-Insurance the insured can demand compensation from the original insured only.

UNIT—3

LIFE INSURANCE

Meaning of Life Insurance

Life Insurance is an agreement in which one party agrees to pay a given sum of money upon the happening of a particular event contingent upon duration of human life in exchange of the payment of a consideration. The person who guarantees the payment is called *Insurer*, the amount given is called *Policy Amount*, the person on whose life the payment is guaranteed is called *Insured* or *Assured*. The particular event on which the payment is guaranteed to be given may be *Death* or *Life*. The consideration is called the *Premium*. The document evidencing the contract is called *Policy*. Life insurance is a contract in which the insured agrees to pay certain sums, called premiums, at specified times and in consideration, thereof the insurer agrees to pay a certain sum of money on certain conditions and in a specified way, upon happening of a particular event contingent upon the duration of human life.

SCIENCE OF LIFE INSURANCE

Life insurance is a business proposition resting on the combined operation of law of mortality and interest. The science of life insurance revolves around the principle of providing some financial relief to the loved ones of a person in case of his sudden death¹. We all know that time of our death is uncertain and in case of untimely death of a person his family could be put into great financial hardship.

The first essential for working of life insurance is calculation

of risk to fix the amount of contribution (premium) to be made by each policy-holder according to his age, medical history, habits, occupation etc. so that the fund should be adequate to meet the whole claims.² The probability of death or the law of mortality is used for this purpose.

Secondly, the funds acquired from each policy holder must be carefully invested to safeguard the interest of the policy-holders. The insurance company should take care that adequate funds are available at all times to meet the claims of the policy-holders.

Thirdly, the policy-holders are required to pay not only the timely premium but also the costs for meeting the expenses of organization. The expenses of organisation are also included in regular premium fixed at the time of taking policy.

Thus, the mortality, the interest and the expenses are the three main factor which are taken into account for asserting the contribution of each policy holder.

Definitions of Life Insurance

Insurance may be defined as a contract between two parties whereby one party called insurer undertakes in exchange for a fixed sum called premium to pay the other party called insured a fixed amount of money after happening of certain events.

According to R.S. Sharma: "Life Insurance Contract may be defined whereby the insurer, in consideration of premium paid either instalment undertakes to pay an annuity on the death of the insured of a certain number of years.

According to Magee J.H : "The Life Insurance contract embodies an agreement in which broadly stated, the insurer undertakes to pay a stipulated sum upon the death of the insurer to a designated beneficiary.

Essential features of life insurance are:

- I. It is a contract relating to human life
- II. There need not be an express provision that the payment is due on the death of the person.
- III. The contract provides for payment of lump sum money.

- IV. The amount is paid at the expiration of certain period or on death of the person

Nature of Life Insurance

The best explanation of the definition and nature of life insurance contract undoubtedly occurs in the case titled *Dalby v. India and London Life Assurance Company*. The basic fact about life insurance recognized in this case is that a contract of life insurance is not a contract of indemnity. One of the effects of life insurance not being a contract of indemnity is that on happening of the event insured against the insurer should pay the agreed amount irrespective of whether the assured suffers any loss or not.

Life insurance is, therefore, in the nature of a contingency insurance. It does not provide an indemnity but only provides for a payment on a contingent event. Moreover, the sum is not measured in terms of a loss; the policy states the amount payable. And the sum undertaken to be paid becomes payable irrespective of the value of life or limb lost.

The Supreme Court explained this concept in a case of *Chandulal Harjivandas v. CIT* in which the subject matter of the contract was insurance on the life of the assessee. The contract on behalf of the assessee was entered into between his father and LIC as the assessee was then a minor. The contract of insurance provided that the assessee was not entitled to the policy till he adopted the contract on the date of his attaining majority. The apex court held that "reading the contract as a whole it appears in substance to be a contract of life insurance with regards to the life of assessee. The important point to notice is that if the assessee adopts the policy upon attaining majority the corporation becomes liable to pay the sum assured to the assessee on the stipulated date of majority, if the assessee was alive. The LIC was also liable to pay the amount assured if the assessee was to die before the stipulated date of majority but on or after the deferred date.

CONTRACT OF LIFE INSURANCE

As we discussed above contract of insurance is a contract either to indemnify a person against a loss which may arise

on the happening of an event or to pay a sum of money on the happening of some or any event for an agreed consideration. Under such a contract one party agrees to take the risk of another person's life, property or liability in consideration of certain comparatively small periodic payments.

Nature of Life Insurance Contract

The nature of contract of life insurance may be summarized under the following heads:

(a) Unilateral Contract

It is that type of contract where only one party to the contract makes legally enforceable promise. Here it is the insurer who makes an enforceable promise. The insurer can repudiate the contract of payment of full policy, but he cannot compel the insured to pay the subsequent premiums. On the other hand, if the insured continues to pay the premium, the insurer has to accept them and continue the contract.

(b) Contract of Utmost Good Faith

An insurance contract is a contract of utmost good faith and therefore, the contracting parties are placed under a special duty towards each other, not merely to refrain from active misrepresentation but to make full disclosure of all material facts within their knowledge.³ It has been said that „there is no class of documents to which the strictest good faith is more rightly required in courts of law than policies of insurance .

(c) Conditional Contract

Life insurance is subject to the conditions and privilege provided on the back of the policy. The conditions put the obligation on a party to fulfil certain conditions before the proof of death or of disability are the parts of the contract. The conditions whether subsequent of the legal rights must be fulfilled in order to complete the contract.

(d) Aleatory Contract

In such a kind of contract, no mutual exchange of

equal monetary value is done. It is the happening of the contingency on which the payment is made. If death occurs only after payment of a few premiums, full policy amount is paid.

(e) Contract of Adhesion

In such a contract, the terms of the contract are not arrived at by mutual negotiations. Similarly, in a life insurance contract, the contract is decided upon by the insurer only. The party on the other side has to choose between the two options, i.e. either to accept or reject the policy.

(f) Contract of Certain Amount

Life insurance contract does not provide an indemnity. It is in the nature of a contingency contract by providing for the payment of the agreed amount on the happening of the event.

(g) Standard Form of Contract

In the life insurance, all the essentials of a general contract as provided by the Indian Contract Act, 1872, for a valid contract are present.

KINDS OF LIFE INSURANCE

Life insurance products are usually referred to as 'plans' of insurance. These plans have two basic elements, one is death cover and the other is survival benefit. If regular premiums are paid throughout the duration, one gets the sum assured in the policy at the end of the period. Or, if the holder dies while the policy is in force, his survivors will get the amount as compensation for the economic loss. Thus, if you live till the end of policy period, you get the sum assured or if you die before the end of policy period, your survivors will get the sum assured.

Privatization has greatly revolutionized the product range of insurance companies. Now, there are different kinds of insurance plans, which are available to people in life insurance itself. People today have greater option in choosing a policy depending on their requirements. The major kinds of life insurance plans are:

1. Term Assurance

The plans of insurance that provides only death cover for a specific term are called term assurance. You can select the term for which you would like the coverage; up to 35 years. Payments are fixed and do not increase during your term period. In case of an untimely death, your dependants will receive the benefit amount specified in the policy. One can also customize term insurance with the additional riders, such as children benefit, waiver of premium or accidental death benefit⁴. The whole life plan is a long term 'Term Assurance'. The annuity is reverse of life insurance principle as in life insurance one has to make periodic payments called premium whereas in annuity plan one gets a regular income in form of periodic payments.

2. Pure Endowment

The plans of insurance that provides only survival benefits are called pure endowment plan. A term insurance plan is just the opposite of a term insurance plan. In this plan the life insurance company promises to pay the life insured a specific amount (sum insured) only if he survives the term of the plan. If the insured dies during the tenure of the plan then the family is not entitled to anything. It means there is no death cover. But in this plan, the premium is much higher compared to the term assurance. All the different insurance plans of any insurance company are a mixture of these two basic plans, though their proportions may vary. While doing it, customer needs are given preference, out of which are born different insurance plans.

3. Annuity (Pension) Plan

Annuities are practically the same as pensions⁵. We all know that each and every person is going to retire at some time or the other and the greatest risk after retirement is the lack of income, or a reduced earning capacity. To take care of this, different insurance companies have devised different plans providing annuity. A contract providing for regular periodic payments during a specified period is an annuity contract. It is designed to generate regular income for senior citizens when they retire. Once the pension starts, insurance protection is

removed. The pension can be had monthly, quarterly, half yearly or yearly.

4. Unit Linked Insurance Plan

ULIPs are market linked life insurance products that provide a combination of life cover and wealth creation options⁶. This is a very attractive and equally useful scheme. Here, after paying the first 2-3 yearly premium amounts, even if one does not pay the rest of premiums, his insurance protection continues. The policy does not lapse. Most importantly, it provides flexibility of choosing from a variety of fund options depending upon the customers risk appetite. Under the ULIP, the holders can decide whether to invest in equity shares, or debt and company deposits, or only in government schemes, or in money market operations. This scheme will certainly be all pervasive in the insurance sector in future⁷.

5. Whole Life Policy

A term insurance plan with an unspecified period is called a whole life policy. Under this plan premiums are paid throughout life, till his death, but the claim i.e. the sum assured becomes payable only after his death⁸. The policy does not expire till the time any unfortunate event occurs with the individual. The advantage of this policy is that the validity of this policy is not defined and hence the individual enjoys the life cover throughout life. Moreover, this policy is the cheapest policy as the premium under this policy is lowest and exempted from tax⁹.

6. Whole Life Policy- Limited Payment

Here, the holder can decide in advance the number of years he is going to pay the premiums. After the period of premium payment, the risk continues without payment of premiums, and if the policy is participatory, the amount of yearly declared bonus is added to the sum assured. A feature of this policy is that in the declining period of life, when premium payment becomes burdensome because of carrying out of other responsibilities, premiums need not be paid, because the premiums have already been paid during the prime life.

7. Convertible Term Insurance Policy

Convertible term insurance policy is for those people who may not be able to afford a large premium at present, but will be capable of paying large premiums in 4-5 years after their income has grown and stability has been attained in the occupation. Convertible term insurance policy allows the insured to convert a term policy to a permanent policy at a later date as the insurance needs and financial resources change¹⁰. It is a term assurance policy with a period of 5-7 years. They have to decide whether to convert it into a whole life policy or endowment policy, at least two years before the end of the term of this policy. For this, there is no need for fresh medical examination. Only, premium has to be paid at the time of making the changes according to the changed age, and for the changed term accordingly¹¹. This is the model scheme for young doctors, lawyers, engineers, chartered accountants, professional or businessmen, or employed persons who can find a lot of advancement in five years. The maximum insurance protection is for Rs. 10 lakhs, and the minimum is for Rs. 50,000.

8. Convertible Whole Life Assurance Policy

This is devised for those people who want a large insurance protection, but want a minimal premium at the beginning, which may be increased four to five times after five years and also want to convert it into a whole life policy of a proper duration. In the beginning, it is in the form of a whole life assurance policy where premiums have to be paid till the age of 70. Before the end of five years, the holder can convert it into a whole life policy of a proper duration. For this, there is no need for fresh medical examination. If no changes are made, the insurance continues in the form of a limited payment whole life plan, where premiums have to be paid till the age of 70.

9. Pure Insurance

This scheme is for young people with a limited income but who want a large insurance protection. If the holder dies while the policy is in force, the whole insurance amount together with loyalty addition amount is paid. If he lives till the end of the term, all premiums paid by him (less extra premiums paid),

together with loyalty addition are paid to him. In addition, free insurance protection is provided for next 10 years, depending on the policy duration for 30 to 60 percent of the original sum assured.

10. Mortgage Redemption Policy

Mortgage redemption policy is designed to meet the requirements of the policy holding individual who seeks to ensure that all his outstanding loans and debts are automatically paid up in the event of his demise¹². This plan is suitable to a person who is refunding loan on EMI basis. If he dies before repaying the full loan amount, instead of the burden of his loan balance repayment falling upon his survivors, the loan is automatically repaid out of the insurance amount payable on his death. Premiums have to be paid for a period which is two years less than his loan duration. One time premium payment can also be made. The premiums are easily affordable. At any time, the policy face value is equal to the loan balance. In other words, policy face value goes on decreasing yearly in proportion to loan balance. The holder gets no benefits under the policy, once the loan is repaid fully. Medical examination is compulsory. Since the premium amount is fixed according to the loan interest, loan amount, age of the holder and loan duration, the premium amount is informed to him after he applies for the loan.

11. Endowment Assurance Policy

This is the most popular policy. There is a wonderful mixture of risk coverage and provision for old age in this policy scheme. If the holder dies while the policy is in force, his survivors get the compensation in the form of the sum assured. At the end of policy period, if he is alive, he gets the policy amount. These policies are both with and without bonus. This is considered to be a model insurance policy, and over 60 percent of all the policies are taken out under this scheme. It is suitable for middle aged to elderly professionals whose dependents might need assistance in clearing their debts in case of their unexpected demise. This policy bears no surrender value.

12. Money Back Policy

This scheme is devised for those who need a lump sum amount after a certain period, or those who want to invest this amount somewhere other than in insurance and earn more profits. While this policy is in force, if the holder is alive after certain period of time, he is paid 15-20 per cent of the sum assured as survival benefit. On the other hand, if he dies at any time during the policy period, the whole amount is paid to his survivors. If he is alive after the policy duration, the whole amount after deducting the survival benefits already paid is paid back to him.

Event Insured Against Life Insurance

The event insured against in ordinary life insurance is the death of the life assured arising from disease or accident. It does not matter that whether the death is caused by natural or accidental causes or even due to the criminal act of a third party.

A contract to be valid must satisfy the element of legality of consideration and object. Courts of law do not enforce contracts, the objects of which are against public policy. One of the cardinal rules of legal theory based on public policy is that no man shall be allowed to take advantage of his own wrong and this rule is expressed in the maxim *ex turpi casua non oritur action*, that is, no cause of action arises out of wrong. Based on this principle, in law of life insurance, to the above general rule that the legal representatives of the assured can recover on a life policy of the assured on his death, whether the death is due to natural or accidental causes including death caused by a criminal act of a third party.

But there are two have namely:.

- (i) Where death of the assured is caused due to the violation of the rule of criminal law by the assured himself; and
- (ii) Where the death is the result of a suicide.

Murder is one of the most serious offences and therefore on principles of justice, equity and good conscience, the law

lays down that a murderer cannot inherit the property of the murdered person and to hold otherwise, it would be allowing a person to take advantage of his own wrong. As a sequel to this principle it has been observed by Lord Atkin in *Beresford v Royal Assurance Co.*,¹³ that death caused by the wilful misconduct of the assured himself debars the personal representatives from recovering on the assured's life policy.

Exception to Suicide

A clause is generally inserted in the policy that if any third party has acquired a bona fide interest for valuable consideration he will be entitled to recover the amount not exceeding the sum assured. In *City Bank v Sovereign Assurance Co.*,¹⁴ the assured deposited the policy and received a loan on the security of the policy. Later on, he committed suicide. There were other securities also. It was held that the debt might be paid out of the insurance amounts, because a bona fide assignee for valuable consideration is not subjected to the disabilities incurred by the assured subsequent to the assignment. The bona fide assignee, as noted in the general principles of insurance law, is subjected only to the equities the assignor was liable by the date of assignment. But it may be noted that this benefit is not and cannot be extended to persons who obtained an interest in the policy by operation of law or bankruptcy and likewise to voluntary assignments.

The Factors Affecting Risks

There are various features that differentiate one insurance policy from another, including the benefits provided by that specific insurer. But in particular, the premium amounts that a person pays towards his or her life insurance policy is dependent on a number of crucial factors. Such As-

Age

The primary factor influencing the life insurance premiums of a policyholder is his or her age. From the perspective of the insurer, a young individual has a higher chance of continuing the life insurance policy for years to come. He or she is also less likely to suffer from an age-related disease and pass away prematurely. This makes them less of a liability for the insurer

and hence, more likely to be eligible for low premiums. Hence, as a general rule, it is preferable to avail a life insurance policy as early on in your career as possible to avail the lowest premiums possible for you.

Gender

Another factor that determines the amount of your premiums is your gender. This factor is rooted in scientific and statistical evidence which states that women are likely to live an average of 5 years more than men [1]. This translates to women availing their policies for a longer tenure than men, and hence, as mentioned above, this means they can avail lower life insurance premiums.

Medical Records

Life insurance policies typically come with an underwriting process that includes conducting a thorough medical exam of the policyholder. The findings of this medical exam shed light on the status of your physical health and raise flags about potential illnesses you might contract in the future. Therefore, these medical records and their results also play a key part in determining the exact premium amount you will pay for your life insurance.

Family History

It is widely known that certain diseases are considered hereditary, which means that they have a tendency to run in the family. Other types of diseases might not be considered hereditary, but might have a higher chance of affecting members of a family due to common lifestyle choices. All of these risks are reflected in your family medical history, and also play a part in determining your life insurance premium amounts.

Tobacco Use

An important factor that most people might not consider when thinking about life insurance premiums, is an individual's smoking habits. According to research, people who smoke are more likely to contract various illnesses and have a higher mortality rate as well. Hence, the *term insurance* premiums for

smokers reflect these risk factors and tend to be higher than for their non-smoker counterparts.

Occupation

There are jobs which can be considered hazardous and come with a shortened life expectancy. They may be considered hazardous because there's a higher chance of an accident occurring—for example, construction workers—or it's an unhealthy working environment—for example, miners.

All life insurance companies have occupational manuals which list the occupations deemed to have an adverse effect on mortality. If you work in one of the listed occupations, you will likely be required to pay a higher premium.

If you purchase a policy and were paying a higher rate because of your job, but then change to a less hazardous one, you may ask the life insurance company for a reconsideration. Depending on the circumstances, it's likely they will agree to move you into a better risk class and decrease your premiums. It is the duty of both the parties to enclose all material facts until the completion of the contract. In *Looker and another v. Law Union & Rock insurance Co*¹⁵, the question of that is material to the assessment of a risk is a question of fact to be decided by the court. Since the insured knows or is expected to know more about the subject matter i.e. the life; he is more liable to disclose all the material facts about the subject matter.

In *Lakshmi Insurance Co. v. Bibi Padmavati*,¹⁶ it was held that the contracting parties are placed under a special duty towards each other, of merely to refrain from active misrepresentation but to make full disclosure of all material facts within their knowledge.

Residence

Mortality rates vary throughout the world. If you are contemplating foreign travel or residence, the life insurance company will want to know when, where, and for how long. They also want to know if you have recently travelled to or lived in a foreign country. A particular country's climate, living standards, sanitary conditions, medical care, political stability, and terrorist risk can all have an effect on your mortality.

Amount recoverable under Life Insurance policy

The following amounts are recoverable under a life insurance policy

- **Maturity of policy**

On maturity of the policy i.e Completion of the term for which the insurance was taken in case of endowment policies, the processing of claims by maturity is normally undertaken by Divisional office of Life Insurance Corporation (LIC) about 2 months before the date of maturity.

- **Happening of certain event**

On the death of the life insured, if it occurs before the maturity of the policy, provided policy is in force on the date of death, the death claims action begins with an intimation being received in the Insurer's office. The intimation may be received by the nominee, assignee, relatives, the employer, agent or Development Officer of the area.

- **Bonus**

Bonus is payable if declared by the insurance company. If a surplus is shown in the valuation of Corporation, The Life Insurance Corporation(LIC) distributes its profit among its policyholders every year in the form of bonus/profit share.

- **Share in profits**

If it is a participation policy, a share in the profits, declared by the board of directors of the insurance company may be recovered in addition to the sum assured. It is noteworthy that share in the profit does not make the policyholder liable for the acts of the company.

- **Surrender value**

Surrendering a life insurance policy means complete cancellation of the policy. One needs not to pay any premium to the insurance company after surrendering the policy. Earlier surrender value is payable by the

insurer only after three consecutive years premiums are paid. If the policy is cancelled before the lapse of 3 years, no amount is returned to the insured.

- **Paid-up value**

When the policyholder wants to terminate the policy, he may convert the same into paid-up policy. In this case, the amount of paid-up value is payable to the insured only after the full term (maturity) of the policy.

Persons entitled to payment under Life insurance

Nobody can predict what will happen in their future life however there is always need to earn income to support yourself and your dependents in case of any eventuality. Life insurance policy provides financial security. As we all know that Life insurance is a contract that pledges payment of an amount to the person assured or his nominee on the happening of the event insured against. Life insurance policy covers the risk of contingencies is dependent on human life. The life insurance policy pays in the wake of unfortunate events such as death or on the inability to earn due to physical disabilities.. For example payment of an amount (which is called sum assured) on the death of the Life Assured. Further, annuity contracts (which provide for periodic payments to life as sure as long as the policyholder is alive) are the provisions of accident benefits also from part of life insurance business.

The claim monies can be paid to any of the following :

(A) Payee

In the contract of life insurance, the policyholder will not always be the payee but it is the person whose name is entered in the benefits schedule of the policy and who receives the benefits of payment of scheme who is also known as the payee.

(B) Assured himself

In the Life insurance contract, life Assured himself in case of policy on own life for living benefit claims (for example critical illness, disability old age etc.) if in the life insurance contract, life insured services to the full term, then basic sum assured is payable to him only.

(C) Assignee or assignment -

The expression assignment literally means transfer. the insurance act lays down the mode of assignment and transfer of life insurance policy. an assignment or transfer may be made only on satisfaction of the following conditions:

- An endorsement upon the policy itself or by a separate instrument;
- The endorsement or instrument should be signed by the transferor his agent and should be attested by at least one witness;
- It should specifically set forth the fact of transfer or assignment.

(D) Nominee

Nomination is governed by Section 39 of the Insurance Act 1938. According to Section 39(1) of the said act the holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Provided that,

- (1) where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.
- (2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment

under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

- (3) The insurer shall furnish to the policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.
- (4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination.

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy: Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy: Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the insurer.

- (5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal

representatives or the holder of a succession certificate, as the case may be.

- (6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.
- (7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee
- (8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.
- (9) Nothing in sub-section (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.
- (10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.
- (11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such

a case, his nominee shall be entitled to the proceeds and benefit of his policy.[Amended by Insurance Act 2015]

- (12) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied: Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

(E) Legal heirs

The claim is usually payable to nominee/assignee or the legal heirs as the case may be. However, if the deceased policyholder has not nominated/assigned the policy or if he or she has not made a suitable provision regarding the policy sums of money by way of a will, the claim is payable to the holder of a succession certificate or some such evidence of title from a court of law.

(F) Appointee

Appointee is entitled to payment of life insurance contract.

Claim Settlement

Payment of claim is the ultimate objective of life insurance. The policyholder has already carried out his obligation of paying the premium regularly as per the conditions mentioned in the schedule of the policy document.

There may be three types of claim in life insurance policies

1. Survival Benefit Claim
2. Maturity Benefit Claim
3. Death Benefit Claim

Survival Benefit Claim

It is only payable in endowment or money back plans after a lapse of a fixed period say 4 or 5 years, provided firstly the policy is in force and secondly the policyholder is alive. As the insurer sends out premium notices to the policyholder for payment of due premium, so it sends out intimation also to the policyholder if and when a survival benefit falls due. The letter of intimation of survival benefit carries with it a discharge voucher mentioning the amount payable. The policyholder has merely to return the discharge voucher duly signed along with the policy document. The policy document is necessary for endorsement to the effect that the survival benefits which was due has been paid. The survival benefit can take different forms under different types of policies.

Maturity Claim

It is a final payment under the policy as per the terms of the contract. Any insurer is under obligation to pay the amount on the due date. Therefore the intimation of maturity claim and discharge voucher are sent in advance with the instruction to return it immediately. If the life assured dies after the maturity date, but before receiving the claim, there arises a typical problem as to who is entitled to receive the money. As the policyholder was surviving till the date of maturity, the nominee is not entitled to receive the claim. The policy under such conditions is treated as a death claim where the policy does not have a nomination. The insurer in such a case shall ask for a will or a succession certificate, before it can get a valid discharge for payment of this maturity claim.

Death Claim

If the life assured dies during the term of the policy, the death claim arises. If the death has taken place within the first two years of the commencement of the policy, it is called an early death claim and if the death has taken after 2 years, it is called a non early death claim.

Claims procedure in respect of a life insurance policy

- (i) A life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim.

- (ii) 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 piecemeal manner, within a period of 15 days of the receipt of the claim.
- (iii) 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.
- (iv) 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).
- (v) 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.

Procedure of Claim Settlement

Maturity Benefit

If the policyholder lives through the duration of the policy and becomes eligible to get the maturity value it is called the settlement of a maturity claim. As the policyholder is alive, the

nomination is of no significance. Age is normally admitted at the stage of the proposal. If it has not been admitted for some reason, it is necessary to submit the age proof before the payment of the maturity value. Much before the date of maturity the insurer sends the claim discharge voucher which has to be returned duly signed and witnessed along with the policy document for payment of the maturity value.

Death Claim

In case of the death of the policyholder at anytime during the duration of the policy, the claim amount becomes payable to the nominee mentioned in the policy document. The nominee or the nearest relative shall send an intimation of death of the policyholder to the insurer stating therein the fact of death, the date of death, cause of death and the place of death along with the policy number. Insurer deals with the death claim differently on the basis of the duration of the policy. If the policyholder has died within two years of the commencement of the policy, i.e., acceptance of risk which may be different from the date of commencement if the policy has been dated back it is treated as “early or premature claim”.

If the death has occurred after 2 yrs of the commencement, it is treated as normal death claim. In a normal death claim, that is if the life assured has died after two years of the commencement of risk, the insurer, on being intimated about the death of the policyholder, calls for the age proof, if not earlier admitted, the original policy document and proof of death. The proof of death can be a certificate from the municipal authorities under which cremation has taken place, or other local body like death registry. The claimant generally is required to fill in a form giving certain routine information about his title to the policy money and the information relating to death, which is normally called a claimant's statement.

Premature claim

It is a premature claim if the death has occurred within two years from the commencement of the policy or the date of last revival, or medical examination. The insurer takes certain precautions before making payment under such a premature claim. It wants to satisfy itself that it is a genuine case i.e.,

the correct policyholder has died and that the cause of death does not go back to a date prior to the commencement of the policy. The duration of last illness is of vital importance to eliminate any fraudulent intention. Last medical attendants' certificate, hospital report, burial certificate, employees' leave record, if he was an employee in a reputed firm etc, are the different records examined and normally a senior officer is deputed by the insurer to make on the spot investigation, through neighbours, colleagues or doctor of the locality.

As the revival of the policy is a *de novo* contract of insurance, the insurer would like to verify whether the statement contained in the declaration of good health given at the time of revival is correct. If such a statement is proved fraudulent relating to a material fact, the claim, may be rejected.

Life insurance is a contract of utmost good faith and good faith has to be observed, not only at the time of the proposal, but also at the time of the revival of the policy whenever it is done. In case there is a rival claimant to the insurance money, the insurer can get a valid discharge by paying to the nominee. The rival claimant can approach a court of law which may order to stop the payment till the case is finally disposed of. However if there is no nomination under the policy, the insurer shall await a valid title through either a will or a probate as a letter of administration or a succession certificate. If there is an assignment/nomination, the policy money is paid to the assignee. If there is a reassignment of the policy, it is necessary that a fresh nomination is done, as assignment invalidates the existing nomination.

If the premature death has been due to an accident, it is necessary to get a police inquiry report in lieu of the attending physician certificate. Suicide, if it has taken place within one year of the beginning of the risk, exempts the insurer from the liability of the payment of the claim. The propensity to commit suicide is a moral hazard and is not expected to continue beyond one year. If the policyholder disappears and he has not been heard of for 7 years by those who would naturally have heard of him, if he had been alive, he is presumed dead as per Sec 108 of the Indian–Evidence Act,

1872. However, it is necessary to keep the policy in force during this period by payment of the

IRDA Regulation on Policyholders Protection

The Insurance Regulatory and Development Authority has issued the Protection of Policyholders' Interests Regulations, 2002. This regulation states the matters to be stated in the life insurance policy for the protection of policyholders interests. It also lays down the procedure to be adopted towards the settlement of claim under a life insurance policy.

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The Insurance Act, 1938

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UNIT—4

4

THE PERSONAL INJURIES (COMPENSATION INSURANCE) ACT, 1963

Short title, extent and commencement

- (1) This Act may be called the Personal Injuries (Compensation Insurance) Act, 1963.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date¹ as the Central Government may by notification appoint.

1. Definitions: In this Act, unless the context otherwise requires:

- (a) “employer” includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the service of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means the later person while the workman is working for that other person;
- (b) the “Fund” means the Personal Injuries (Compensation Insurance) Fund constituted under section 13;
- (c) “gainfully occupied person” and “personal injury” have the meanings respectively assigned to those

expressions in the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

- (d) “notification” means a notification published in the Official Gazette;
- (e) “partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time the injury was sustained, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in any employment which he was capable of undertaking at that time:

Provided that permanent partial disablement shall be deemed to result from every injury, or from any combination of injuries, specified in the Schedule, where the percentage, or the aggregate percentage, of disability as specified in the Schedule against such injury, or combination of injuries amounts to less than one hundred per cent;

- ²[(f) “period of emergency” means, in relation to the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution,—

- (i) on the 26th day of October, 1962, the period beginning with the 26th day of October, 1962, and ending with the 10th day of January, 1968, that is to say, the date on which the said Emergency was declared, by notification of the Government of India in the Ministry of Home Affairs, No. G.S.R. 93, dated the 10th January, 1968, to have come to an end;
 - (ii) on the 3rd day of December, 1971, the period beginning with the 3rd day of December, 1971, and ending with such date as the Central Government may, by notification in the Official Gazette, declare to be the date on which the said emergency shall come to an end;]
- (g) “prescribed” means prescribed by rules made under section 22;

- (h) “total disablement” means such disablement whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time the injury was sustained:
Provided that permanent total disablement shall be deemed to result from every injury, or from any combination of injuries, specified in the Schedule, where the percentage, or the aggregate percentage, of disability as specified in the Schedule against such injury, or combination of injuries, amounts to one hundred per cent. or more;
- (i) the “Scheme” means the Personal Injuries (Compensation Insurance) Scheme referred to in sub-section (1) of section 8;
- (j) “wages” means wages as defined in the Workmen’s Compensation Act, 1923 (8 of 1923), and “monthly wages” has the meaning assigned to that expression by section 5 of the Workmen’s Compensation Act, 1923 (8 of 1923), and shall be calculated for the purposes of this Act in the manner laid down in that section;
- (k) “workman” means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer’s trade or business) who is employed in any of the employments specified in section 3.

COMPENSATION PAYABLE UNDER THE ACT

3. Workmen to whom the Act applies

The workmen to whom this Act applies are:

- (a) workmen employed in any employment or class of employment which is, or has been declared to be an essential service under rule 126AA of the ¹[Defence of India Rules, 1962 or under rule 119 of the Defence of India Rules, 1971];
- (b) the workmen employed in any factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (c) workmen employed in any mine within the meaning of the Mines Act, 1952 (35 of 1952);
- (d) workmen employed in major port;
- (e) workmen employed in any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (f) workmen employed in any employment specified in this behalf by the Central Government by notification.

4. Compensation payable under the Act, by whom and how payable

- (1) There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer in respect of personal injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), of the amount and kind provided by section 7:

Provided that where an employer has taken out a policy of insurance, as required by sub-section (1) of section 9, and has made all payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme or where by the provisions of sub-section (1) of section 9 or of sub-section (2) of section 10 the employer is not required to insure, the Central Government shall assume and discharge on behalf of the employer the employer's liability to pay compensation under this sub-section.

- (2) The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf in the Scheme.
- (3) This section shall be binding on the Government.

5. Limitation on right to receive compensation otherwise than under this Act and Act 59 of 1962

Where any person has a right apart from the provisions of this Act and of the Personal Injuries (Emergency Provisions)

Act, 1962 (59 of 1962), to receive compensation (whether in the form of gratuity, pension, compassionate payment or otherwise) or damages from an employer in respect of a personal injury in respect of which compensation is payable under this Act, the right shall extend only to so much of such compensation or damages as exceeds the amount of compensation payable under this Act.

6. Special provisions in relation to employees of Government

Where any person in the employ of Government has under the rules regulating the conditions of his service a right apart from the provisions of this Act or of the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), to receive any sum, whether as extraordinary pension, gratuity, compassionate payment or damages, from the Government in respect of a personal injury in respect of which compensation is payable under this Act, then, notwithstanding anything contained in this Act or the Personal Injuries (Emergency Provisions) Act, 1962, that person shall have the right to receive the sum admissible under those rules and if the sum so admissible is less than the amount payable as compensation under this Act and the Personal Injuries (Emergency Provisions) Act, 1962, then, he shall have a further right to receive an amount equal to the difference between the sum admissible under those rules and the amount of compensation payable under this Act.

7. Amount of compensation

- (1) The compensation payable under this Act shall be as follows:
 - (a) where death results from the injury, the amount payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923), reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);
 - (b) where permanent total disablement results from the injury, the amount payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923),

- reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);
- (c) where permanent partial disablement results from the injury:
 - (i) in the case of an injury specified in the Schedule—such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement;
 - (ii) in the case of an injury not specified in the Schedule—the percentage of such compensation specified in the Schedule for disablement held by a competent medical authority acting under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), to be of corresponding degree;
 - (iii) where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability has resulted from the injuries;
 - (d) where temporary disablement, whether total or partial, results from the injury, the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923), reduced in each case, so long as he receives any payment under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), by the amount payable under the said Scheme.
- (2) Where the monthly wages of a workman are more than five hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman

whose monthly wages are more than four hundred rupees.

**PERSONAL INJURIES (COMPENSATION
INSURANCE) SCHEME**

**8. Personal Injuries (Compensation Insurance)
Scheme**

- (1) The Central Government shall, by notification, put into operation a Scheme to be called the Personal Injuries (Compensation Insurance).

Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes, in relation to employers of workmen to whom this Act applies, the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme:

³[Provided that different Scheme shall be put into operation in relation to different periods of emergency.]

- (2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government.
- (3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.
- (4) The scheme may be amended at any time by the Central Government.
- (5) Without prejudice to the generality of the provisions of sub-section (1), the Scheme may—
- (a) make provisions regulating the payment of the compensation payable under this Act and the Scheme, including provisions for punishment by fine not exceeding two thousand rupees for the contravention of any requirement of the Scheme;

- (b) make provisions specifying the persons to whom and the proportions and manner in which payments under this Act shall be made;
- (c) make provisions for determining the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);
- (d) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act, and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specification is not covered by the policy;
- (e) specify the conditions or circumstances under which the compensation payable to a workman may be withheld, cancelled, reduced or reviewed if the award made under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), is withheld, cancelled, reduced or reviewed;
- (f) provide for cases in which an employer has of his own accord undertaken a part or the whole of the liability imposed by this Act;
- (g) provide for the final assessment of the total premium due on a policy of insurance under the Scheme either as the equivalent of all advance payments of premium already made by an employer, or as a percentage of the total wages bills of an employer for the periods with reference to which the amount of any advance payments made by him was fixed or as a percentage of the total wages bill of an employer for a period of not less than twelve or more than fifteen months immediately preceding the expiry of the period of the emergency, and for the assessment of the total premium due on a policy which has ceased to be in force before the expiry of the period of the

emergency owing to the employer having gone out of business;

- (h) provide for the recovery from an employer of the total premium due on a policy of insurance including provision for its recovery by periodic advance payments of an amount based on a percentage of his total wages bill for any prescribed period, the separate funding of the payments so made by each employer, and the eventual adjustment of the total premium as finally assessed against the total of such periodic payments:

Provided that where the amount of the periodic payment based on the total wages bill of the prescribed period is less than eight rupees, it shall be increased to eight rupees:

Provided further that the first of such periodic payments shall, subject to the aforesaid minimum of eight rupees, be at such rate as the Central Government may specify in this behalf:

Provided further that such periodic payments shall not be more frequent than once in each quarter of a year:

Provided further that the rate of any periodic payment after the first shall, subject to the aforesaid minimum of eight rupees, be such as the Central Government may, after considering its liabilities under this Act, fix from time to time, and the Central Government may, where the total amount in the Fund so" requires, either waive or postpone any periodic payment.

9. Compulsory insurance

- (1) Every employer of workmen to whom this Act applies or is subsequently made applicable except an employer whose total wages bill for any quarter after the commencement of this Act has never exceeded fifteen hundred rupees, shall, before such date as may be prescribed, or before the expiry of such period as may be prescribed after his having first become such an employer, take out a policy of insurance issued in accordance with the Scheme, whereby he is

insured until the expiry of the period of the emergency or until the date, if any, prior to the expiry of the period of the emergency at which he ceases to be an employer to whom this section applies, against all liabilities imposed on him by this Act.

- (2) Whoever contravenes the provisions of sub-section (1), or, having taken out a policy of insurance as required by that sub-section, fails to make any payment by way of premium thereon which is subsequently due from him in accordance with the provisions of the Scheme, shall be punishable with fine which may extend to two thousand rupees and shall also be punishable with a further fine which may extend to one thousand rupees for every day after having been so convicted on which the contravention or failure continues.
- (3) This section shall not bind the Government.

10. Principals and contractors

- (1) Where a person (in this section referred to as the principal) uses, in the course of or for the purposes of his trade or business, the services of workmen temporarily lent or let on hire to him by arrangement with another person with whom the workmen have entered into contracts of service or apprenticeship, or in the course of or for the purpose of his trade or business, contracts with any other person for the execution by or under such other person of the whole or any part of any work which is ordinarily part of the trade or business of the principal (either such other person being in this section referred to as the contractor) the principal shall obtain from the contractor the name of the agent of the Central Government acting under section 11 with whom he intends to insure, and shall report to the agent the existence of his agreement or contract with the contractor.
- (2) Notwithstanding anything elsewhere contained in this Act, in any such case as is referred to in sub-section

(1), it shall not be necessary for the contractor to insure against the liabilities imposed on him by this Act in respect of workmen employed by him whose services are lent or let on hire on such an arrangement or used in the execution of work on such a contract as is referred to in sub-section (1), where the arrangement or contract is for a term of less than one month.

- (3) The Scheme may make provision for the supply by a contractor to a principal of any information necessary to enable the purposes of this section to be carried out including provision for punishment by fine not exceeding two thousand rupees for the contravention of any requirement of the Scheme.

11. Employment of agents by the Central Government

The Central Government may by notification employ or authorise the employment of any person to act as its agent for any of the purposes of this Act and to pay to the person so employed such remuneration as it may think fit.

12. Prohibition of certain insurance business

- (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business or insuring employers in India against the liabilities for insurance against which the Scheme provides.
- (2) Nothing in sub-section (1) applies to any policy of insurance entered into before the date on which the Scheme is put into operation and current after that date or to any policy of insurance covering liabilities undertaken in excess of the liabilities imposed by this Act.
- (3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

13. Personal Injuries (Compensation Insurance) Fund

- (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Personal Injuries (Compensation Insurance) Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on compensation of offences under section 18 or by way of expenses or compensation awarded by a court under section 545 of the Code of Criminal Procedure, 1898 (5 of 1898), out of any fine imposed in any prosecution under this Act or by way of penalties imposed under the Scheme.
- (2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme or for the payment by the Central Government of the cost of administering the Scheme:

Provided that no payment from the Fund shall be made in discharge of any liability of the Government to pay compensation to workmen employed by it.
- (3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.
- (4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall

be disposed of in such manner as the Central Government may think fit.

- (5) The Central Government shall prepare in such form and manner as may be prescribed and shall publish either annually or at such shorter intervals as may be specified therein, an account of all, sums received into and paid out of the Fund.

FOONOTES

1. 1st November, 1965, *vide* notification No. S.O. 3382, dated 18th October, 1965, see Gazette of India, Extraordinary, Part II, sec. 3(ii).
2. Subs. by Act 75 of 1971, s. 2, for clause (f) (w.e.f. 25-12-1971).
3. The proviso added by Act 75 of 1971, s. 4 (w.e.f. 25-12-1971).

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