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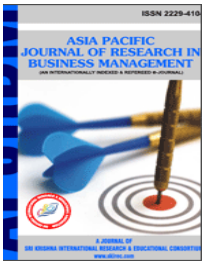

An Analytical study and Regulatory Mechanism of Insurance Business in Public Sector and Private Sector in India

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Introduction

Human existence is hinged on the purpose of a struggle for perfection and excellence. Nature has endowed man with the talent to perceive, attempt and create and maintain the necessities for making his life more creative and comfortable and also satisfy his intellectual pursuit. Man is engaged in an everlasting exercise of discovering and improving the existing faculties that nature has vested in him. Unless he engages himself in this pursuit, he is not performing the duty imposed upon him by nature. In fact it is not an overstatement to say that nature's best attempt at creation is the human, creating in him all the faculties necessary to discover, innovate and also be prepared to face the intermittent difficulties involved in such attempts. Difficulties have never stood as a stumbling block in human pursuit.

What makes this pursuit so special? Is it the difficulties and hurdles involved in this pursuit that make it so very challenging? Is it the essential nature of creativity that nature has endowed man with? Is it the realization of the challenges involved in this eternal pursuit of man to achieve excellence? Or is it that element of human nature which makes challenges give strength to human effort? Or is it the preparedness of man to face challenges and difficulties while engaging in this pursuit of perfection?

Definition of Insurance

Insurance is a co-operative device to spread the loss caused by a particular risk over a number of persons who are exposed to it and who agree to insure themselves against the risk. Thus it is essentially a method to spread the loss perceived in any venture.[1]

According to 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."[2]

The aim of all insurance is to protect the owner from a variety of risks which he anticipates. He who seeks this protection is called the assured or insured and the other person who takes the risk by undertaking to protect that other from loss is called the underwriter or insurer and he does this for a small consideration called the premium. So a contract of insurance may be defined as a contract whereby one person, called the 'insurer' undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the assured, a sum of money or its equivalent on the happening of a specified event. The happening of the specified event must involve some loss to the assured or at least should expose him to adversity which is in the law of insurance commonly called the risk. Thus the nature of insurance depends upon the nature of the risk sought to be protected.[3]

Historical Growth of Insurance Business in India

Insurance in India can be traced back to the Vedas. For instance, yogakshema, the name of Life Insurance Corporation of India's corporate headquarters, is derived from the Rig Veda. The term suggests that a form of "community insurance" was prevalent around 1000 BC and practiced by the Aryans. Burial societies of the kind found in ancient Rome were formed in the Buddhist period to help families build houses, protect widows and children.

Bombay Mutual Assurance Society, the first Indian life assurance society, was formed in 1870. Other companies like Oriental, Bharat and Empire of India were also set up in the 1870-90s. It was during the swadeshi movement in the early 20th century that insurance witnessed a big boom in India with several more companies being set up. As these companies grew, the government began to exercise control on them. The Insurance Act was passed in 1912, followed

[1] Murthy & Sarma, Modern Law of Insurance (New Delhi: Butterworths, 2002) page no.4.

[2] JB Maclean, Law of Insurance, Supra note 1 page no.4.

[3] Ibid.

by a detailed and amended Insurance Act of 1938 that looked into investments, expenditure and management of these companies' funds.[4]

By the mid-1950s, there were around 170 insurance companies and 80 provident fund societies in the country's life insurance scene. However, in the absence of regulatory systems, scams and irregularities were almost a way of life at most of these companies. As a result, the government decided nationalize the life assurance business in India. The Life Insurance Corporation of India was set up in 1956 to take over around 250 life companies.

For years thereafter, insurance remained a monopoly of the public sector. It was only after seven years of deliberation and debate - after the RN Malhotra Committee report of 1994 became the first serious document calling for the re-opening up of the insurance sector to private players -- that the sector was finally opened up to private players in 2001.[5]

The Insurance Regulatory & Development Authority, an autonomous insurance regulator set up in 2000, has extensive powers to oversee the insurance business and regulate in a manner that will safeguard the interests of the insured.

The insurance consumers have the option to select the appropriate authority and forum, be it the Insurance Ombudsman or the Consumer Councils, to settle their disputes. Both the institutions have their own set of strengths and weaknesses as discussed earlier. In order to get benefits they may opt for Consumer Councils, as they are widely spread and located. The process of settlement of disputes is easy and inexpensive like that of Ombudsman. The other advantage of Consumer Councils is the legal binding upon the parties, which is lacking in the case of Ombudsman. The limitations of Ombudsman, such as the pecuniary jurisdiction, geographical spread, and appeal against the awards, are the strengths of the Consumer Councils. Though the Consumer Councils do suffer from the lack of expertise in the field, this shortcoming may be addressed by providing a specialized bench with experienced members, to deal with insurance cases; this will certainly help the consumers to mitigate their sufferings and have access to immediate justice. The institution of Ombudsman has to be further strengthened by

[4] History of Insurance, the official website of the IRDA

http://www.irda.gov.in /ADMINCMS/cms/NormalData_Layout.aspx?page=PageNo4&mid=2 visited on 16-7-07.

[5] Arjun Bhattacharya and O'Niel Rane, Nationalization of Insurance in India,

Centre for Civil Society. Working paper No.0073, 2003 at p.no.377.

removing its limitations and also establishing its offices at urban places, especially where there is an insurance company situated, this will give the consumers on easy access to justice.[6]

The capital of the Life Insurance Company before passing the Amendment Bill 2008 it was five crores but after passing the Amendment Bill 2008 it becomes hundred crores. So any person who want to run insurance business in India first of all he will deposit hundred crors in the Reserve Bank of India as a security. So every insured have certainty that their money must be returned by the insurance company after the maturity of the insurance policy. At present in every business there may be venture but insurance business is that kind of business in all circumstances a policy holder who pays the installments within time; he will receive certain amount after the maturity of the policy. So there is no venture in insurance business in India.

The main function of the IRDA is to regulate the insurance business in India, whether it may be public sector or private sector. Before the year 2000 there was monopoly of Life Insurance Corporation this was the sole company who run the life insurance business in India. After the year 2000 there are so many private players has come in the field of life or non- life insurance business. After the entry of the private insurance companies, the insurance business has come very irregularities. So the role of IRDA to see the regulatory mechanism over insurance business in India, become very complicated and critical.

Parliament had passed IRDA Act, in 1999. After passing this Act there were so many Amendment Bill has come through Parliament. In this present scenario the monopoly of the life insurance company has been finished because so many life insurance companies have come in the field of insurance business. The facilities provide by the private insurance companies is far better than public life insurance company. The private insurance companies providing better facilities in so many other insurance businesses. In all life insurance policies which is issued by the public life insurance company, every insured secure that after the maturity of the policy a stipulated amount will be come in the hand of insured but in case of private life insurance companies nobody knows what will be come in the hand after the maturity of the insurance policy. This was only due to the recession of Indian market and foreign market.

Life Insurance Company is a government company so the belief of the people in this company is very much rather than the other private insurance companies. At the time of the recession every private insurance company was going on loss but the public life insurance company was going on profit, this was only due to the faith of the people in public life insurance company. There are so many examples which show the public faith in public life insurance company. In the month of

[6] The Icfai University Journal of Banking & Insurance Law, vol. V11, Nos. 3 & 4, 2009.

January 2009 an insurance plan was announced by the public insurance company, i.e. Jeevan Varsha, in this plan there was a guarantee of the refund of invested money. At that time the public invest 8000 Crores rupees in the public life insurance company. This was happened at the time of the recession when all companies of any business was going on loss. The Indian people believe in government sector and the Life Insurance Corporation of India is a government company so the faith of the public is going to increase day by day. In the year of 2007 there was so many unit linked plan announced by the public insurance company, thousand crores rupees invested by the public in the life insurance company. So these facts show that the faith of the people in government sector is very much rather than the private sector.

Insurance Regulatory and Development Authority Act (1999)

After the report of the Malhotra Committee was submitted to the government, changes in the insurance industry appeared imminent. Unfortunately, due to instability in the Central Government, changes in insurance regulation could not pass through the parliament.

The dramatic climax came in 1999. On March 16, 1999, the Indian Cabinet approved an Insurance Regulatory Authority (IRA) Bill that was designed to liberalize the insurance sector. The bill was awaiting ratification by the Indian Parliament. However, the BJP Government fell in April 1999. The deregulation was put on hold once again.

An election was held in late 1999. A new BJP-led government came to power. On December 7, 1999, the new government passed the Insurance Regulatory and Development Authority (IRDA) Act. This Act repealed the monopoly conferred to the Life Insurance Corporation in 1956 and to the General Insurance Corporation in 1972. The preamble to the legislation reads as follows:

An Act to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalization) Act, 1972.

The first and the most important object of the Act is to establish a regulatory authority as recommended by the Malhotra Committee. Every financial institution where the ownership is divested from the management of the institution inevitably requires an independent regulatory authority armed with powers of supervision and regulation in clear and specific terms. The need is immense when there is a complete overhaul of the structural format of the insurance industry bringing in private players and removing the monopoly of the Government. Regulatory

authority's necessity is felt because it ensures a seamless functioning of the business whose existence is owed to the trust placed in it by customers. The regulatory framework has been established to address and answer three major concerns. They are:

a) The protection of the interest of the consumers;

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

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

The imperative for a regulatory mechanism became all the more a necessity when the business no longer remained under the monopolistic control of the Government, where regulation and supervision were a matter of normal governmental functioning. Liberalization made it mandatory that an independent regulatory authority be established for supervising the functioning of the industry.

The legislation itself was a small enactment of thirty two sections, but albeit a very important enactment. The schedules attached to it are declaratory of the fact that the exclusive dealings of the Life Insurance Corporation and the General Insurance corporation be withdrawn by introducing amendments of S.30 of the Life Insurance Corporation Act, 1956 and S.24 of the General Insurance Business (Nationalization) Act, 1972.

After introducing amendment to S.30 of the LIC, 1956 a new section, Section 30A was added which reads as follows:

30A – Excusive privilege of corporation to cease:

Notwithstanding anything contained in this Act, the exclusive privilege of carrying on the life insurance business in India by the Corporation shall cease on and from commencement of the Insurance Regulatory and Development Authority Act 1999 and the corporation shall, thereafter carry on life insurance business in India in accordance with the provisions of the Insurance Act 1938 (Act 4 of 1938).

After section 24, the following words were inserted,

Excusive privilege of corporation to cease:

Notwithstanding anything contained in this Act, the exclusive privilege of the corporation and the accruing companies of the carrying on of general insurance business in India shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation and the acquiring companies shall thereafter carry on general insurance business in India in accordance with the provisions of the Insurance Act, 1938.

The authority created by the Act is now called IRDA. It declares the Authority to be a body corporate with perpetual succession and a common seal. It has ten members. It can hold property, enter into contracts and is entitled to sue and is liable to be sued by its name. Section 13 provides for the transfer of all property rights and liabilities of the Provisional Insurance Regulatory and Development Authority to the present Authority.

Ombudsman

The Governing Body of Insurance Council (GBIC) has been established under Redressal of Public Grievances Rules 1998, to set-up and facilitate the Institution of Insurance Ombudsman in India.[7] The Ombudsmen are appointed in accordance with the Redressal of Public Grievances Rules, 1998, to resolve all complaints relating to settlement of claims on the part of insurance companies in a cost-effective, efficient and effective manner.[8] Any person who has a grievance against an insurer may make a complaint to an Ombudsman within his jurisdiction, in the manner specified. However, prior to making a complaint, such person should have made a representation to the insurer and either the insurer has rejected the complaint or has not replied to it. Further, the complaint should be made not later than a year from the date of rejection of the complaint by the insurer and should not be any other proceedings pending in any other court, Consumer Forum or arbitrator pending on the same subject matter. The Ombudsmen are also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much such a dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium.[9] The Ombudsmen act as a counselor and mediator and make recommendations to both parties in the event that the complaint is settled by agreement between both the parties. However, if the complaint is not settled by agreement, the Ombudsman may pass an award of compensation within three months of the complaint, which

[7] http://www.gbic.co.in/ on 06-06-08.

[8] Ibid.

[9] Supra note 4 at page 5.

shall not be in excess of which is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees two million (including ex gratia and other expenses), whichever is lower. Ombudsman within his jurisdiction, in the manner specified. However, prior to making a complaint, such person should have made a representation to the insurer and either the insurer has rejected the complaint or has not replied to it. Further, the complaint should be made not later than a year from the date of rejection of the complaint by the insurer and should not be any other proceedings pending in any other court, Consumer Forum or arbitrator pending on the same subject matter. The Ombudsmen are also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much such a dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium. The Ombudsmen act as a counselor and mediator and make recommendations to both parties in the event that the complaint is settled by agreement between both the parties. However, if the complaint is not settled by agreement, the Ombudsman may pass an award of compensation within three months of the complaint, which shall not be in excess of which is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees two million (including ex gratia and other expenses), whichever is lower. Every insurer seeking to carry out the business of insurance in India is required to obtain a certificate of registration from the IRDA prior to commencement of business. The pre-conditions for applying for such registration have been set out under the Act of 1938, the IRD Act and the various regulations prescribed by the Authority.

Insurance Advertisements

The IRDA (Insurance Advertisements) Regulations, 2000, seeks to regulate and control every insurance advertisement issued by the insurer, intermediary or insurance agent. For this purpose, every insurer, intermediary or insurance agent is required to establish and maintain a system of control over the content, form and method of dissemination of all advertisements concerning its policies and such advertisement should be filed with the Authority as soon as it is first issued.[10] An advertisement issued by an insurer should not fall in the category of an unfair

[10] Regulation 2(c), IRDA (Insurance Advertisements) Regulations, 2000: "*Intermediary or insurance intermediary*" includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors, or any other persons representing or assisting an insurer in one or more of the following:
(i) soliciting, negotiating, procuring, or effectuating an insurance contract or renewal of an insurance contract;
(ii) disseminating information relating to coverage or rates;
(iii) forwarding an insurance application;

or misleading advertisement. It is to be noted here that advertisements under this legislation and the regulations that followed cover not just the insurer but also every other authority acting ore representing the insurer or doing business in the insurance products of the insurer. An '*unfair or misleading advertisement*' means and includes any advertisement· that fails to clearly identify the product as insurance;

- claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance;
- describes benefits that do not match the policy provisions;
- uses words or phrases in a way which hides or minimizes the costs of the hazard insured against or the risks inherent in the policy;
- omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract;
- gives information in a misleading way;
- illustrates future benefits on assumptions which are not realistic nor realizable in the light of the insurer's current performance;
- where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in manner or form that it could remain unnoticed;
- implies a group or other relationship like sponsorship, affiliation or approval, that does not exist;
- makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.

Every advertisement should disclose the full particulars and identity of the insurer, and also a statement that insurance is the subject matter of solicitation. In the event that such advertisement describes any benefits, the form number of the policy and the type of coverage and the benefits should be fully disclosed. In case of Internet advertisements, the website or portal of the insurer or intermediary should contain disclosure statements which outline the site's specific policies vis-à-vis the privacy of personal information for the protection of both their own businesses and the consumers they serve and should also display the registration or license numbers. In addition to these requirements, every insurer or intermediary is also

(iv) servicing and delivering an insurance policy or contract;
(v) inspecting a risk;
(vi) setting a rate;
(vii) investigating or assessing a claim or loss;
(viii) transacting a matter after the effectuation of a contract;
(ix) representing or assisting an insurer or other person in any other manner in the transaction of insurance with respect to a subject of insurance resident, located or to be performed in India; or
(x) servicing a policy or contract.

required to follow recognized standards of professional conduct as prescribed by the Advertisement Standards Council of India. It is to be seen here that the 1999 regulatory act brought in a dual-pronged control over the insurance industry in India, where the insurers shall conform to the standards of both the IRDA and the ASCI.

IRDA guidelines on corporate agent's appointment

Insurance companies cannot appoint a person from any group having a broking license as corporate agents/agency, the Insurance Regulatory and Development Authority said. In the guidelines issued on licensing of corporate agents the IRDA said, applications for corporate agency from those who are already engaged in the insurance business should be referred to it. Applicants, regulated by Reserve Bank of India could obtain a license provided they had "substantial" client base of their own or access to data which would facilitate identification of prospects.

They should also have a turnover, assets or income of at least Rs. 15 crores, the guidelines stipulate.

The guidelines would come into force with immediate effect, an Executive Director, IRDA, said.[11]

Corporate to bear bigger share of insured loss

The industry is also facing pressure from reinsurers. All reinsurance treaties are renewed with effect from April 1 and reinsurance companies are pressurizing insurers to be more prudent in their rates. "Another way of looking at this situation is that insurers are finding it difficult internally to enforce pricing discipline and are trying to curtail claims instead. From these steps and the difficulty that insurers are having with their treaty renewals makes us feel that we may see higher prices in the near future as well," said a chairman of an insurance company.[12]

Conclusion

The researcher concludes this research paper with these view in the present scenario the policy holders are scared about their investment in insurance business because they are facing so many problems after taking the insurance policies.

[11] [Source : www.thehindubusinessline.com dated March 11, 2010]

[12] [Source : www.economictimes.com dated March 12, 2010]