A RIDDLE OF UNFAIR PRACTICES PROMOTING LIFE INSURANCE PRODUCTS AND ENTAILING UNCONSCIONABLE TERMS ON GULLIBLE CONSUMERS: A CRITICAL STUDY IN JURISDICTION OF PUNE

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ABSTRACT

Life has become more complex than never before and it has lead increasing demand for life insurance products. It is not only life but insurance business too, is taking a shape of complex industry with abundant life insurance products. With growing cut throat competition and to survive in the industry, insurance companies introducing many new products with bend of advantages of different types of insurance products. Every company wants 10 capture major portion of the market, so on with the insurance agents. Insurance agents have set targets in front of them to achieve, it’s a question of their survival and growth in monetary returns.

Insurers and insured people have conflicting interests. Law plays a very vital role in balancing these interests. The object of any regulatory framework relating to particular industry is basically to promote and develop the business to protect the interests of all stake holders fairly. Insurance regulatory framework is not an exception to It. Law should provide solutions to discourage unfair practices and terms with regard to life insurance products.

Keywords: Instances of Mis-selling; International Status; National Status; Consumer Awareness

INTRODUCTION

Life has become more complex than never before and it has lead increasing demand for life insurance products. It is not only life but insurance business too, is taking a shape of complex industry with abundant life insurance products. With growing cut throat competition and to survive in the industry, insurance companies introducing many new products with bend of advantages of different types of insurance products. Every company wants 10 capture major portion of the market, so on with the insurance agents. Insurance agents have set targets in front of them to achieve, it’s a question of their survival and growth in monetary returns.

RESEARCH PROBLEM

It is observed by Governing Body of Insurance Council in its latest Report that insurer parties and their agents are often play foul & ‘mis-selling’ has become a common feature in promotion of insurance products, especially in life insurance products. It is a need of the hour to curb this social evil. Not only that when due claims are made, they are rejected on any shady and unconscionable grounds, sometimes without proper investigation or without providing any just ground to do so. Insurer parties exercise its right to reject claim as a privilege, considering that insured doesn’t have right at all to get satisfied their claims. Despite order by Insurance Ombudsmen, similar nature of complaints has been
observed subsequently. It shows insurers are not serious about customer complaints & Ombudsmen orders.

**Uberrimae Fidei : Duty of Disclosure- Is it one sided?**

It is open but disgusting truth that on large scale insurer parties engages themselves in false promises, wrong explanations, concealment of information & misrepresentation, k is observed that many complaints arise because customer is not made fully aware of the proper terms and conditions. Latin maxim Uberrimae fidei, which means utmost good faith. previously though imposed burden only on insured, the situation is changed now. According to jurists, it implies same duty from insurer also. In LJC v Shankuttalabai\(^2\), the Andhra Pradesh High Court observed that the duty to show good faith falls on the insured as well as the insurer to an equal degree. This obligation seems to be not discharged by insurer companies generally.

When insurer expects utmost good faith, he should follow the same principle. No one should be allowed to take disadvantage of its own wrong, neither insured nor insurer.

**Instances of Mis-selling:**

Practices like taking signatures on blank documents, false representations, very wide & ambiguous exclusion clauses, non- providing offer letters, not providing contact details, deliberately sending the policy document at insufficient address or not sending it at all to avoid option of Tree Look Cancellation\(^1\), non- disclosure of information, taking advantage of financial illiteracy of consumers, using very complex terminologies in policy etc. are some of the unfair practices observed by Ombudsmen in the Report\(^6\). Though maximum grievances arise because of non- reading of policy documents, reading blindly or without understanding the same doesn't serve the purpose. There could be many reasons for non reading like small font, providing contents in such a jumbling manner and using very technical or complex terms, so that consumer will be discouraged to read the same.

Insurance is essentially a contract and hence should satisfy the test of valid contract.\(^7\) Freedom of contract is a basis for valid contract, if consent is obtained by misrepresentation or if the is lured by false promises, it should be voidable at the option of innocent. Informed consent or independent expert advice should be mandatory. Insurance agents can not lend such impartial advice; often they themselves are ignorant about implications of terms. They want to sell the products, so it can't be expected from them. Qui facit per alium facit per se, a Latin maxim which means, he who acts through another does the act himself. Considering the principle, insurer company shouldn't be allowed to escape from the responsibility for misrepresentations on part of their agents. Often after selling products, agents disappear or change the company, they couldn't be traced. This is again a common problem to be tackled.

It is argued that if consumers are allowed to return the policies on ground of unfairness, which Is difficult to prove, it will lead to uncertainty in the industry. The answer to this question is, test to decide unfairness should be objective, guidelines can be definitely provided. It can be fairly said from decisions of the judicial & quasi-judicial forums like the Supreme Court, High Courts, Insurance Ombudsman, and Consumer Forums etc. that insurer companies incorporating terms which legally & ethically should not be a part of the insurance policy. They have failed to disclose information and lack genuineness in providing explanation. Exclusions clauses are misinterpreted to avoid claims. These all show, though IRDA & other regulators are doing a good job in protecting insurance consumers, in sonic respects they have failed and need to be worked more upon such issues. It is also observed that government/statutory insurance companies are blamed less and not much indulge in such practices, but private companies, who have sole motive to gain profit & profit only, engage largely in such practices.

Here the researchers wish to make a humble attempt to find out solutions for tackling above mentioned social evil.
Interdisciplinary’ Relevance

The research has interdisciplinary approach of law & commerce. The primary focus is to find out legal solutions to boon the insurance commerce. The insurance industry can't afford to lose credibility amongst consumers. To re gain the faith & confidence of people, law must be proactive. Without delay and further damage to reputation of the industry, it is a high time to awake and spot the lacuna for removing the same, If is necessary for overall development & public interest.

LITERATURE REVIEW

Regulatory bodies, judicial forums, NGOs, research institutes are endeavoring to provide the solutions; still the problem subsists till today. The attempts have been made at international as well as national level. To summarize, following observations are made here.

International Status: U.K. a common law country like India if seen, has enacted two important piece of legislations viz. Unfair Terms in Contracts Act 1977 & Unfair Terms in Consumer Contracts Regulations 1999 to tackle the problem of unfair terms & practices in contracts including insurance contracts. United Nations through a body named United Nations Conference on Trade & Development (UNCTD) keeping a watch on international insurance business. It is the only UN agency which has officially included insurance as one of its area of working. There is also a body called International Association of Insurance Supervisors functioning for international cooperation and protection of insured.

National Status: Talking about Indian position, as it is a subject matter of Union List of Seventh Schedule in the Constitution of India 1950, the position of law is uniform throughout India. IRDA, Insurance Ombudsmen, Consumer Forums, other judicial bodies, executives, NGOs are trying to maintain the balance of industry. The governing Laws namely Insurance Act 1938, Consumer Protection Act 1986, IRDA Protection of Policyholders Regulation 2002, IRDA other Regulations, Indian Contract Act 1872, Consumer Protection Act 1986 etc. are some of the amongst other laws dealing with given problem at present.

SIGNIFICANCE OF THE STUDY

In one of the landmark decisions Modern insulator Ltd. vs. Oriental Insurance Co. Ltd. the Supreme Court of India stated that, “exclusion clause under the policy when not explained to the insured, then the same is liable to be ignored while considering the insurance claim.”

The point is though judicial system is established, in country like India it is always misused/ abused by some parties for many reasons like unawareness of law amongst others, delay in justice, no satisfactory awards, difficulty in access to justice, time consuming, cost of justice etc. The challenge is to overcome all these problems as early as possible. It will not happen at once; gradually the plan of solutions should be implemented.

Consumer awareness, especially financial literacy is must but the problem lies in means to achieve this object. Prevention is better than cure, it should be seen that people won't require to approach redressal agencies. A better system required to be evolved in terms of new regulations. If it is so evident that current system/ situation is being so exploited, it is asking for changes. Measures should be taken urgently considering the public element involved in the issue.

OBJECTIVES

To curb any virus, diagnosis is important. Here the researchers will attempt to spot exact problems which need to be fixed, once problems are identified, measures can be provided accordingly. To elaborate more precisely statement of objectives can be further classified into below given headings

1. To find out unfair practices entailing life insurance products
2. To identify terms delaying or depriving claims which otherwise due or genuine in life insurance claims
3. To spread literacy of rules, regulations which govern insurance industry
4. To check the awareness amongst people in urban area
5. To analyze judicial decisions relating to the topic
6. To provide solutions curbing the problem

Scope- Here the researcher is restricting the scope of enquiry only to life insurance products and area of research shall be city of Pune.

RESEARCH METHODOLOGY
It will be non-doctrinal & critical research, not restricted to any particular company.

Secondary Data
Reference Books, Research Articles, Reports by Govt. & Non-govt. Bodies, Judicial Decisions etc.

Primary Data
i) Quantitative Data- Sample size 200 (Stratified Random Method) Technique - Questionnaire from Insured
ii) Qualitative Data - Interview of Consultants, Lawyers, Insurance co. Executives, Insurance Ombudsman, Consumer courts Members, [RDA member etc.
iii) Additional written material provided by insurance agents & policy holders

FINDINGS
In light of above observations somewhere the market is turning into ugly trends, sophistically called as ‘mis-selling’. Insurance products are not cheap, rather they are very expensive. Consumers when buy them, it should be fairly presumed that they invest their hard earned money. The problem to be dealt in hand is how to curb the unfair practices played by insurers to promote or sell their products to genuine but economically illiterate and puzzled consumers. There is also alarming tendency amongst insurers to reject the claims by misinterpreting the exclusion clauses in insurance policy. Similarly, insurers try to retain maximum money by way of forfeiting the policy and or rejecting claims on any fishy grounds, they wish to keep returns for insured at minimal.

CONCLUSIONS
Insurers and insured people have conflicting interests. Law plays a very vital role in balancing these interests. The object of any regulatory framework relating to particular industry is basically to promote and develop the business to protect the interests of all stake holders fairly. Insurance regulatory framework is not an exception to It. Law should provide solutions to discourage unfair practices and terms with regard to life insurance products.

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