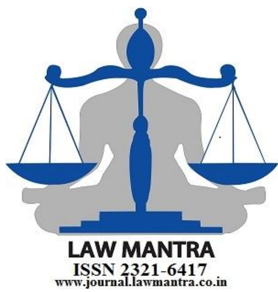

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(I.S.S.N 2321- 6417 (Online)

Ph: +918255090897 Website: journal.lawmantra.co.in

E-mail: info@lawmantra.co.in contact@lawmantra.co.in

INSURING LIFE*

Introduction:

Insurance policy is a contract, in which an individual could receive a financial reimbursement against losses suffered to him. Life insurance has played a crucial role in the lives of most of the people in India. In today's world every risk can be made subject to insurance. For example, singers can get their voice insured and so do dancers for their legs so that if their skills in their respective field decline, the insurance company pays them, the insured money. Insurance is compensation and not prevention, that is, it cannot prevent loss to one's property but can provide compensation to the loss caused by the effect of misfortune.

The business of insurance is classified into two categories-

1. Life insurance- it is insurance to a person's life. The tenure of this insurance is for a longer period of time and the payment of premium is yearly, half yearly or even monthly, as per the convenience of the insurer.
2. General insurance- it is insurance to fire, marine and miscellaneous events which includes health, travel, etc. The insured money of this insurance is paid while taking up the policy.

For some people, it is an investment policy while for others; it acts as a safety net for a family member's untimely death. If an insured person dies, life insurance provides reimbursement to the beneficiaries. Life insurance is a contractual agreement between a policyholder and a life insurance company.[1] Life insurance is a type of contingent contract, which is a contract to do or not to do something, if same event collateral to such contract, does or does not happen.[2] Under this policy, the parties entering into the contract have legal obligation towards each other. The Life insurance is not a perfectly valid contract in nature. However, the life insurance contract can be confused with the wagering agreement, which is unenforceable by law and is void ab-initio.[3]

Principles of Insurance Contract-

1. Utmost good faith- the element of utmost good faith is present in the insurance and is a contract of insurance. This element of utmost good faith is derived from the doctrine of Uberrimae fidei, which is class of agreements in which one party is under a fundamental duty to disclose all material facts and surrounding circumstances that could influence the decision of the other party enter the agreement[4]. Material facts are the facts which can influence a prudent insurer in determining whether to take the risk,

* **Mr. Dewansh Vashishth, BA L.LB (1st year), Christ University, Bangalore.**

[1] http://www.mylifeinsurancequotes123.com/life-insurance-definition/

[2] Section 31 of the Indian Contract Act.

[3] Section 30 of the Indian Contract Act.

[4] http://www.businessdictionary.com/definition/uberrimae-fidei.html

and if so, what can be the terms of taking the risk. In the misrepresentation of these facts, the insurer can avoid the policy rendering it void and the premium amount is made to be paid to the insurer. If an insurer is aware of a policy being illegal in nature, then it is the duty of the insurer to show utmost good faith to the policy holder and not to influence him in taking up any such policy. The proposer must also truly disclose all his material facts to the insurer and there should not be any false statement or half truth in the material facts. This duty of the proposer is continued till the contract is concluded. But, if any material fact is brought up after the contract is concluded, there has to be renewal of the old contract or alteration of the existing one. 'In case of life insurance, no policy of life insurance, shall, after the expiry of 2 years from the date on which it was effected, be called in question by an insurer on the ground that the statement made was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder.'[5]

The contract becomes voidable at the option of the party not at fault, if there is a lack of duty of utmost good faith in either of the contracting parties. If there is an innocent misrepresentation, then the premium is refundable if the contract is avoided. Thus, it is very important on the part of insured to show utmost good faith to the insurer.

2. Indemnity- All insurance contracts are contracts of indemnity, except the insurance of life and personal accidents. These are excluded as in these insurance, money cannot indemnify the loss of life or any bodily injury. While in marine and fire insurances, it is the duty of the insurer to indemnify the insured from loss occurred to him and the insured can recover the amount of loss which does not exceed the amount of the policy. If any loss is occurred to the insured which is not covered under the policy, then the insured cannot claim for indemnity. Under any situation, the insured, cannot recover more than the loss he had suffered as this would be against the public interest.

3. Insurable Interest- 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.[6] It basically means, some monetary (pecuniary) or proprietary interest. At the time of contract, the policy holder must have an insurable interest about the subject matter of the insurance or else, the contract is assumed to be a wagering agreement which is rendered void and unenforceable in the court of law. Thus, in a contract of insurance, the presence of insurable interest becomes a legal requirement. The object of insurance is not to protect the material property but to protect the subject matter of insurance of the insured. If there is any pecuniary loss to the insured, he can derive pecuniary benefit from this.

4. Doctrine of proximate cause- under this principle, the insurer can be made liable only for those losses caused by the peril insured against by the insured. The insured can recover the amount only to the causes for which the policy is undertaken and not for the causes or consequences that are remote in nature. For example, if a person has a fire policy and his property suffered loss due to fire, then the person can recover the loss under the policy. But if the cause of an event is not fire and just something remotely related to fire, then the insurance amount is not recoverable. Although principle of causa proxima is applicable mostly in marine and fire insurance cases, it can also be applicable in life insurance policies. If a person has a personal accident policy, then

[5] Section 45 of the Insurance Act, 1938.
[6] http://economictimes.indiatimes.com/definition/insurable-interest

death through accident is the proximate cause and the insured can recover the policy amount but if there is natural death, then the policy amount cannot be recovered.

5. Risk must attach- under this principle, a risk must be attached to form a valid contract of insurance. If the subject for which insurance was made does not or ceases to exist, and the risk is no more attached and the insured can recover the premium amount from the insurer because of the failure of consideration of premium. Thus, a contract of insurance cannot be in force if there is no definite risk attached in the policy rendering the insurance company to repay the premium amount it had received from the insured person.

6. Mitigation of loss- when an event which has been insured against takes place, it is the duty of the policy holder to take steps to mitigate or minimize the loss and save the property which is left. For example, if there is a fire insurance policy for a property and the fire occurs, the policy holder must do everything to minimize the loss and to safeguard the remaining property. If the policy holder fails to do so, the insurer can avoid the payment of the loss occurred to the insured. However, if any loss is suffered by the insured in taking such steps, he can successfully claim compensation from the insurer.

7. Doctrine of subrogation- According to this doctrine, where a loss occurs and the insurer pays as for a total loss, he is entitled to all the rights and remedies which the insured has against a third party in respect of loss so paid for.[7] This doctrine applies to fire and marine cases only. Through this principle, the insured is prevented from getting indemnified for the same loss through various sources. For example, if one person has damaged someone's motor car, the latter can take the loss amount from the former but cannot claim the same amount from the insurance company. However, if the person, to whom the damage is caused, claims for compensation from the insurance company under this policy, he cannot recover the said amount from someone else. This principle is only applied for complete loss of property and not partial.

8. Doctrine of contribution- like doctrine of subrogation, this doctrine also applies to marine and fire insurance, i.e. contracts of indemnity only. Under this doctrine, a particular property is insured with two or more insurers against the same risk, and is also called double insurance. However, if the insurer has paid more than the compensation amount, he can recover the same from his co-insurer. The following conditions are essential for the doctrine of contribution to be applicable-

   a. There should be more than one policy which covers same interest, subject for insurance and perils from different insurers who have caused the loss.
   b. There must be partial of property or over insurance, i.e., the situation where an insured has bought so much coverage that it exceeds the actual cash value.[8]
   c. The policy holder can recover loss from one or more insurers but not entire amount from each insurer separately.

   Doctrine of contribution comes into operation if all the above conditions are fulfilled.

9. Terms of policy- insurance policies that are valid up to a fixed period or term at a fixed rate payments. When this period gets expired, the rates of premium are not guaranteed. For example. A contract of fire insurance usually has a valid period of 1 year, and once

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[7] http://nilum.hubpages.com/hub/Principles-of-Insurance (last updated on Sept. 29, 2009).
[8] Jonckie, http://www.insurancechat.co.za/2011-03/what-is-over-insurance (last updated on March. 27, 2011)

the period is ended, the liability of the insurer is ended. Similarly, a contract of marine insurance might be for a certain period and after the expiry of this period, the liability of insurer comes to an end.

Reinsurance occurs when multiple insurance companies share risk by purchasing insurance policies from other insurers to limit the total loss the original insurer would experience in case of disaster.[9] It is also known as stop loss insurance. Through this, a part of risk is transferred to the reinsurer from the original insurer. The payment made by the original insurer to the reinsurer with the assumption of risk is called reinsurance premium.

If there is a lapse in the original policy, the contract of reinsurance comes to an end. Or, if there is an alteration in the original contract without the consent of the reinsurers, the duties of these reinsurers are discharged.

Life Insurance Business-

Life insurance is a contract (policy), in which an individual or entity receives financial protection or reimbursement against losses from an insurance company.[10]

Insurance in India has a very significant history. The first life insurance society which was established in India was the **Bombay Mutual Assurance Society**. Early in the 20th century during swadeshi movement, insurance in India witnessed a big boom and around 170 insurance companies spread over their business all over the country but due to lack of regulatory system and scams, these companies suffered from various irregularities. To overcome these existing evils within the companies, government decided to nationalize the life assurance business within the country. As a result, in 1956 Life Insurance Corporation (LIC) of India was set up. It took over 250 insurance companies.

The Insurance Act of 1983, LIC (Life Insurance Corporation) act of 1956 and IRDA (Insurance Regulatory and Development Authority) Act of 1919 looks upon the life insurance business in India. The insurance business since 1956 to 1999 was carried on by the LIC of India formed and maintained by LIC Act of 1956. However in 1999, the monopoly of the LIC of India came to an end and the business of life insurance was made open to other life insurance companies. Following the recommendations of the Malhotra Committee report, in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry, with the objective to regulate, ensure and promote the growth of the insurance and re-insurance business.[11]

[It is a business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include-

1. the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
2. the granting of annuities upon human life;
3. The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been

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[9] Steven Merkel, http://www.investopedia.com/ask/answers/08/reinsurance.asp.
[10] http://www.investopedia.com/terms/i/insurance.asp
[11] http://www.dnaindia.com/special-features/report-insurance-in-india-the-journey-from-origin-to-evolution-1563019 (last updated on July 7, 2011)

engaged in any particular profession, trade or employment or of the dependents of such persons.][12]

Life insurance companies have their own set of rules or procedure manuals to determine whether to issue any policy to an individual or not. The policy includes certain questions like age, sex, height and weight, purpose of insurance, income and occupation, smoking and drinking habits etc., which the person taking insurance is bound to answer. Supposing that a person has misrepresented about his smoking habits to the insurance company, his act becomes fraudulent and he and his family might not receive the insurance benefits. Even if the person says he smokes marijuana and not tobacco, the insurance benefits are still not available to that person.

TYPE OF LIFE INSURANCE-

There are different types of life insurance that act accordingly to the needs of different people. These plans offer death benefit and are payable if the insured person dies when the policy is in effect. The policies are-

1. Whole life policy- under this policy, the insured has to pay the premium throughout his life. The premium under this policy is comparatively lower than other policies. The sum is payable only on the death of the insured to his heirs, nominees etc.
2. Limited payment life policy- under this policy, the insured has to pay the premium for a specific number of years or death, whichever is earlier. The sum is payable only on the death of the insured.
3. Joint life policy- under this policy, joint lives of 2 or more people are taken into consideration. The sum is payable after a fixed term of years or after the death of the insured, whichever is earlier. The partners in a partnership firm mostly insure themselves under this category of insurance, as death of one partner might cause serious financial loss to other partners.
4. Endowment policy- in this scheme, the policy is only valid for a limited period or up to the age of 70 and not more than that. The premium under this policy has to be paid till the date of maturity of the policy. Sum is payable after a fixed term of years or after the death of the insured, whichever is earlier. The premium rates in this scheme are higher than that of whole life policy.
5. Annuity policy- this policy is a type of endowment policy but unlike an endowment policy, a full amount is not paid in lump sum but is paid at fixed intervals. The advantage of this policy is that it provides regular income. Sum is payable after a fixed term of years or after the death of the insured, whichever is earlier.
6. Convertible whole life policy- initially, this policy is treated as whole life policy and the premium is kept low. The insured is given an option after five years to convert the policy into endowment policy. If the insured does not exercise this option then the policy continues as whole life policy.
7. Education or marriage endowment policy- the purpose of this policy is to meet the expenses of marriage and education of children. The policy is valid for a specified period and premiums are to be paid for a fixed number of years. The insured has to pay the policy amount for a period of five years in half yearly instalments under the Education endowment policy while for Marriage endowment policy, the insured has to pay the whole amount as lump sum and the sum is payable only on the death of the insured.

[12] Section 2(11) of the Insurance Act, 1938.

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Apart from child plans, pension plans etc., LIC of India also introduced Unit Linked Plans which is a combination of an insurance policy and an investment fund. Under this plan, the premium amount is invested in stock market and on the maturity period, the income is returned. As large fund is invested in the markets, the returns are usually high and there is also a provision to switch from one fund to another if one fund does not seem profitable. Unit Linked Plans are better for long term investment.

ASSIGNMENT OF LIFE POLICIES-

If a person has taken up a life insurance, his legal representatives, after the insured person's death, can collect the sum assured from the policy. The policy holder can sell, assign or transfer his life insurance policy as a gift or security for loan. Thus a life insurance policy acts like a property and not merely like a proof of contract. The assignment is a transfer of rights of the policy holder to the assignee in respect of the policy. This means, when a person assigns a life policy, all his rights and the title of the policy is passed on to the assignee by reason of assignment. In the case of assignment of life policy, the policy holder is under an obligation to pay money to the assignee on the date of maturity, even though he is alive.

NOMINATION BY POLICY HOLDER-

The policy holder of life insurance has the right to nominate any person to receive the policy amount on the death of the insured before the maturity of the policy and the nominated person is called the nominee. In the event of death of the policy holder, the insurer is bound to pay the policy amount to the nominee. However, the nominee can only claim for the policy amount, at the event of death of policy holder, before the maturity of the policy and not after the maturity or surrender of the policy. Nomination by the policy holder just makes a nominee as a receiver of the policy amount from the insurer and does give any title over that amount, as seen in the case of DM Mudaliar v. Indian Insurance and Banking Corporation (1957).[13] Unlike assignment, nomination need not require any consideration. However, the nomination by the policy holder can be changed or cancelled before the maturity of the policy.

RENEWAL OF LAPSED POLICY-

There are situations, under which the policies issued by the LIC of India lapses, if the premium is not paid by the policy holder within the grace period. Grace period is the time provided to the customer over and above the exact due date to make the payment for the renewal premium without lapsing the insurance policy or reducing any of the policy benefits.[14] However, these policies can also be revived within the life time of the policy holder. The policy must be revived within 5 years from the 1st date of unpaid premium to the date of maturity. Revival of the policy acts as a fresh contract between the insured and the insurance company and new terms and conditions can be imposed by the company on the insured.

Loss of Policy-

If there is any situation where the documents of policy are lost or destroyed, LIC of India will issue another document for the policy after a bond of indemnity has been executed and the fee has been paid to the corporation by the policy holder. Also, the details about the loss must be given to the concerned Divisional Officer working for LIC and also in the newspaper through public advertisement.

[13] AIR 1957 Mad 11
[14] Manoj Aswani, http://www.myinsuranceclub.com/guides/grace-period-definition-in-insurance (last updated on April 25, 2011).

Conclusion and Suggestion-

The policy of insurance is more of a contract and the companies try to limit their risks by terms in the insurance contract like fine prints and use of exclusion. The policy may have clauses which can be overlooked or misinterpreted by the policy holder. Some of them are-

- Alcohol and drug use clause- under this clause, if a person, under influence of drugs or alcohol that are illegal, dies and the cause of death is not alcohol or drugs, and accordingly the exclusion may have various definitions and may vary from policy to policy. The premiums can be reduced by the insurers by a clause that states the normal use of substances that are legal.
- Suicidal clause- this clause states, that the insurance company is not bound to pay the policy amount if a person commits suicide within 2 years of taking the policy. Through this clause, the insurance company is protected from people, who have taken the policy with intention to provide benefit to the beneficiaries by committing suicide. The insurance company is only bound to pay back the returns of the premium paid.
- Aviation clause- this exclusion is only related in the matters concerning private aircrafts. If a person is travelling in a private aircraft and the aircraft crashes leading to his death, the insurance company can deny the death benefits.
- Dangerous activity- as danger activity may vary from person to person, this policy lists out various activities which are considered dangerous, for example activities like car driving, mountaineering, etc. However, one can remove a specific activity by paying an additional premium. This means, if a car racer wants to get covered under the policy, he can pay for that protection.
- Illegal activity- according to this exclusion, if a person, while committing a crime or being engaged in any illegal activity, dies, then he is not entitled to get payment of the policy amount from the insurance company.
- Misstatement of age clause- this clause is invoked if a person intentionally misrepresents its age on the application for insurance.

In these ways and through various clauses and exclusions, the insurance companies protect themselves from paying claims to the beneficiaries for the people who die before their expected age. The main purpose of the insurance companies is to make profits and they do it by limiting their risks. It may be called as loopholes in the policy or exclusions, but one must not overlook the particulars in the life insurance policy.

There are many policies that are offered by the insurance companies which differ in their terms. If a person is unaware of the facts, he may end up buying a policy that result into a big disaster. While choosing for a life insurance, there are few missteps that a person must look into. While choosing a policy, one must look into every aspect of it and must not wait too long to buy. It is often said that sooner you buy a policy, the better it is; as premiums increase as the time passes on. One must also compare policy rates of one company with another to get the best out of the policy. Keeping these things in mind, people are also advised to read the policy documents carefully before signing and if one comes across any question, he must inquire with the concerned insurer.