

CBIL – 02

Insurance Laws in India



**Vardhaman Mahaveer Open University,
Kota**

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Insurance Laws in India



**Vardhaman Mahaveer Open University,
Kota**

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Insurance Laws

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BI-2 Introduction

This Course has been conceived and produced for the students of Certificate Program in Banking and Insurance Laws who need to study the different basic aspects of Insurance Laws. It will provide understanding, skill and elementary knowledge of Insurance Laws. It will train learner for career as Insurance Officer, Agents or professionals. Course will also inculcate the understanding of Insurance Laws at national level and it will provide some other regulatory dimensions in Insurance Laws field.

This Block contains Thirteen Units. First Unit will introduce students with the meaning of Insurance, its historical development and laws in India. It will also help students in knowing the status of insurance before independence and after independence. Unit will also acquaint you with nature of insurance also. This Second unit deals with the General principles of Insurance. Unit will also acquaint you with Conditions of Insurance and Procedure for settle the insurance claims. Third Unit will explain students the specific principles of Insurance and Law. Students will be able to recognize the specific principles of insurance. Unit Four will introduce students with the Insurance Act, 1938 in which they will learn about importance and salient features of Insurance Act. Unit Five again deals with the Insurance Act, 1938 and will help students in knowing applicability of important provisions of the Act. Unit Six will explain students about the Life Insurance Act, 1956. It deals with concept of Life Insurance and administration of life insurance etc. Unit seventh will introduce students with meaning, importance and applicability of marine insurance. Unit Eight will explain students about meaning, importance and principles of Fire insurance. Unit Nine will explain students about the meaning, need and importance of Motor Insurance. It will also explain the importance of Motor Vehicle Act, 1988 and its related provisions. Unit Ten will apprise students about the various miscellaneous insurances like householder, crop, livestock and persona accident etc. Unit eleven will apprise students about the importance of Insurance Regulatory and Development Authority Act, 1999 and provisions related to establishment of the Authority. You will also learn the application of Act, 1999 to monitor and regulate insurance business in India. Unit twelve will apprise students about the importance of the Insurance Ombudsman

and the role of Insurance Ombudsman in settlement of the cases between insured and insurer; and the concept of consumer and its relationship particularly in case of disputes. Unit thirteen will apprise students about the meaning and importance of Social Security, the various government social security schemes, and the legislative provisions for Social Security in India.

Unit 1

History, Development and Nature of Insurance

Objective:

After going through this unit you should be able to:

- Understand the meaning of 'Insurance'
 - Understand the historic perspective of insurance
 - Understand the nature and characteristic of insurance
-

Structure:

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- | | |
|------|--|
| 1.1 | Introduction and Meaning of Insurance |
| 1.2 | History of Insurance |
| | 1.2.1. Ancient Era |
| | 1.2.2. British Era |
| 1.3 | Pre Nationalization /Post Independence Era of the Indian Insurance |
| 1.4 | Nationalization of the Insurance Business in India |
| 1.5 | History of Insurance Legislation in India |
| 1.6 | Liberalization of Indian Insurance |
| 1.7 | Role of Private Insurance Companies in Growth and Develop. of Insurance Sector |
| 1.8 | Nature or Characteristics of Insurance |
| 1.9 | Functions and Limitations of Insurance |
| 1.10 | Importance of Insurance |
| 1.11 | Summary |
| 1.12 | Some Useful Books |
| 1.13 | Check your Progress |
| 1.14 | Answers to check your progress |
| 1.15 | Terminal Questions |
-

1.1 Introduction and Meaning of Insurance:

The insurance idea is an old institution of transactional trade. Even from olden days merchants who made great adventures gave money by way of

consideration, to other person who made assurance, against loss of their goods, merchandise ships and things adventured. The rates of money consideration were mutually agreed upon. Such an arrangement enabled other merchants more willingly and more freely to embark upon further trading adventures. Insurance in the modern form originated in the Mediterranean during 13/14th century. The use of insurance appeared in the account of North Italina Merchant Banks who then dominated the international trade in Europe and that time. Marine insurance is the oldest form of insurance followed by life insurance and fire insurance. The concept of Insurance has prevalent in India since ancient times amongst Hindus. The Joint family system, peculiar to India, was a method of social insurance of every member of the family on his life.

The term 'insurance' may be defined as a co-operative mechanism to spread the loss caused by a particular risk over a number of persons who are exposed to it and who agree to ensure themselves against that risk.

Insurance is a 'contract' wherein one party (the insurer) agrees to pay the other party (the insured) or his beneficiary, a certain sum upon a given contingency (the insured risk) against which insurance is required.

Some 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 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." (J.B. Maclean; Life Insurance P.1)

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." (Riegel and Miller; Principles of Insurance and Practice; P-10)

The primary function of insurance is to act as a risk transfer mechanism. Under this function of insurance, an individual can exchange his

uncertainly for certainly. In return for a definite loss, which is the premium, he is relieved from the uncertainly of a potentially much larger loss. The risk themselves are not removed, but the financial consequences of some are known with greater certainly and he can budget accordingly.

Every subject or discipline has certain generally accepted and a systematically laid down standards or principles to achieve the objectives of insurance. Insurance is not exception to this general rule. In insurance, there is a body of doctrine commonly associated with the theory and procedures of insurances serving as an explanation of current practices and as a guide for all stakeholders making choice among procedures where alternatives exit. These principles may be defined as the rules of action or conduct that are universally adopted by the different stakeholders involved in the insurance business. These principles may be classified into following categories:

- Essentials of Insurance Contract
- Specific Principles of Insurance Contract
- Miscellaneous Principles of Insurance Contract

1.2. History of Insurance:

History of insurance can be easily understandable when it is categorically discussed in relevant segments:

1.2.1. Ancient Era: Basically insurance is an age old phenomenon and part of the human society. The ancient origin of insurance is Emerigon, whose brilliant and learned *Traite des Assurance*, first published in 1783, is still read with respect and admiration. There is a presence of insurances were known to the ancients such as Romans, Phoenicians Rhodians, although the business of underwriting commercial risks was probably not highly developed. In Spanish history of Livy and Suetonius show that the contractors who undertook to transport provisions and military stores to the troops in Spain stipulated that the government

should assume all the risk of loss by reason of perils of the sea or capture and this was probably the first time when insurance process was known.

There were friendly societies organized for the purpose of extending aid to their unfortunate members from a fund made up of contributions from all. These societies undoubtedly existed in China and India in the earliest times. 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.

A. 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 and based on a clear appreciation of hazard involved and the means of safeguarding against it. If 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. Freight was fixed according to season and was expected to be reasonable in the case of marine transport which was then very much at the mercy of winds and elements. Travelers by sea and land were very much exposed to the risk of losing their vessels and merchandise because 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. Later on this street became famous in the insurance history.

B. Fire Insurance: After marine insurance, fire insurance developed in the present form. It had been observed in Anglo-Section Guild for the first time where the victims of fire hazards were given personal assistance by providing necessities of life. It had been originated in Germany in the beginning of sixteenth century. The fire insurance got momentum in England after the great fire in 1666 when the fire losses were tremendous. About 85 per cent of the houses were burnt to ashes and property worth of sterling ten crores were completely burnt off. Fire Insurance Office was established in 1681 in England. With colonial development of England, the fire insurance spread over the world.

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

D. 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. Now, insurance such as cattle insurance, crop insurance, profit insurance, etc. are taking place. The scope of general insurance is increasing with the advancement of the society.

1.2.2. British Era: Even though the insurance was and old concept but developed during the regime of British rule. In the nineteenth century the growth and development of the insurance sector taken shape without any regulation any monitory framework. It was really a typical story of a colonial era where a few British insurance companies dominated the market. Company started by Europeans in Calcutta was the first Life insurance company on Indian soil named Oriental Life Insurance Company 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, Indians were charged an extra premium of up to 20 per cent as compared to the British.

1.3. 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 Center and States. Insurance is included in the Union List. The subject include in this list are of the exclusive jurisdiction of the Center. 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.

1.4. 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, AIR 2011 Patna 139, 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.

1.5 History of Insurance Legislation in India:

Upto the end of nineteenth century, the insurance was in its inception stage in India. Therefore, no legislation was required till that time. Usually the Indian Companies Act, 1883 was applicable to business concern; banking and insurance companies like New Indian Insurance Companies and Provident Societies started during the time of independence movement; but most of them were financially unsound. It was asserted that the Indian Companies Act, 1883 was inadequate for the purpose. Therefore, two Acts were passed in 1912, namely, Provident Insurance Societies Act V of 1912 and the Indian Life Insurance Companies Act, 1912. These two Acts were in pursuit of the English Insurance Companies Act, 1909.

These two enactments were governing only life insurance. There was no control on general insurance since such businesses were not so developed. Besides, there were the following defects of these acts:

1 The control and enquiry was slight. Non-compliance of rules and regulations was not strictly penalised.

2 The foreign companies were to submit report of their total business both in Indian and outside India. But separate particulars regarding business done in India were not demanded and the absence of these made it impossible to get any idea of the cost of procuring business in India for foreign companies and comparing them with similar data of the Indian companies.

3 The government actuary was not vested with the power to order investigation into the conduct of a company even when it appeared that the company was insolvent under the power of exemption.

4 Any one can start life insurance business only with the sum of Rs. 25000/-. It was too low to prevent the mushroom growth of companies. Foreign insurer was not bound to deposit a certain sum of life policy issued in India.

General Insurance on the other hand also has its origins in the United Kingdom. The first general insurance company "Triton Insurance Company Ltd." was promoted in 1850 by British nationals in Calcutta. The first general insurance company established by an Indian was "Indian Mercantile Insurance Company Ltd" in Bombay in the year 1907. There were legislative attempts made to strengthen the Act of 1912 but failed and in the year 1938 the government enacted Insurance Act, 1938 to deal both life and non-life insurance sector.

1.6. 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 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”.

1.7. 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.

1.8. Nature or Characteristics of Insurance:

The following are the characteristics of the Insurance:

1. **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.

2. Evaluation of Risks: For the purpose of ascertaining the insurance premium, the volume of risk is evaluated, which forms the basis of insurance contract.
3. Payment on happening of specified event: The insurance company is bound to make the payment to the insured. Happening of the insurance event is certain in the life insurance but in the case of fire or marine or accidental insurance, it is not necessary.
4. 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.
5. 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.
6. 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.
7. Transfer of risk: Insurance is a plan in which the insured transfer his risk on the insurer.
8. 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.
9. A Contract: Insurance is a legal contract between the insurer and insured under which the insurer promises to compensate the insured financially within the scope insurance policy, and the insured promises to pay a fixed rate of premium to the insurer.

10. 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.

1.9. Functions of Insurance:

The primary functions of insurance includes the following:

1. Provide protection: The primary purpose of insurance is to provide protection against future risk, accident and uncertainty. Insurance cannot check the happening of the risk, but can certainly provide for the losses of risk. Professor Hopkins observes , "Insurance is a protection against economic loss by sharing the risk with others." He further adds "Insurance is the protection against economic loss."
2. Collective bearing of risk: Insurance is a device to share the financial loss of few among many others. Dinsdale opines, insurance is a mean by which few losses are shared among longer people. Similarly, William Bevridge observes, "The collective bearing of risks is insurance." All the insured contribute the premiums towards a fund and out of which the person exposed a particular risk is paid. Similarly, Riegel and Miller observe, "Insurance is a device whereby the uncertain risks may be made more certain."
3. Evaluation of Risk in Advance: Insurance determines the probable volume of risk by evaluating various factors that give rise to risk. Risk is the basis for determining the premium rate also.
4. Provide certainty against risk: Insurance is a device which helps to change from uncertainty to certainty. This may the reason that John Magee writes that the function of insurance is to provide certainty. Similarly, Riegel and Miller observe, "The function of insurance is primarily to decrease the uncertainty of events."
5. Spreading Risks: Professor Thomas has correctly written that "Insurance is the device for spreading or distributing risks."

6. Other Functions: There are indirect functions of insurance which benefit the economy indirectly. Some of such functions are:

a. Means of savings and investment: Insurance serves as saving and investment. Insurance is a compulsory way of saving and it restricts the unnecessary expenses by the insured's. For the purpose of availing income-tax exemptions also, people invest in insurance. In the words of Magee "Although investment is not the primary function of insurance. Insurance service is proved to be an important benefit of insurance."

b. Source of earning Foreign Exchange: Insurance is an international business; the country can earn foreign exchange by way of issue of marine insurance policies.

c. Promote exports: Insurance makes the foreign trade risk free through different types of policies issued under marine insurance cover. In case of loss of cargo and others due to marine perils the insurance company makes good the loss.

d. Provides Social Security: Through various social protection plans, the insurance provides social security to people. It not only provides security at the time of death but also provides assistance to the insured at the time of sickness, old age, maternity etc.

Limitations of Insurance: In spite of number of advantages of insurance, it has certain limitations. On account of such limitations, the benefits of insurance could not avail in full. These limitations are:

a. All the risks cannot be insured: All the risks cannot be insured, only pure risks can be insured, and speculative risks are not insurable.

b. Insurable interest on the subject matter: Insurance is possible only when the insured has insurable interest in the subject matter of insurance either at the time insurance or at the time of loss, or at both the times; in the absence of which the contract of insurance become void.

- c. Impossibility of measurement of real loss: In case the loss arisen from the happening of the event cannot be valued in terms of money, such risks are not insurable.
- d. Not possible to insure the risk covered by a single individual or a small group: Insurance against the risks of a single individual or a small group of persons are not advisable since it is not practicable due to higher cost involved.
- e. Moral Hazards: It becomes difficult to control moral hazards in insurance. There are certain people who mis-utilize the insurance plans for their self interest by claiming false claims from insurance companies.
- f. Insurance is not profitable investment. Its main object is to provide security against risks. Insurance business cannot be a source to acquire profits.

1.10. Importance of Insurance:

Insurance is a very important useful tool to provide security to individual, business or industry and to the society.

- A.** Insurance provides security and safety to an individual.
- B.** Insurance affords peace of mind of a person and society in general
- C.** Insurance also protects mortgaged property
- D.** Insurance eliminates the dependency after the death of the husband or father or any other key earning member of the family.
- E.** Life insurance encourages saving.
- F.** Life insurance is a profitable investment as well as providing income-tax exemption to an individual.
- G.** Life insurance fulfils the needs of a person, either it is a Family needs or Old age needs or Re-adjustment needs or other type of needs.
- H.** Uncertainty of business losses is reduced
- I.** Business efficiency is increased with insurance
- J.** Key man Indemnification is a unique feature of insurance

K. Welfare of employees

1.11. Summary:

The history of insurance is very old and developed through the joint family concept of social security in India. The development of theoretical concepts and legal development is started little late during the regime of British Government. The insurance sector developed very fast in our country as compared to any other sector. The definition, Nature and definition of insurance is also discussed at length in this unit.

1.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow

- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

1.13. Check your Progress:

A. Which of the following statement are true or false?

1. The insurance is an old institution of transactional trade.
2. Insurance is gambling.
3. Marine insurance is an oldest form of insurance.
4. Insurance is a cooperative device to share the burden of risk.
5. The insurance company is bound to make the payment to the insured.

B. Fill in the blanks:

1. The fire insurance got momentum in England after the great fire in..... when the fire losses were tremendous.
2. The Life Insurance Corporation was formed in
3. The first general insurance company established by an Indian was
4. The IRDA Act also carried out a series of amendments to the
5. The Primary purpose of insurance is to provide protection against.....

1.14. Answers to check your progress

A.

1. True

2. False

3. True

4. True

5. True

B.

1. 1666

2. September, 1956

3. Indian Mercantile Insurance Co. Ltd.

4. Insurance Act, 1938

5. Future Risk

1.15. Terminal Questions

Q.1. Discuss the functions of insurance.

Q.2. Discuss the limitations of insurance.

Q.3. Define insurance and describe its main characteristics.

Q.4. Discuss the importance of insurance.

Q.5. Discuss the history of insurance.

Unit-2

General Principles of Insurance Law

Objective:

After going through this unit you should be able to:

- To understand the basic principles of insurance
- To understand the importance of conditions
- To understand the procedure to settle the insurance claims

Structure :

- 2.1. General Nature of Insurance Contract
- 2.2. Offer and Acceptance
- 2.3. Legal Consideration
- 2.4. Competent to make contract
 - 2.4.1. Minor
 - 2.4.2. Persons of unsound mind
 - 2.4.3. Other disqualification
- 2.5. Free Consent
- 2.6. Legal Object
- 2.7. Construction of Policy
- 2.8. Conditions of Policies
- 2.9. Discharge of Insurance Contract
- 2.10. Discharge at Death
- 2.11. Summary
- 2.12. Some Useful Books
- 2.13. Check Your Progress
- 2.14. Answer to Check Your Progress
- 2.15. Terminal Questions

2.1. General Nature of Insurance contract:

The valid insurance contract, like any other contracts, according to section 10 of the Indian contract act, 1872 must be based upon the following principles:

1. Offer and acceptance

2. Legal consideration
 3. Competent to make contract
 4. Free consent
 5. Legal object
-

2.2. Offer and acceptance:

The intimation of the proposer's intention to buy insurance is the 'offer', while the insurer's readiness to undertake the risk stated, is the 'acceptance'. The 'offer' in case of insurance is called proposal. If other party accepts this proposal, it is transformed into an agreement. The offer for entering into contract may generally come from the insured. The insurer may also propose to make the contract. Whether the offer is from the side of insurer or from the side of insured the main fact is acceptance. Any act that precedes it is an offer or a counter-offer. All that precedes the offer or counter – offer is an invitation to offer. In insurance, the publication of prospectus, the canvassing of others are invitations to offer. When the prospect (the potential policy - holder) proposes to enter the contract it is an offer and if there is any alteration in the offer that would be a counter-offer. If this alteration or change (counter-offer) is accepted by the proposer, it would be an acceptance. At the moment, the communication of acceptance is given to other party; it would be a valid acceptance.

Generally the insurance agent approaches to the prospect with the prospectus, rate and condition of insurance. The prospect will decide whether to purchase the policy at the stipulated rate or not when the prospect decides to purchase the policy, he fulfills the proposal form. The proposal form with the medical report, agent's report and development officer's report along with the premium rate are sent to the insurer. The insurer on receiving these documents and premium, will decide whether to accept or not. If the decision is to accept the risk on ordinary terms, an acceptance letter is sent to the prospect. There may be another case of acceptance when the premium is not sent with the proposal.

The insurer advises to pay the first premium within a specified period. The contract would complete on payment of the premium within the prescribed period. If the premium is not paid within the period specified in the acceptance letter, the acceptance is revoked. There may be the third case where the risk is to be accepted

on special rates and conditions, the applicant is informed accordingly. If these terms and conditions are acceptable to the prospect, the contract would complete when the requisite premium is paid within the specified period. If he does not accept the terms and conditions, the contract fails.

The submission of proposal form will be an offer and sending of an acceptance letter will be an acceptance from the side of insurance company. But if the proposal form is not with the first premium it is simply an invitation to make an offer. The letter sent to the insured asking for payment within a period is an offer and payment of the premium is an acceptance.

In *Looker and another v. Law Union & Rock Insurance Co.* (1928), the contract was not considered complete. In this case the proposal was made on 10th July, 1926 and accepted on 15th July. The insured fell ill on 21st July. A cheque was dispatched on 24th July. Receipt of cheque was issued on 26th July and on 27th July the insured died. In this case the contract would have finalized on 26th July but the cheque was not honoured due to insufficient, the contract would not complete. Moreover, it is the duty of the insured to disclose all the material facts before the completion of the contract.

If the insurer decides to accept the risk on special terms and rates, the letter sent to the insured informing about the terms and conditions would be an offer if premium was not accompanied with the proposal form but if premium was accompanied the letter would be a counter offer. When the insured accepts the special rates and conditions and pays the requisite amount of premium, it would be an acceptance. The contract completes as soon as acceptance is made. It should be noted that the delivery of the policy is not a condition for completion of life insurance contract. The policy is an evidence of contract between insurer and insured.

The insurer's offer to insure the proposer is to be deemed conditional on the risk not materially changing prior to acceptance. In *Canning v. Fraquer* (1886) the proposer was seriously injured before acceptance although premium was tendered but was not accepted by insurer. Shortly afterwards the proposer died. The court held that the insurer was not liable because the first premium was not accepted by the insurer; the so-called acceptance letter was not an acceptance but was a

counter-offer which could not be considered to be in force after the risk has changed and material change in the health was not informed to the insurer.

Similarly in *Harrington v. Pearl Life* (1914), the insurer informed the proposal that the proposal would be accepted provided the first premium was paid within 30 days. The proposer assigned the policy on the condition that the assignee would pay the first premium. The assignee- Harrington paid the first premium a little before the death of the assured. The court held that since the policy was not complete, the assignee has no right to receive the policy amount, i.e., the acceptance was not made before assignment.

2.3. Legal consideration:

In insurance contract, the premium is the consideration on the part of the insured. Certainly, the insurer who promises to pay a fixed sum at a given contingency must have some return for his promise. The fact is that without payment of premium insurance contract cannot be initiated. The insurer must have some return for its promise. It need not be money but it must be 'valuable'. It may be right, interest, profit or benefit according to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. In life insurance, the considerations are the statements in the application and the payment of the first annual premium. All subsequent premiums are not part of the consideration but are merely conditions to be fulfilled by the insured for keeping the contract in force. Since the subsequent premiums are not part of the considerations, the insurer cannot compel the insured to pay the premiums subsequent to the first premium.

2.4. Competent to make contract

The parties to the contract should be competent to contract. Every person is competent to contract (a) who has attained the age of majority according to the law; (b) who is of sound mind; (c) who is not disqualified from contracting by any law to which he is subject (Section 11 of the Contract Act). Any person, either natural or artificial who has legal capacity to enter into a contract can become an insurer. It must have the required license for the purpose of

conducting life insurance from the government authority. It can continue to hold or get renewed the license only as long as it is properly organized and managed and is observing all the conditions to which the license is issued or renewed. The applicant (insured) can enter into the contract provided he is not minor, not of unsound mind, not disqualified from contracting by any law.

As far as the insurance contracts are concerned, only those insurers grant insurance policies that have been issued licenses by Insurance Regulatory and Development Authority (IRDA). Similarly, minors, people of unsound mind and criminal background cannot take on insurance contract. This applies to bankrupt persons. In case of a minor, the natural legal guardians enter into a valid contract on behalf of the minor, till the minor attains 18 years of age.

2.4.1. Minor: Majority is attained when a person completes the age of 18 years. A minor has no capacity to contract except for necessities or for employment. The minor can repudiate the contract any time till he attains the majority. A minor cannot sign for proposal for assurance. Therefore, the age of proponent must be proved by submission of satisfactory evidence. The contract can be voidable at the option of minor who is entitled to refund of premium paid on it. There does not arise any question of incompetence on the ground that the application for insurance on the life of minor is made by a competent adult.

2.4.2. Persons of Unsound Mind: Section 12 of the Indian Contract states that a person is said to be of sound mind for the purpose of making a contract, I, at the time of making it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind but occasionally of sound mind can make a contract when is of sound mind.

A same man who is delirious from fever or who is so drunk that he cannot understand the terms of contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts, In *Molton v. Camrouse*, 1849, it was established when a lunatic purchased two annuities, for his life, the company has no knowledge of his lunacy; the purchase

was fair and of good faith, the purchase money could not be recovered by the personal representatives of the deceased lunatic.

2.4.3. Other disqualification: Other disqualification arises out of the incapacities arising out of political status such as in the case of an alien. Valid contract can be made with aliens, but not with enemy aliens when a foreigner with whom an insurance contract has been entered into becomes an enemy foreigner, the contract is either suspended or terminated as from the date of declaration of war. It has been realized that court decisions have not been uniform in this case. Sometime, the contract is suspended and is re-instated after hostilities have ceased. The policy holder becomes entitled to reserve value when the contract is terminated.

Insolvent: An insolvent cannot enter into contract. He is deprived of all powers to enter into transactions which will bind the creditors in respect of his property. After discharge of his obligation, he can enter into the contract.

Married Women: In India, a women married or unmarried was and under no disability to enter into contract for insurance. Under the Married Women's Property Act, 1882, a woman is empowered to take a policy on her own life or on the life of her husband for her own benefit.

Convicted: A convicted person cannot enter into contract unless he is discharged from the crime.

2.5. Free consent:

When both the parties have agreed to a contract on the terms and conditions of the agreement in the same sense and spirit, they are said to have a free consent. The consent will be free when it is not caused by; (a) coercion; (b) undue influence; (c) fraud; (d) misrepresentation ; or mistake. When there is not free consent except fraud the contract becomes voidable at the option of the party whose consent was so caused. In case of fraud the contract would be void.

Section 14 of the Indian Contract Act lays down that consent is said to be free when it is not caused by:

1. Coercion;
2. Undue Influence;
3. Fraud;
4. Misrepresentation ; or
5. Mistake

When there is no free consent the contract becomes voidable at the option of the party whose consent was so caused.

Free Consent in Insurance: When a person signs a proposal for assurance, he gives his free consent to the contract. The proposer should understand the contents of proposal in the same sense and should make rational judgment upon it and a written declaration on the proposal. The agreement with a blind man or an ignorant and uneducated man stand on the same footing and it requires that free consent is obtained. The proposer is responsible for the proposal made by him.

The disqualifies of a free consent are discussed below coercion:- Contract vitiated by coercion becomes voidable at the option of the party whose consent was procured by such coercion. It is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into agreement.

Undue Influence: A person is deemed to be in a position to dominate the will of another when he holds a real or apparent authority over the other or when he stands in a fiduciary relation to the other or where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. The burden of proving the undue influence was not exercised shall be upon the person who is in a position to dominate the will of the other. The undue influence exists where the relations subsisting between the parties are such that one of the parties is in position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Fraud: Fraud includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract:-

1. The suggestions as to a fact by one having knowledge or belief of the fact.
2. The active concealment of a fact by one has knowledge of belief of the fact.
3. A promise made without intention of performing it.
4. Any other act fitted to deceive.
5. Any such act or omission as the law specially declares to be fraudulent.

The contract initiated by fraud is void ab initio and party whose consent to the agreement or contract is caused by fraud has the right to avoid it and claim compensation for any damage suffered by him.

Misrepresentation: Misrepresentation means and includes:

- (i) The positive, assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (ii) Any breach of duty which, without an intent to deceive gains an advantage to the person committing it, or anyone claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- (iii) Causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of agreement.

The agreement caused by misrepresentation is voidable at the option of the party whose consent was so caused.

2.6 Legal object

The object of the agreement should be lawful. An object that is; (i) not forbidden by law; (ii) is not immoral; or (iii) opposed to public policy; or (iv) which does not defeat the provisions of any law, is lawful. In proposal form the object of insurance is asked which should be legal and the object should not be concealed. If the object of an insurance agreement, like the consideration is found

to be unlawful, the policy is void. Moreover, the object of the contract should not be based on gambling nature.

2.7. Construction of Policy:

Policy is the formal document which evidences the contract of insurance which has already been made between the insured and insurer. It has been the practice of insurer to issue a policy in which the contract is completely expressed. The Insurance Act, 1938 under Section 3(2) clearly lays down the necessity of a standard form. It reads as- " A certified copy of the published prospectus, if any , and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with life insurance business by an actuary that such rates, advantages, terms, and conditions are workable and sound....."

The following points are important while constructing the policy:

1. Any ambiguity in the policy will be construed against the insurer who prepared it so that the insured may obtain the benefit of any reasonable doubt. It was decided in *Jowkes v. Manchester and London Life*, (1863). This rule stems from the rule of *Contra Proferentum*.

In *Alder Moore* (1960), it was held that this rule will apply only where there is real ambiguity. Where the language of the policy is taken from an answer in the proposal which is the phraseology of the insured, the above rule will not apply.

2. Where a policy issued is not in conformity with the terms of the contract which has already been made, the insured may require the insurer to rectify it. Where a contract is contained in more documents than one spread over different dates, the later in date should be given greater weight in case of conflict between the two. The written portions of the policy will be held to override the printed parts should there be any conflict between them.

3. Although the policy is not the contract, but only evidence of it. Yet the contract will normally be interpreted according to the contents of the policy.

4. The policy should refer the proposal made by the proposer payment of the premiums, conditions when sum assured is payable.

5. In *Annapurnabai v. Hindustan Cooperative Insurance* (1943), it was stated that if the policy makes no reference to the prospectus or rules of the company, they cannot be taken into consideration in interpreting the policy.

6. The particulars relating to names, addresses of the assured and life assured, sum assured, premiums, class of insurance and the life, are grouped together in the form of a schedule. There are no legal difficulties in the schedule.

2.8. Conditions of Policies:

It is again a very important aspect of insurance. The conditions of policies are discussed under days of grace, premium, notice, payment of premium, return of premium, lapse of policy, revival of lapse policy, surrender value and its adjustment and loan on policy.

1. **Days of Grace:** Days of grace period during which the policy does not lapse on ground of non-payment of premium of the due date. The insurance cover continues uninterrupted during these days even without payment of premium for the current period. If the premium is not paid within the due date, the policy lapses with effect from the due date of the unpaid premium.

The days of grace in India in one calendar month but not less than 33 days in case of an annual, half yearly or quarterly mode of premium-payment and 15 days in case of monthly mode of premium. If the policy-holder dies within these, full policy-amount minus the unpaid premium is payable. The rule of computation when the matter is not provided for by legislation has always been that the day upon which the negotiation paper becomes due and payable is not to be counted and the following day is the first day of grace.

2. **Premium Notice:** The insurer is not legally bound to send the premium notice, but as a matter of practice, the insurer sends a premium notice to every insured about a premium falling due on a particular date in the next few

weeks. It mentions the amount of premium, the due date and days of grace. The premium notice is not sent in case of monthly premiums.

3. Payment of Premium: The first premium is the consideration for the insurer's promise; but the subsequent premiums are conditions to continue the contract. The payment of these premiums is not a promise by the insured that he would pay the premiums subsequent to the first. The insurer cannot compel the insured to pay the premium. He can discontinue paying these premiums at any time. If the subsequent premiums are not paid, the assured cannot claim the full policy amount because he has not fulfilled the conditions of the contract.

4. Return of Premium: Lord Mansfield stated, "Equity implies a condition that the insurer shall not receive the price of running a risk if he runs none. Where the contract does not come into effect, the insurer is not liable for premium and he has to return the premium to the insured." Where the insured has committed breach of warranty, he cannot take advantage of it to put an end of the policy. If the statement in the proposal is false or there is concealment of material facts, the policy shall be void and the premiums paid shall be forfeited. The premiums appearing in the prospectus of a life office are based upon the rates of mortality of standard lives. So an extra premium should be charged in case of persons who are known to be engaged in or changing to more than usually hazardous occupations or residing or intend to reside in or travel through unhealthy climate. So, the premiums paid shall be forfeited if the insured resides or travels beyond prescribed territories.

5. Lapse of Policy: A life insurance contract is a conditional contract where under in order to keep the contract in force, the policy-holder has to pay premiums as and when due. If the premium is not paid within the days of grace, the policy is lapsed and the insurer is not under any obligation to continue his promise. The insurer is relieved of all his responsibility under such conditions.

6. Revival of Lapsed Policy: A lapsed policy can be revived or reinstated at the request of the insured although the insurer will be within his right to decline the revival. The insured is required to state his health. A fresh medical

examination will be necessary if the lapsed policy is revived after a certain period of lapsation.

7. Surrender value and its adjustment: Under Insurance Act, 1938, it is provided that a policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer. Section 113 of the Insurance Act, 1938 provides that notwithstanding any contract to the contrary a policy which has earned a surrender value shall not lapse by reason of non-payment of further premiums but shall be kept alive to the extent of the paid up sum insured.

Important to note that if two years premiums are paid, the policy amount will be reduced to paid-up value in case of non-payment of premiums, to the premium payable, such paid-up policies do not participate in future profits or bonuses of the company but the vested bonuses are attached to it. If the premiums are paid for latest three years and the insured dies within 6 months from the date of default, the full sum assured by the policy will be payable subject to usual deductions of unpaid premiums and interest thereon. Recently the provision of surrender value has changed. Now the benefit of surrender value will be applicable only when five consecutive annual premiums are paid or one-fourth of the total premium payable has been paid provided this one fourth premium is not less than three years.

8. Policy-Loan: The insured has a right to obtain a loan on the security of the policy within its surrender value is also one of the privileges mentioned by some insurer has lien on the proceed of the policy to the extent of outstanding loans and interest thereon. The security against which the loans are granted is the cash surrender value of the policy. If policy holder fails to pay back the loan amount and or interest, the same may be deducted from cash surrender value.

2.9. Discharge of Insurance Contract:

The nature of insurance contract is generally a contract between two parties- the insurer and the insured. The contract can be discharged in the following ways:

1. By Agreement: The policy holder and the insurance company may agree to perform the contract on mutual terms and conditions as prescribed by the Insurance Regulatory and Development Authority in this regard. They may agree that on surrender of the policy after a certain period, the surrender value may be paid. The policy may be converted into a paid up policy or in the form of policy such as form a whole life insurance to endowment insurance.

2. Impossibility of performance: The contract is deemed to be performed when an act of impossibility occurred or where the promisor could not prevent, the act which made, the contract void. For example: When war occurs between the countries of insurer and insured and discharge of contract becomes impossible.

3. Breach: The breach of contract may take place when the promisor refuses to perform the contractor renders himself disabled to perform or fails to perform it or by his action or conduct it becomes impossible of performance. The performance may refuse to perform his part of the contract.

4. Performance: When both the parties perform their promises, the contract is discharged under normal course of business. When the life assured pays the premium the insurer will be bound to pay the assured by the policy. The insurer shall pay the premium at the time of death or at the maturity of the claim as the case may be.

2.10. Discharge at Death:

Final settlement of claim in the form of discharge of death is very important stage. In the settlement of death claim the documents like – proof of death, proof of title and other important documents are required to settle the claim of the policy holder. The details related to each aspect are as follows:

1. Proof of Death: In India the following evidences are required: In claim Form-A, the claimant is required to give his/her replies to questions regarding to his/her occupation, relationship with the deceased, nature of title, place and date of death of the life assured, duration of his last illness, death, details of other policies on life assured and names of the doctors who has been consulted

by the life assured during the last three years. In claim Form-B, the last medical attendant's replies to a number of questions relating to the assured as well as the circumstances relating to the assured's death and habits, history of any previous ailments and any other information which the medical attendant is in a position to give. In Claim Form-C, certificate of burial or cremation is required. If the death certificate by the Municipality or the Panchayat is given, no certificate of burial or cremation is required. A certificate of identity has also to be obtained by the claimant in addition to the certificate of burial or cremation in the absence of certificate of death. It has to be completed and signed by a person known character and responsibility acquainted but not related to the deceased nor to the claimant and who has seen the dead body. If the deceased was in service at the time of death, certificate from the last employer in the claim Form-E.

Premature Claim- If the death occurs within one year of the issue of the policy, the insurer will have to make confidential enquiries regarding the cause of death and the nature and duration of last illness, etc., from the doctors consulted by the deceased and others. In case of suicide within one year issue of policy, the insurer may repudiate his liability. Similarly, if false statement or suppressed material facts are given, the insurer may repudiate his liability to pay the sum assured.

Presumption of Death- If sufficiently searching inquiries have been made to satisfy a judge of the probability of the assured being dead, the court will presume death to have taken place at the end of seven years from the date of the disappearance, and the evidence the office will require is the order of the court presuming death.

War: In case of war, where the whereabouts of member of the armed forces could not be established, it is more likely that he may be missing or in the hands of enemy or have disappeared in circumstances arising out of war which renders proof of death difficult. In such case, the certificate of death issued by the appropriate military authorities should be accepted as the best proof of death.

2. Proof of Title: The sum assured is payable to the assured or his executors, administrators, assign or other legal representatives. The assured can

receive the policy money if the policy matures during his lifetime. Other persons are entitled to the sum assured in the event of his death. The legal representatives have been defined as any executors and administrators where there are no executors or administrators, the heir and where there is no heir, the person who represents in law and can give a valid discharge. No right can be claimed on the policy of the deceased person unless letter of administration have first been granted by a court of competent jurisdiction. Under the letter of administration or probate of the will is granted, no one can claim. Where the policy money does not exceed Rs. 2,000, a certificate from the Administrator-General will be sufficient. This certificate can be easily obtained from the Administrator-General of the State concerned, without the help of pleader, if the total estate left by the assured including policy money does not exceed Rs. 2,000. The Administrator General charge a fee at the rate of 3 per cent of the value of the estate.

Nomination and Assignment: The nominee will get policy if the policy was not assigned. If the nomination is not registered, the insurer will not be liable for the payment. The nominations can be canceled at any time before the payment. So the person nominated in the last is legally liable to get the policy amount. The insurer may apply to pay the amount into the court with the jurisdiction of which is situated the place at which such amount is payable under the terms of policy or otherwise if there is conflicting claims or insufficiency of proof of title. A receipt granted by the court for any such amount; subject to certain procedure the court shall decide all questions relating to the disposal of claims to the amount into court.

Maturity Claim: A notice is generally is issued by the insurer shortly before the maturity date. A printed letter is usually employed for this purpose which will state the number of the policy and name of the life assured, the date of maturity, and the amount of the sum assured and bonus, if any, the amount of any loan outstanding with interest thereon to the date of maturity and the net sum payable. If the policy does not stand assigned, the amount is payable to the insured. Even if the policy stands nominated the nominee is not entitled to get the policy amount. However, where the policy is assigned, the assignee will get policy amount provided the assignment is absolute one. If the assignment is conditional,

the policy amount will be paid according to the terms and conditions of the assignment.

2.11. Summary:

General nature of contract of insurance is similar to other general contract. The basic principles which are applicable on other type of contract are simultaneously also applicable to insurance. But the specific general principles of insurance are only applicable to the contract of insurance and changing the nature of it. The formation of contract is based on basic principles like- offer and acceptance, consideration, legal object, competency to make contract etc. and discussed at length. The students can easily understand the nature of insurance through these explanations.

2.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow

- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

2.13. Check Your Progress:

A. Which of the following statements are true and false?

1. The 'offer' in case of insurance called 'proposal'.
2. The contract would complete on payment of the premium within the prescribed period.
3. Insurer can compel the insured to pay the premium subsequent the first premium.
4. The insured can enter into the contract provided that he is not minor.
5. The insurer is not legally bound to send the notice of premium.

B. Fill in the blanks:

1. The valid insurance contract, like any other contract according to.....of the Indian Contract Act, 1872.
2. The insurer's offer to insure the proposer is to beon the risk not materially changing to prior to acceptance.
3.of the Indian Contract Act, 1872 lays down that consent is said to be free.
4. Any ambiguity in the policy will be construedthe insurer.

5. The insured has right to obtain a loan on the security of the policy within its

2.14. Answer to Check Your Progress:

A.

1. True
2. True
3. False
4. True
5. True

B.

1. Section 10
2. deemed conditional
3. Section 14
4. Against
5. Surrender value

2.15. Terminal Questions

- Q.1. What is important principle of Insurance?
- Q.2. Discuss in detail offer and acceptance.
- Q.3. Who is competent or not competent to make contract.
- Q.4. Explain the procedure to settle the claim?
- Q.5. Explain in detail the importance of conditions of policy.

Unit-3

Specific Principles of Insurance Law

Objectives:

After going through this unit you should be able to:

- Understand the concept of important specific principles of Insurance
- Understand the concept of miscellaneous principles of Insurance
- Understand the use of Assignment

Structure:

- 3.1. Introduction
- 3.2. Uberrima Fides or Principle of Utmost Good Faith
- 3.3. Principle of Insurable Interest
- 3.4. Principle of Indemnity
- 3.5. Principle of Proximate Cause
- 3.6. Principle of Subrogation
- 3.7. Principle of Contribution
- 3.8. Principle of Double Insurance
- 3.9. Principle of Assignment
- 3.10. Principle Re-Insurance
- 3.11. Summary
- 3.12. Some Useful Books
- 3.13. Check Your Progress
- 3.14. Answer to check your Progress
- 3.15. Terminal Questions

3.1 Introduction:

Besides, the essentials of a valid insurance contract discussed in the previous section, there are certain specific principles, which are of paramount significance to the contract of both the life and non-life insurance. The specific principles of the contract of insurance consist of the following:

- Uberrima fides or Principle of Utmost Good Faith;

- Principle of Insurable Interest;
- Principle of Indemnity;
- Principle of Proximate Cause;
- Principle of Subrogation;

In addition to this few miscellaneous principles are also important to understand the concept of insurance in general like:

- Principle of Contribution
- Principle of Double Insurance
- Principle of Assignment
- Principle of Re-Insurance

3.2 Principle of Utmost Good Faith or Uberimma Fides:

In Marine Insurance Act, 1906, Section 17 which provides, “A contract of Marine Insurance is a contract based upon the utmost good faith, and if utmost good faith is not observed by either party, the contract may be avoided by either party”.

Section 18 (1), despite the title of the statute, this section is of general application is insurance law. Section 18 (1) provides:

“Subject to the provision of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstances, which is known to the insured and insured is deemed to know every circumstances which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.”

The test for determining the materiality of any “circumstances” is laid down by section 18 (2) of the act which provides that, “Every circumstances is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.”

Characteristics of utmost good faith

1. It is an obligation to the parties to insurance contract to make a full and true disclosure of material fact.
2. The obligation to make full and true disclosure applies to all type of insurance.
3. The duty to disclose continues upto the conclusion of the contract.
4. It covers any material alteration in character of the risk which may take place between personal and acceptance.
5. Concealment of material fact on misrepresentation may affect the validity of the contract.

The principle of utmost good faith must be used in respect of the following –

In Life Insurance – Information relating to age, health and disease, habits, family history, nature of business or profession.

In Fire Insurance – Information relating to structure of assets, nature of goods, condition of godown, activities of the firm etc.

In Marine Insurance – Information relating to size of the ship, nature of cargo, packaging of cargo etc.

It is true that the underwriter can have a pre-survey for fire insurance or medical examination for life or health insurance, carried out, but even then there are certain aspects of the risk which are not apparent at the time of pre-survey or medical examination, for example, the previous loss or medical history and etc. Because of the aforesaid reason the law imposes a greater duty of disclosures on both the parties to an insurance contract than to other commercial contracts. This is called *uberimma fides* (utmost good faith).

Remedies for breach of utmost good faith – The aggrieved party has the following options:

- To avoid the contract by either
 - a) Repudiating the contract void ab initio; or

b) Avoiding liability for an individual claim;

- To sue for damages as well, if concealment or fraudulent misrepresentation is involved;
- To waive these rights and allow the contract to carry on unhindered.

The aggrieved party must exercise his option within a reasonable time of discovery of breach or it will be assumed that he has decided to waive his right. Legal consequences – It is worth mentioning that in absence of utmost good faith the contract would be voidable at the option of the person who suffered loss due to non-disclosure. The inadvertent concealment will be treated as fraud and it is void, ab initio. However, as and when the voidable contract has been validated by the party not at fault, the contract cannot be avoided by him later on.

In *United India Insurance Co. Ltd. v/s M.K.J. Corporation* [(1996) 6 SCC 428] the Supreme Court observed that “it is the fundamental principle of insurance that utmost good faith must be observed by the contracting parties. It is different than the ordinary contract where the parties are expected to be honest in the dealings but they are not expected to disclose all the defects about the transaction,” The court also observed that it is the duty of the insurer and their agents to disclose all material facts within their knowledge since obligation of good faith applies to them equally with the assured.

Burden of Proof – In *L.I.C. of India v/s Channasbasamma* [AIR 1991 SC 392], “The burden of proving that the assured had made false representation and suppressed material facts is undoubtedly upon the corporation.”

Cases Referred for further reading :

1. *Vijay Kumar v/s New Zealand Insurance Co.*
AIR 1954 Bom. 347
2. *Bhagwani Bai v/s L.I.C. of India*
AIR 1984 M.P. 126
3. *Lakshmi Insurance Co. v/s Bibi Padmavati*
AIR 1961 Punjab 253
4. *L.I.C. of India v/s Smt. Vijaya Chopra*
AIR 2008 (NOC) 2334

5. L.I.C. of India v/s Smt. Chandra Kanta
AIR 2008 (NOC) 2334
6. L.I.C. of India v/s Mrs. Shashi Sethi
AIR 2008 H.P. 67
7. Smt. Sakhitombi v/s Zonal Manager, L.I.C. of India, Calcutta
AIR 2009 Gauhati 90

3.3 Principle of Insurable Interest:

The Webster's (Third New International Dictionary) has defined Insurable interest as the interest (as based on blood tie or likelihood of financial injury) that is judged to give an insurance applicant a legal right to enforce the insurance contract against the objection that is wagering contract.

In the words of Riegel and Miller, "An insurable interest is an interest of such a nature that the possessor would be financially insured by the occurrence of the event insured against."

This term has not been defined in the Insurance Act, 1938 but a definition has been given in section – 7 of the Marine Insurance Act, 1963 [Same as section -5 of the Marine Insurance Act, 1906] "a person is interested in a marine adventure where he stands in any legal or equitable relation to adventure to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage there to, or by the detention thereof, or may incur liability in respect thereof."

Characteristics of Insurable Interest – Following are some important characteristics that emerge from the definition of insurable interest:

1. There must be some subject-matter to insure, namely, the life of a person, property like house, vehicle etc.;
2. The insured must have some legally recognised relationship with the subject matter of the insurance;

3. The insured must be benefited by the safety of the subject – matter and suffers loss if the subject – matter is lost, damaged or destroyed;
4. The subject-matter should be definite and it should be capable of being valued in terms of money.

A good case regarding insurable interest came up before the Delhi State Commission in Virmani Refrigeration & Cold Storage Pvt. Ltd. v/s New India Assurance Co. Ltd. [(2005) 1 CPJ 767 Delhi State Commission]. The complainant insured the property comprising of godowns and other offices against fire for Rs. 7,40,000/-. A fire broke out engulfing the entire property as a result of which extensive damage was caused to the building, furniture, fixtures, fitting, electricity and sanitary system. A surveyor was appointed and during course of investigation it was found that one M/s Anantraj Agencies Pvt. Ltd. claimed themselves to be occupant of 60% of the building. A claim was preferred by the complainant. The respondent took the plea that it was discovered during investigation that 60% of the property was given to Anantraj Agencies under various agreements whereas only 40% property remained with the complainant had insurable interest of only 40%. On these facts, the commission observed:

“It does not mean that by virtue of this deed the insurable interest of the complainant was to the extent of 40%. While receiving the premium the Insurance Company had assessed the insurance amount and therefore, to say at the end of the day that insurable interest of the complainant was to the extent of 40% is difficult to accept.” It is the insurer to satisfy him regarding insurable interest before issuing policy.

In United India Insurance Co. Ltd. v/s Shri Hasan Sultan Nadaf [(1992) 3 CPJ 64 (National Commission)], the question of insurable interest was before the National Commission. That the state commission observed that the contention of the insurer that the respondent – claimant had not produced any evidence that the shed of the factory was owned by him, is untenable and seems to us to be mere lame excuse put forward by the insurer to improperly reject the insured’s claim. The National Commission in the present case rightly observed that the observation of the state commission that insurance policy has been issued by

the insurer after inspecting the shed of the complainant and if the fact of the insurable is not verified then we have only gain to business but issue the reckless insurance policies without ascertaining the existence of a property before it is entered into insurance policy.

In the absence of an insurable interest in the life or the thing insured, the insurance contract will simply be a wager and therefore void. The insurable interest is necessary to the validity of insurance policy.

3.4 Principle of Indemnity:

Indemnity is the controlling principle in insurance law. All insurance policies, except the life policies and personal accident policies are contract of indemnity. This principle may be defined as “under the indemnity contract the insurer undertakes to indemnify the insured against the loss suffered by the insured peril.” Literally, indemnity means “make good the loss.” This principle is based on the fact that the object of the insurance is to place the insured as far as possible in same financial position in which he was before the happening of the insured peril. Under this principle the insured is not allowed to make any profit out of the happening of the event because the object is only to indemnify him and profit making would be against the principle. Example – If a house is insured for Rs. 10 Lakhs against the risk of fire and is damaged in fire causing a loss of Rs. 1 Lakh only. Then the insured would be paid only one Lakh because the principle of indemnity is with him. Likewise, this principle also limits the amount of compensation, if the loss caused is more than 10 Lakh, he cannot recover more than the amount for which the house was insured.

The principle of indemnity has been explained in an English Case, *Castellain v/s Preston* [1883 2 Q B 38];

“Every contract of Marine and Fire insurance is a contract of indemnity and of indemnity only, the meaning of which is that the insured in case of loss is to receive full indemnity but is never to receive more. Every rule of insurance law is adopted in order to carry out this fundamental rule, and if ever any proposition brought forward the effect of which is opposed to this fundamental rule, it will be bound to be wrong.”

The main characteristics of the principle of indemnity are:

1. That it applies to all contracts of insurance except the life and personal accident insurance.
2. That the amount of compensation is restricted to the amount of loss, meaning there by that the insured cannot be allowed to make profit out of it.
3. If there are more than one insurer for the property, if destroyed, the amount of loss could be recovered from any of them but not from all of them, and
4. The insurers take all the rights that the insured had, after the payment of compensation.

How Indemnity is provided?

Replacement

Cash

Indemnity

Reinstallment

Repair

Merits of the principle of indemnity – The principle of indemnity offers the following advantages:

1. The principle of indemnity is an essential feature of an insurance contract, in absence of this principle industry would have the hue of gambling and the insured would tend to effect over-insurance and then intentionally cause a loss to occur so that a financial gain could be achieved.
2. This principle helps in avoidance of anti-social act.
3. The principle of indemnity helps to maintain the premium at low level.

There are certain obvious exceptions to the indemnity principle; life insurance is one of them. No money value can be placed on human life and therefore the insurer undertakes to pay a fixed or guaranteed sum irrespective of the loss suffered. A life insurance contract comes near to guarantee than to indemnity.

3.5. Principle of Proximate Cause 'or' principle of causa proxima:

The maxim as it runs is, "Causa proxima non remote spectator", which means "the immediate, not the remote cause" In order to pay the insured loss, it has to be seen as to what was the cause of loss. If the loss has been caused by the insured peril, the insurer shall be liable. If the immediate cause is an insured peril, the insurer is bound to make good the loss, otherwise not.

In an English Cases, Pawsey & Co. v/s Scottish Union and National Insurance Co. (1907), "The Proximate cause has been defined to mean the active and efficient cause that sets in motion a chain of events which bring about a result without the intervention of any force started and working actively from a new and independent source."

Perils relevant to an insurance claim can be classified under three headings:

1. Insured Perils – Those named in the policy as insured example – fire, sea, water, lightening, storm theft etc.
2. Excluded Perils – Those stated in the policy as excluded either as causes of insured perils e.g. riots, earthquake, war etc.
3. Uninsured Perils – Those perils not mentioned in the policy at all as insured and excluded perils. Smoke and Water may not be excluded nor mentioned as insured in a fire policy.

Need for the principle of proximate cause – When the loss is the result of two or more causes operating simultaneously or one after the other in succession.

In an English Case Cox v/s Employers Liabilities Assurance Corporation [(1865) LR 1 CP 232 : 14 WR 106], An army officer visiting sentries posted along the railway lines was accidentally run over by a passing train and killed. The policy excluded death or injury "directly or indirectly caused by war etc." The place of accident was dark due to blackout. The passing of train was held

to be proximate, efficient and effective cause of the accident but the indirect cause was the war because war was the reason for the presence of the officer on the spot. The claim was rejected on the ground that the death of the officer was not directly but indirectly, result of the war.

In a recent case *Kajima Daewoo Joint Venture v/s New India Assurance Co. Ltd.* [(2005) 1 CPJ 534 Uttaranchal State Commission] the number of machines were employed in constructing a power project was duly insured. One such machine was TIL excavator that was insured for site, the machine burst as the lubricating system failed and with much effort the machine was lifted to a safe place otherwise that 30 ton machine would have fallen much below causing a total loss to it. The main damage was caused to the engine of the machine that was reported beyond repairs. A claim was preferred where as the surveyor was deputed for the assessment of the loss/damage. The claim was repudiated on the ground inter alia that the machine did not suffer any external impact and damage to the engine was mechanical on account of seizure of the engine on account of starvation of lubricant oil which was not within the preview of the policy. The commission observed entire material on record and reached the conclusion that the mechanical failure of the machine was due to its slipping on the hilly terrain and the accident was the proximate cause of the mechanical failure. Therefore it was well covered under the policy.

In *New India Assurance Co. Ltd. v/s Vivek (Old Storage)* [(1999) 2 CPJ 26], [the National Commission], the Comprehensive policy (Fire Insurance Policy) had covered fire risk as well as other risks to Building, machinery etc. and also deterioration of stocks of potatoes stored in the complainant's cold storage. The accident clause covered the breakdown of machinery due to unforeseen circumstances. There was leakage of ammonia gas and therefore the plant was closed causing loss to the stock of potatoes in the go down. The Insurance Co. denied the claim as there was no breakdown of the plant and machinery. This contention was rejected and it was held that as plant and machinery of cold storage developed leakage and ammonia gas escaped the plant had to be shutdown for repairs of the leak which resulted in damage to the stored potatoes. Thus the Insurance Co. was held liable.

1. It is the responsibility of the assured to prove, in case of loss that the loss was caused by insured perils.
2. In case the insurer gives the argument that the loss was caused by excluded perils and not by insured or proximate perils he is to prove.
3. According to conditions of many insurance plans the losses caused directly or indirectly due to certain reasons are kept outside the provision of insurance policies. In such a case, the losses caused by such reasons are not the liability of the insurer.
4. It is the duty of the assured to prove that the loss was not caused by excluded perils but the loss was caused by itself without the interference of excluded perils.

3.6 Principle of Subrogation:

This is also a corollary to principle of indemnity. Subrogation is the substitution of one person in place of another in relation to a claim, its rights, remedies or securities. 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. In the words of W.A. Dinsdale, "Subrogation is the insured's right to receive the benefit of all the rights of the assured against third parties which, is satisfied, will extinguish or diminish the ultimate loss sustained."

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." 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:

1. 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.

2. 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 subrogated, goods damaged while in the custody of a common carrier or tenancy agreement is a suitable example in the case.

3. 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.

In an English case, *Commercial Union Assurance Co. v/s Lister* [(1874) 9 CH App. 483], which is usually cited as authority for the proposition that an assured not fully compensated for his loss retain control of legal proceedings brought against third party. In this case a mill was insured with 11 insurers for a total \$ 30,000. The mill was destroyed in a gas explosion. The responsibility for which lay with the Halifax Corporation, the estimated true losses, exceeded \$ 56,000 including consequential loss of profits of \$ 6,000. The insured recovered under the policies from all the Insurance Companies and sued the Commercial Corporation. Sir George Jessel MR held on an interlocutory application by the commercial union, that the assured could retain control of the action subject to an undertaking to sue for the whole loss. The court further said, “If the insured obtain from the Corporation of Halifax a sum larger than the difference between the amounts of the loss. He is a trustee for that excess for the Insurance Co. or Companies.” The implication seems to be that recovery in these circumstances should go first in favour of the insured in respect of his losses not covered by the policy.

3.7. Principle of Contribution

This principle is a corollary to the principle of indemnity. This principle is applicable in all types of insurance contracts except life insurance. Where an insurer gets the subject matter insured with more than one insurer and case of loss/damage to the insured property, all of them shall be called upon to contribute towards the claim in proportion to the sum assured with each.

In an English case, North British and Mercantile Insurance Co. v/s London Liverpool and Globe Insurance Co. [(1877) 5 CHD 569], the principle of contribution has been explained as, "Contribution exists where the thing is done by the same person against the same loss and to prevent a man first of all recovering more than the whole loss or if he recovers from the other then to make the parties to contribute ratably. But that only applies where there is the same person insuring the same interest with more than one office."

According to the Federation of Insurance Institutes, Mumbai, "Contribution is the right of an insurer who has paid a loss under a policy, to recover as a proportionate amount from other insurers who are liable for the loss." This principle ensures equitable distribution of losses between different insurers. A policy holder is not entitled to claim from each insurer more than the ratable proportion of the loss to which one is liable.

Calculation of Contribution – The following formula is applicable to calculate the contribution by each:

Contribution = $\frac{\text{Sum assured with individual insurer}}{\text{Total sum assured}} \times \text{Total loss}$

Total sum assured

Example : A insures a building against fire with three fire insurance companies x, y and z with Rs. 30,000/- Rs. 40,000/- and Rs. 30,000/- respectively. A fire took place during the period of insurance and a total loss of Rs. 60,000/- was calculated. The contribution from x, y and z shall be as under:

Contribution of x Company = $\frac{30,000}{1,00,000} \times 60,000 = 18,000$

1,00,000

Contribution of y Company = $\frac{40,000}{1,00,000} \times 60,000 = 24,000$

1,00,000

Contribution of z Company = $\frac{30,000}{1,00,000} \times 60,000 = 18,000$

1,00,000

In case Company X has made the payment of claim for Rs. 60,000/- to A , X has right to claim Rs. 24,000/- and Rs. 18,000/- from Y and Z respectively.

3.8. Principle of 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. 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 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 Companies	Same Insured	Different insurance
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In New India Assurance Co. Ltd. v/s Krishna Kumar [(1994) 1 CPR 731], [Haryana State Commission], 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."

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 properties 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.

3.9. Principle of Re-Insurance:

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. In the words of Riegel and Miller "Re-Insurance is the transfer by an Insurance Company a portion of its risk to another Company."

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."

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. Re-Insurance is dealt within section 101-A of the Insurance Act, 1938. 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 may 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 –

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

3.10. 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. Briefly stated, an assignment is an interest through which the beneficial interest, right and title under a policy are transferred, the transfer may be absolute or conditional. So far life policies are concerned, the assignment could be made either by endorsement on the policy itself or through a separate instrument

which 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. [(2005) 3 CPJ 401 Uttaranchal State Commission], 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 while dismissing the complainant 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. [AIR 2001 SC 2630 | (2001) 5 SCC 625] 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 – a – vis the carrier.

It has been specifically held on the strength of the ruling reported in New India Assurance Co. Ltd. v/s G.N. Sainani [AIR 1997 SC 2938] that assignee of a mere right to sue for the loss cannot be held to be beneficiary of any service within the meaning of the definition ‘consumer’. 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. [(2000) 2 SCC 407 | (2000) | CPJ 7 SC].

Features of Assignment – A reading of 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. The insurer must register the assignment in the books and give a written acknowledgement of the receipt of such notice. The assignment may be absolute or conditional. The effect of the assignment should be the transfer of all rights and

liabilities under the policy to the assignee subject to conditions if any. Necessary Conditions for Assignor and Assignee –

- (i) an assignment can be made by a person competent to make 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 [(1999) 98 comp. case 293 (AP)], 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. In view of the clear position of law, the stand of the corporation is perfectly legal and writ petition is liable to be dismissed against it.

3.11. Summary:

Due to existence of the specific and miscellaneous principle makes the concept of the insurance unique even though it is also a contract between the parties and policy holders. All these principles are important in Life and Non-life Insurance. The application and understanding of all these principle is important also in case of any dispute.

3.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal , J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

3.13. Check Your Progress:

A. Which of the following statements are true and false:

1. A contract of Marine Insurance is a contract based upon the utmost good faith.
2. It is not an obligation to the parties to insurance contract to make a full and true disclosure of material fact.
3. United India Insurance Co. Ltd. V. M.K.J. Corporation case is related to utmost good faith.
4. LIC of India v. Channasbasamma is related to burden of proof.
5. Virmani Refrigeration & Cold Storage Pvt. Ltd. V. New India Assurance Co. Ltd. is related to insurable interest.

B. Fill in the blanks:

1. Indemnity is the Principle of insurance.
2. Literally, indemnity means ".....".
3. English case law Pawsey & Co. v. Scottish Union and National Insurance Co. Ltd. is related to principle of ".....".
4. Subrogation is the transfer of Of the insured to the insurer who has indemnified the insured in respect of the loss.
5. Contribution is the right of an

3.14. Answer to check your Progress:

A.

1. True
2. False
3. True
4. True 5. True

B.

1. Controlling
2. Make good the loss
3. Proximate Cause
4. Rights and remedies
5. Insurer

3.15. Terminal Questions:

1. Discuss in detail the principle of Utmost Good Faith.
2. Discuss in detail principle of Insurable Interest.
3. Discuss in detail principle of Causa-Proxima.
4. Discuss in detail principle of Indemnity.
- 5.. Write short notes on any two of the following:
 - a. Re-Insurance
 - b. Double Insurance
 - c.

Assignment

Unit-4

The Insurance Act, 1938-I

Objectives:

After going through this unit you should be able to:

- understand the importance of the Insurance and the Insurance Act, 1938
- understand the salient features of the Insurance Act, 1938
- understand the application and use of various sections of the Act

Structure:

- 4.1. Introduction
- 4.2. Scope of the Act
- 4.3. Requirements as to Capital
- 4.4. Deposits
- 4.5. Registration
- 4.6. Submission of Returns
- 4.7. Prohibition Rebates, Restriction of Commission
- 4.8. Licensing of Insurance Agents
- 4.9. Investment
- 4.10. Prohibition
- 4.11. Investigation
- 4.12. Duties and Power of Controller of Insurance
- 4.13. Summary
- 4.14. Some Useful Books
- 4.15. Check Your Progress
- 4.16. Answer to Check Progress
- 4.17. Terminal Questions

4.1. Introduction:

Insurance Act, 1938 [AS AMENDED BY INSURANCE (AMENDMENT) ACT, 2002] [4 of 1938] is an Act to consolidate and amend the law relating to the business of insurance. Whereas it is expedient to consolidate

and amend the law relating to the business of insurance; it is hereby enacted as follows: -

PART I - Preliminary - Short title, extent and commencement.

(1) This Act may be called Insurance Act, 1938.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by Notification in the Official Gazette, appoint in this behalf. It was well balanced and was the first comprehensive piece of insurance legislation in India governing both life and non life branches of insurance. This Act provided to prevent the growth of mushroom companies, to enforce working on sound principles, to prevent misappropriation of funds and to protect the assets.

Some important Definitions as per the Insurance Act, 1938 are as under:

Definitions.

In this Act, unless there is anything repugnant in the subject or context, -

(1) "actuary" means an actuary possessing such [*qualifications as may be specified by the regulations made by the Authority*];

[(1A) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;]

(2) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

(3) "approved securities," means-

(i) Government securities and other securities charged on the revenue of the Central Government or of the Government of a State or guaranteed fully as regards principal and interest by the Central Government or the Government of any State;

(ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or

municipal corporation or city improvement trust in any Presidency-town;

(iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a State as to the repayment of the principal and the payment of the dividend;

(iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and

(4) "Auditor" means a person qualified under the Chartered Accountants Act, 1949 (38 of 1949), to act as an auditor of companies ;

(4A) "banking company" and "company" shall have the meanings respectively assigned in them in clauses (c) and (d) of sub-section (1) of Section 5 of the Banking Companies Act, 1949 (10 of 1949);

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in Part III means certified by a principal officer of such insurer or provident society to be a true copy or a correct translation, as the case may be;

(5A) "chief agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission-

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer;

Life [(5-B) "Controller of Insurance" means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and performs the duties of the Authority under this Act or the Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance

Regulatory and Development Authority Act, 1999;]

(6) "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction;

(6A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance Policies;

(6B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;

(7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);

²[(7A) "Indian insurance company" means any insurer being a company-

(a) which is formed and registered under the Companies Act, 1956 (1 of 1956);

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six percent paid-up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

Explanation- For the purpose of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);]

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913 (7 of 1913), or to which the Indian Partnership Act, 1932 (9 of 1932), applies;

(8A) "insurance co-operative society" means any insurer being a co-operative

society,-

(a) which is registered on or after the commencement of the Insurance (Amendment) Act, 2002, as a co-operative society under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to Co-operative Societies or under the Multi-State Co-operative Societies Act, 1984 (51 of 1984);

(b) having a minimum paid-up capital, (excluding the deposits required to be made under section 7), of rupees one hundred crores;

(c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than twenty-six per cent of the capital of such Co-operative Society;

(d) whose sole purpose is to carry on life insurance business or general insurance business in India:

(9) "Insurer" means-

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person specified in sub-clause (c) of this clause which-

(i) carries on that business in India, or

(ii) has his or its principal place of business or is domiciled in India,

or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;

(b) any body corporate [not being a person specified in sub-clause (c) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India; or stands to any

such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913 (7 of 1913), as defined by sub-section (2) of section 2 of that Act, and

(c) any person who in India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters.

but does not include a principal agent' chief agent, special agent' or an insurance agent or a provident society as defined in Part III;

(10) "insurance agent" means an insurance agent licensed under Sec. 42 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;

(10A)"investment company" means a company whose principal business is the acquisition of shares, stocks debentures or other securities;

(10B)"intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)

(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any

(12) "Manager" and "officer" have the meanings assigned to those expressions in clauses

(9) and (11), respectively of Section 2 of the Indian Companies Act, 1913 (7 of 1913);

(13) "Managing agent" means a person, firm or company entitled to the

management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of Sec. 32 of this Act;

(13A)"marine insurance business" means the business of effecting contracts of insurance

upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit, by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B)"miscellaneous insurance business" means the business of effecting contracts of

insurance which is not principally or wholly of any kind or kinds included in clause (6A), (11) and (13A);

(14) "prescribed" means prescribed by rules made under this Act; and

(15) "principal agent" means a person who, not being a salaried employee of an insurer,

in consideration of any commission,—

(i) performs any administrative and organising functions for the insurer; and

(iii) procures general insurance business whether wholly or in part by

employing or causing to be employed insurance agents on behalf of the

(16) "private company" and "public company" have the meanings respectively assigned

to them in Clauses (13) and (13-A) of Sec. 2 of the Indian Companies Act, 1913 (7 of 1913);

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent.

Salient Features of the Insurance Act, 1938

The Salient Features of Insurance Act, 1938 have been discussed under the following subtitles:

1. Scope
2. Requirements as to Capital
3. Deposits
4. Registration
5. Submission of Returns
6. Prohibition Rebates, Restriction of Commission
7. Licensing of Insurance Agents
8. Investment
9. Prohibition
10. Investigation
11. Duties and Power of Controller of Insurance

4.2. Scope of the Act, 1938:

The Act applies to all type of insurance business-life, fire, marine etc. done by companies incorporated in India or elsewhere. It also governs the provident companies, mutual offices and cooperative societies.

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 co-operative societies or,
- c) A body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Provided that the Central Government may, by notification in the official Gazette, exempt from the operation of this section to such extent, for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of Section 2 or for the purpose of carrying on any general insurance business.

4.3. Requirement as to Capital:

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, shall be registered unless as:

- (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 shall 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 this Act, shall 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.

4.4. Deposits:

To prevent the growth of insurer of small financial resources or speculative concerns, the Act provided for registration of all insurers and a substantial deposit with the Reserve Bank.

According to Section-7, every insurer shall, 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.

a) 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;

b) 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 commencement after the 31st day of March 2000, not exceeding rupees ten crores;

c) 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 shall be one hundred thousand rupees only.

4.5. Registration:

Section – 3 states that, no person shall, after the commencement of this Act, begin to carry on any class of insurance business in India shall after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the authority a certificate of registration for the particular class of insurance business.

Every application for registration shall be accompanied by –

- a) A certified copy of the memorandum and articles of association.
- b) Names, address and occupation of directors.
- c) A statement of the class or classes of insurance business done or to be done.
- d) Principal place of business or domicile outside India.
- e) A certified copy of the published prospectus.
- f) The receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the authority.
- g) Such other documents as may be specified by the regulations made by the authority.

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.

The authority may register the applicant as an insurer and grant him certificate 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.
- f) Defaults in complying with any rules.
- g) Carry any business other than insurance business or any prescribed business.

Section 3-A of the Act is related to renewal of Registration. According to the sub-clause (1), an insurer who has been granted a certificate of registration under Section 3 shall have the registration renewed annually for each year after the ending on the 31st Day of March after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

Section 3-B of the Act is related to Certification of soundness of terms of life insurance business.

4.6. Submission of Returns: (Section 15):

The audited accounts and balance sheet and actuarial report and abstract and four copies there of 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 shall 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.

The insurer shall, within the time specified in sub-section (1) of Section – 15, furnish to the authority four certified copies in the English language of every balance-sheet, account abstract, report and statement supplied to the public authority and in addition there four certified copies in the English language of each of the following statement:

- a) A statement audited by an auditor or by a person duly qualified under the law of the insurer's country showing the assets held by the insurer in India at that date of any balance sheet so furnished.
- b) A separate account of receipts and payments and revenue account for the period covered by any account to furnish;
- c) A separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business; and
- d) A declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head officer or from any other source outside and have been shown in the revenue account.

4.7. Prohibition, Rebates, Restriction of Commission:

Prohibition of Payment by way of Commission or Otherwise for Procuring Business

No person shall, after the expiry of six months from the commencement of this act, 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.

[Section 40 (1)]

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.

Provided that insurers, in respect of life insurance business only, may pay during the first ten years of their business, to their business, to their insurance agents 55% of the first year's premium payable on any policy or policies affected through them any 6% of the renewal premium payable on such policies. [Section 40 (1)]

Limitations of Expenditure on Commission (Section – 40(A))

1. No person shall pay or contract to pay to an insurance agent, and no insurance agent shall 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 after the 31st day of December 1950, 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.

2. No person shall pay or contract to pay to a special agent, and no special agent shall receive or contract to receive, by way of commission or as remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950 and effected through a special agent an amount exceeding:

- a) In a case referred to in clause (a) of sub-section (1) one half percent of the premium;
- b) In a case referred to in clause (b) of sub-section (1) two percent of the first year's premium payable on the policies;
- c) In a case referred to in clause (c) of sub-section (1) fifteen percent of the first year's premium payable on the policies;

Prohibition of Rebates (Section - 41)

1. No person shall allow or offer to allow either directly or indirectly as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk, relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer:

Provided that acceptance by an insurance agent of commission in connection with a policy of the insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is bonafide insurance agent employed by the insurer.

2. Any person making default in complying with the provisions of this section shall be punishable with fine, which may extend to Rs. 5000/-.

4.8. Licensing of Insurance Agents (Section - 42):

1. The authority or an officer authorized by him in this behalf shall in the prescribed manner and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the prescribed manner determined by the regulations, a license to act an insurance agent for the purpose of soliciting or procuring insurance business provided that:

- a) In the case of an individual, he does not suffer from any of the disqualification:
 - (i) That the person is a minor;

(ii) That he is found to be of unsound mind by a court of competent jurisdiction;

(iii) That he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that, where at least five years have elapsed since the completion of sentence imposed on any person in respect of any such offence, the authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause:

(iv) That in the course of any Judicial proceeding relating to any policy of insurance or the winding up of an Insurance Co. or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonestly or misrepresentation against an insurer or an insured.

(v) That he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the authority in this behalf.

(vi) That he had not passed such examination as may be specified by the regulations made by the authority in this behalf:

Provided that a person who had been issued a license under sub-section (1) of this section or sub-section (1) or section 64UM shall not be required to possess the examination as required by clauses (e) and (f):

(vii) That he violates the code of conduct as may be specified by the regulations made by the authority.

b) In the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any license issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with regulations, which provide for such license.

2. A license issued under this section shall entitle the holder to act as an insurance agent for any insurer.

3. License issued under this section, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall remain in force for a period of three years only from the date of issue, but shall, if he applicant, does not suffer from any of the disqualification mentioned above and the application for renewal of the license reaches the issuing authority at last thirty days before the date on which the license ceases to remain in force, be renewed for a period of three years at any one time on payment of the prescribed fee which shall not be more than two hundred and fifty rupees, and an additional fee of a prescribed amount, not exceeding one hundred rupees by way of penalty if the application for renewal of the license does not reach the issuing authority at least thirty days before the date on which the license ceases to remain in force.

3-A. No application or the renewal of a license under this section shall be entertained if the application does not reach the issuing authority before the license cease to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept may application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

4.9. Investments:

Every insurer shall invent 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 manner following, 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.

Section 27-A:

1. No insurer shall 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 of, or guaranteed by Government of U.K.;
- 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.

4.10. Prohibition of Loan:

No insurer shall 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.

Provided that nothing contained in this sub-section shall apply to a loans made by an insurer to a banking company.

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the authority.

Investigation: The authority may, at any time, by order in writing, direct any person (Investing Authority) specified in the order to investigate the affairs of any insurer and to report to the authority on any investigation made by him provided that the investigating authority may, whenever necessary employ any auditor or actuary or both for the purpose of assisting him in any investigating under this section. [Section - 33]

The Investing Authority (IA) may, at any time, and shall, on being directed to do so by the Authority, cause an inspection to be made by one or more of his officers of any insurer and his books of account; and the IA shall supply to the insurer a copy of his report on such inspection.

On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in

connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing.

The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the investigating Authority under sub-section (5) or such portion thereof may appear it to be necessary. No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

All expenses of, and incidental to, any investigation made under this section shall be defrayed by the Insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.

4.11. Summary:

The Insurance Act, 1938 is an important legislation. It is also applicable in both life as well as non-life insurance business. The important features related to minimum capital, registration, return and investigation are the key features of this unit and the student will be in a position to apply all this in different situations. The process to provide license to the insurance agent first time at length discussed under Section 42 of the Insurance Act, 1938.

4.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur

- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal , J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

4.13. Check Your Progress:

A. Which of the following statements are true and false:

1. Insurance Act, 1938 applies to all type of insurance business.
2. Insurance Regulatory and Development Authority is of the year 2000.
3. A certified copy of memorandum and article of association is mandatory for registration of insurance company.
4. Loan is permissible against life insurance policies issued by the insurer.
5. Registration of Insurance Companies is not required.

B. Fill in the blanks:

1. Registration is defined under.....of the Insurance Act, 1938.
2. No person shall allow or offer to allow either.....as an inducement to any person to take out or renew or continue an insurance.
3. Licensing of insurance agent is defined underof the Insurance Act, 1938.

4. Investigation is defined under.....of the Insurance Act, 1938.

5. Every insurer shall, in respect of the insurance business carried on by him in India, deposit and keep deposited with the.....

4.14. Answer to Check Progress:

A.

1. True
2. False
3. True
4. True
5. True

B.

1. Section 3
2. Directly or indirectly
3. Section 42
4. Section 33
5. Reserve Bank of India

4.15. Terminal Questions:

1. Discuss in detail the scope of Insurance Act, 1938.
2. Discuss the requirement of capital and deposit to start of Insurance Business.
3. Discuss the importance of Registration.
4. Discuss in detail the licensing under the Act.
5. Discuss the Investigation under the Act

Unit-5

The Insurance Act, 1938-II

Objectives:

After going through this unit you should be able to:

- Understand the importance of the Insurance Act, 1938
 - Understand the features of the Insurance Act, 1938
 - Understand the application and use of various sections of the Act
-

Structure:

- 5.1. Assignment or Transfer of Policies
 - 5.2. Nomination by Policy holder
 - 5.3. Special Provisions of Law
 - 5.4. Management by Administrator of Insurance Business
 - 5.5. Powers and Duties of Administrator
 - 5.6. Acquisition of the Undertakings of Insurers in certain cases
 - 5.7. Insurance Association of India, Councils of the Association and Committee
 - 5.8. Functions of the Executive Committee
 - 5.9. Tariff Advisory Committee and Control of Tariff Rate
 - 5.10. Miscellaneous Penalty Provisions
 - 5.11. Summary
 - 5.12. Some Useful Books
 - 5.13. Check Your Progress
 - 5.14. Answer to Check Your Progress
 - 5.15. Terminal Questions
-

5.1. Assignment or Transfer of Policies and Nominations:

Section 38 of the Insurance Act, 1938: (1) A transfer or assignment of policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either

case by the transferor or by the assignor or his duly authorized agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the money secured thereby until a notice in writing of the transferee or assignment and either the said endorsement of instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorized agents have been delivered to the insurer.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment, the priority of the claims under such instruments shall be governed by the order in which the notice referred to in subsection (2) are delivered.

(4) On payment of fee insurer grant a written acknowledgement of the receipt of such notice and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(5) From the date of receipt the insurer will recognize the transferee or assignee named in the notice only person entitled to benefit under the policy.

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer affected prior to commencement of this Act shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, and assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an

assignment in favour of the survivor or survivors of a number of person shall be valid.

5.2. Nomination by Policy-holder (Section 39):

(1) 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.

(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 policy holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination.

(5) Where the policy matures for a payment during the life time 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 policy-holder or his legal heir 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) The provisions of this section shall not be apply to any policy of life insurance to which section 6 of the Married Women's Act, 1874, applies or at any time applies.

5.3. Special Provisions of Law:

Section 45- Policy not to be called in question on ground of mis-statement after two years:- No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter of suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

Section 46: Application of the law in force in India to policies issued in India:-The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in India after the commencement of this Act shall have the right , notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto , receive payment in India , of any sum secured thereby and to sue for any relief in respect of the policy in any court of competent jurisdiction in India : and if the suit is brought in India any question of law arising in connection with any such policy shall be determined according to the law in force in India:

Provided that nothing in thing in this section shall apply to a policy of marine insurance.

47. Payment of money into court:-(1) where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer may, apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy otherwise.

(2) A receipt granted by the Court for any payment shall be a satisfactory discharge to the insurance for the payment of such amount.

(3) An application for permission to make a payment into Court under this section, shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting fourth the following particulars, namely ,

(a) the name of the insured person and his address;

(b) if the insured person is deceased, the date and place of his death;

(c) the nature of policy and the amount secured by it;

(d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;

(e) the reasons why opinion of that insurer satisfactory discharge cannot be obtained for the payment of the amount; and

(f) the address at which the insurer may be served with notice of any proceeding relating to disposal of the

(4) An application under this section shall not be entertained by the Court if the applications is made before the expiry of six months from the maturing of the policy by survival ,or from the date of receipt of notice by the insurer of the death of the insured , as the case may be .

(5) If it appears to the court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government Securities pending its disposal.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the cost of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into court.

5.4. Management by Administrator:

(Section 52-A): When Administrator for Management of Insurance Business may be appointed: - (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interest of the holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he think fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

(3) The administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Authority the Administrator shall not issue any further policies.

The Authority may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Authority at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

5.5 Powers and Duties of Administrator:

(Section 52-B)- (1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Authority a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:

(a) the transfer of the business of the insurer to some other insurer;

(b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);

(c) the winding up of the insurer; and

(d) such other course as he deems advisable.

(2) On the filing of the report with the Authority, the Authority may take such action

5.6. Acquisition of the Undertakings of Insurers in certain cases:

(Section 52-H)- Powers of the Central Government to acquire undertakings of insurers in certain cases:

(1) If, upon receipt of a report from the Authority the Central Government is satisfied that an insurer-

(a) has persistently failed to comply with-

(i) any direction given to his under Section 34, Section 34-F or Section 34-G, or

(ii) any order made under Section 34-E; or

(b) is being managed in a manner detrimental to the public interest or to the interests of his policy holders, share-holders, and that,

(i) in the public interest; or

(ii) in the interest of the policy-holders or share-holders of such insurer

It is necessary to acquire the undertaking of such insurer, the Central Government may, be noticed order, acquire the undertaking of such insurer with effect from such date as may be specified in the order.

Provided that no undertaking of an insurer shall be so acquired unless such insurer, has been given a reasonable opportunity of showing cause against the proposed action.

After such official Gazette Notification, all the assets and liabilities of the undertaking of the acquired insurer shall stand transferred to, and vest in,, the Central Government. The assets and liabilities of the undertaking of the acquired insurer shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balance, reserve funds, investments, deposits and all other interests and rights in or arising out of, such property, as may be in the possession of, or held by, by the acquired insurer immediately before the appointed day (Sub-section 2 and 3 of Section 52-H).

Sub-section (4)-Notwithstanding anything contained in sub-section (2), the Central Government may, if it satisfied that all the assets of the undertaking of the acquired

insurer should, instead of vesting in the Central Government, or continuing to so vests, vest in corporation or company.

Sub-section (5) Where the undertaking of the acquired insurer vests in an acquiring insurer under sub-section (4), the acquiring insurer shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired insurer and all the rights and liabilities in relation to the acquired insurer shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of such acquiring insurer.

Sub-section (7) - If on the appointed day, any suit, appeal or other proceeding, of whatever nature, is pending by or against the acquired insurer the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired insurer or of anything contained in this section, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the Acquiring insurer, as the case may be.

5.7. Insurance Association of India, Councils of the Association and Committee:

Section 64-A: Incorporation of the Insurance Association of India:- All insurers carrying on insurance business in India to constitute a body corporate by the name of Insurance Association of India. All the insurer and provident fund societies incorporated or domiciled in India shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in India shall be known as associate members of the Association. The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable, and immovable, and shall by the said name sue and to be sued.

Section 64-C: Councils of Insurance Association of India: There shall be two Councils of the Insurance Association of India, namely-

1. The Life Insurance Council consisting of all members and associate members of the Association who carry on life insurance business in India;
2. The General Insurance Council consisting of all members of the Association who carry on general insurance business in India.

Section 64-D: Authority of members of Association to act through agents:- It shall be lawful for any member of the Life Insurance and General Insurance Council to authorize any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting or the council concerned or to stand as a candidate for any election held by that council. The authorities of the Life Insurance Council and General Insurance Council shall be the Executive Committees constituted in the manner provided under the Act.

Section 64-F: Constitution of the Executive Committees of the Life Insurance Council and General Insurance Council: (1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:-

- (a) Two officials nominated by the Authority one as the Chairman and other as a member;
- (b) Eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner from such groups of members and from such areas as may be specified by the Authority;
- (c) One official not connected with any insurance business, nominated by the Authority; and
- (d) Five persons connected with life insurance business; nominated by the Authority for the purpose of representing such groups of insurer carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons namely:

- (a) two officials nominated by the Authority, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Authority;

(c) one non-official not connected with any insurance business, nominated by the Authority; and

(d) five persons connected with general insurance business, nominated by the Authority for the purpose of representing such groups of insurers carrying on general insurance business of such areas as have not been able to secure adequate representation on Executive Committee of the General Insurance Council or for any other purpose.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committee of the Life Insurance Council or General Insurance Council the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Authority shall be entitled, whether as Chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Authority make by-laws for the transaction of any business at any meeting of the said committee, any such by-laws may provide that any member of the Committee who is interested in any matter of or the time being before that Committee may not be present at or take part in any meeting thereof.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto.

5.8. Functions of the Executive Committee:

Section 64-J: Functions of the Executive Committee of Life Insurance Council:-
The functions of the Executive Committee of the Life Insurance Council shall be-

- (a) To aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies;
- (b) To render advice to the Authority in the matter of controlling the expenses of insurers in respect of their life insurance business in India;
- (c) To bring to the notice of the Authority the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies;
- (d) To act in any matter incidental or ancillary to any of the matters specified in clause (a) to (c) as, with the approval of the Authority may be notified by the Life Insurance Council in the Gazette of India.

Section 64-L. Functions of the Executive committee of general Insurance Council -
(1) the functions of the Executive committee of the general Insurance Council shall be –

- (a) To aid and advise insurers, carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance;
- (b) To render advice to the Authority in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;
- (c) To bring to the notice of Authority the case of any such insurer acting in the manner prejudicial to the interests of holders of general insurance policies;

To act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Authority may be notified by the General insurance Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive committee of the General insurance Council may collect such fee as may be prescribed from all insurers carrying on General insurance business:

Provided that if General Insurance Council thinks fit, it may by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Authority the Executive Committee of the General insurance Council shall not any fees in relation to that year.

5.9. Tariff Advisory Committee and Control of Tariff Rate:

Section 64-U-Establishment of Tariff Advisory Committee:- (1) With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee to control and regulate the rates and advantages, terms and conditions that may be offered by insurers in respect of general insurance business. The Advisory Committee shall be body corporate having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and may, by the said name, sue and to be sued.

Composition of Advisory Committee: (Section-UA)-The Advisory Committee shall consist of the following members, namely-

- (a) the Chairperson of the Authority ex-officio who shall be the Chairman;
- (b) a Senior officer of the office of the Authority nominated by the Authority, who shall be the Vice Chairman;
- (c) not more than ten representatives of Indian insurers, elected (in their individual capacities) by such insurers in such manner, from such areas and from among such insurers or groups of insurers as may be prescribed;
- (d) not more than four representatives of insurer incorporated or domiciled elsewhere than in India but registered in India elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers may be prescribed.

Power of the Advisory Committee: (Section 64 UC)-(1) The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate

the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers.

(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective loss experience.

(3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is ratified by the Authority, or if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decision of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act.

Power of the Advisory Committee to require information, etc.-(Section 64-UE) -

(1) The Advisory Committee may require, by notice in writing, any insurer to supply to it such information or statements, periodical or ad hoc, as it may consider necessary to enable it to discharge its function under this Part and every insurer shall comply with such requirements within such period as may be specified by the Advisory Committee in this behalf , failing which the insurer shall be deemed to have contravened the provisions of this Act.

(2) Any information may supplied under this section shall be certified by a principal officer of the insurer or where the Advisory Committee has agreed in advance, by such other officer or officers of the insurer as the principal officer of the insurer may nominate for the purpose and if the notice so require, also by an auditor.

(3) The Authority may, at any time, in writing, depute any subordinate of its, to make a personal inspection of books of account, ledgers, policy-registers and other books or documents of any insurer to verify the accuracy of any return or statement furnished by him under sub-section (1).

(4) The Advisory Committee may, at any time, on the application of an insurer, make arrangements for the inspection of an organization which is concerned with the inspection of risks, adjustment of losses or fire-fighting appliances, and may, whenever necessary, advise insurers about the adequacy of the arrangements for the inspection of risks and adjustment of losses or the suitability of such appliances.

5.10. Miscellaneous Penalty Provisions under the Insurance Act, 1938:

Penalty for default in complying with or act in Contravention of this Act-(Section 102): If any person who is required under this Act or Rules or Regulations made there under:-

- (a) to furnish any document, statement, account, return report to the Authority, fails to furnish the same; or
 - (b) to comply with the directions, fails to comply with such directions;
 - (c) to maintain solvency margin, fails to maintain such solvency margin;
 - (d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties.
- he shall be liable to a penalty not exceeding five Lakh rupees for each such failure and punishable with fine.

Penalty for carrying on insurance business in contravention of Sections 3, 7 and 98: If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true:

- (a) He shall be liable to a penalty not exceeding five Lakh rupees for each such failure; and

(b) He shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

104. Penalty for false statement in document.- if a person fails to comply with the Provisions of Section 27 or Section 27-A or Section 27-B or Section 27-C or Section 27-D, he shall be liable to a penalty not exceeding five Lakh for each for each failure.

105. Wrongfully obtaining or withholding property:- if any director ,managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two Lakh rupees for each such failure.

105-A. Offences by companies:- (1)Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible, to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty offence and shall be liable to be proceed against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Penalty for failure to comply with Section 32-B (Section 105-B):- If an insurer fails to comply with the provisions of Section 32-B, he shall be liable to a penalty not exceeding five Lakh rupees of each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

Penalty for failure to comply with Section 32-C (Section 105-C): If an insurer fails to comply with the provisions of Section 32-C, he shall be liable to a penalty not exceeding twenty five Lakh rupees for such failure and in the case of subsequent and continuing failure, the registration granted to such insurer under Section 3 shall be cancelled by the Authority.

Power of Court to grant relief: (Section 108)- If in any proceedings, civil or criminal, it appears to the court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but he has acted honestly and reasonable and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relive him either wholly or partly from his liability on such terms as it may think fit.

Cognizance of offences (Section 109) :- (1) No court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act. (2) No court shall take cognizance of any offence punishable under sub-section (4) of Section 34-B or sub-section (1-A) of Section 102 except upon complaint in writing made by an officer of the Central Government generally or specially authorized in writing, in this behalf by the Authority and no Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any such offence.

Appeals (Section 110) :- (1) appeal shall lie to the court having jurisdiction from any of the following orders, namely:

- (a) An order under Section 3 cancelling the registration of insurer;
- (b) An order under Section 5 directing the insurer to change his name;
- (c) An order under Section 42 cancelling the license issued to an agent;
- (d) An order under Section 75 refusing to register an amendment of rules;
- (e) An order under Section 87 or Section 87-A;
- (f) An order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The court having jurisdiction for the purpose of sub-section (1) shall be the principal court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorized to hear appeals from the decisions of the court making the same and the decision on such appeal shall be final.

(4) No appeal under this section shall be entertained unless it is made before the expiration of four month from the date n which the order appealed against was communicated to the appellant.

Appeals (Section 110-H): (1) Any person aggrieved by any order made by the Authority under Section 27-D, 34, 34-A, 34-B, 34-C, 34-E, 34-F, 34-G, sub-sections

(1), (4) and (7) of Section 64-UM or Section 64-VC may, within a period of thirty days from the date of such order prefer an appeal against such order to the Central Government and that Government may, by order, confirm, modify or reverse the order made by the Authority and the order so made by the Central Government shall be final.

(2) No claim for compensation shall lie in favor of any person for anything done in pursuance of an order of the Authority so long as such order was effective.

(3) The Central Government may, on the application of an applicant, stay until the decision of the appeal, the operation of any order made under Section 34 or sub-section (5) of Section 34-B or sub-clause (v) of clause (b) of Section 34-E.

5.11. Summary:

The assignment and nomination is very important concept of contract of insurance. After completion of this unit the students can easily understand the penal provisions related to non compliance of Insurance Act as well as concept of appeals related to this. The Insurance Association of India and Tariff Advisory Committee are very important organizations of the insurance sector.

5.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

5.13. Check Your Progress:

A. Which of the following statement are true or false:

1. Section 38 is related to assignment of policy.
 2. The court shall decide all questions relating to the disposal of claims to the amount paid into the court.
 3. Power and duties of administration is discussed under section 52-
- B.

4. All insurers carrying on insurance business in India to constitute a body corporate by the name of Insurance Association of India.

5. Section 65 is related to establishment of Tariff Advisory Committee.

B. Fill in the Blanks:

1. On payment of fee insurer grant aacknowledgement of the receipt of such notice of assignment.

2. Nomination by policy holder is defined under.....of the Insurance Act, 1938.

3. Concept of Management by Administrator is defined under.....

4. Power of Central Government to acquire undertakings of insurer in certain discussed under.....of Insurance Act, 1938.

5. The General Insurance Council consisting of all members of the Association who carrybusiness in India.

5.14. Answer to Check Your Progress:

A.

1. True

2. True

3. True

4. True

5. False

B.

1. Written

2. Section 39

3. Section 52-A

4. Section 52-H

5. General Insurance Business

5.15. Terminal Questions:

Q.1. Discuss the assignment in detail.

Q.2. Discuss the Nomination in detail. 100 0

Q.3. Discuss the importance of Insurance Association of India and its establishment.

Q.4. Discuss the special provisions.

Q.5. Discuss the detail about Tariff Advisory Committee.

Unit-6

Life Insurance Corporation Act, 1956

Objective:

After going through this unit you should be able to:

- To understand the structure of Life Insurance Corporation
- To understand the important legal provisions of Life Insurance Corporation Act, 1956
- To understand the application of LIC Act, 1956

Structure:

- 6.1. Introduction
- 6.2. Definition of Life Insurance
- 6.3. Conditions and Privileges related to Life Insurance
 - 6.3.1. Conditions and Privileges relating to Risk
 - 6.3.2. Conditions and privileges relating to Premium
 - 6.3.3. Conditions and privileges relating to Continuous Policy
 - 6.3.4. Conditions and privileges relating to Lapsed Policy
 - 6.3.5. Conditions and privileges relating to Renewal
- 6.4. Difference between Contract of Indemnity and Life Insurance Contract
- 6.5. Whether Notice before Repudiation Necessary?
- 6.6. When proposal shall be deemed accepted?
- 6.7. Legal Status of the nominee
- 6.8. Life Insurance Corporation Act, 1956
 - 6.8.1. Causes of Nationalization
 - 6.8.2. Objectives of Nationalization
 - 6.8.3. Objectives of LIC of India
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6.1. Introduction:

The Insurance can broadly be divided into two parts-first, the Life Insurance and the General insurance. The Life Insurance as the name suggests, cover the risk on life. The assured amount is payable on natural death or on death due to accident; The general insurance covers fire insurance, the marine insurance, the insurance of vehicle and other properties etc. and the loss or damage is indemnified on the happening of an insured peril. The Life Insurance provides for accumulated small savings and security for old age and for the family members in case of premature death of the assured. The assured feel secured that in case of premature untimely death, his family would not be put in financial difficulty. if the assured survives he get on accumulated sum of his savings.

6.2. Definition of Life Insurance:

There is no statutory definition of "Life Insurance". The term has not been defined in the Insurance Act. If the essentials of Life Insurance were considered, a definition could automatically emerge. These essentials, in short, are (1) that it should be in relation to human life, (2) that it provides payment of the assured amount in a lump sum and (3) that the amount is payable either of happening of ascertained event, i.e. the death, or on expiry of a specified period. Keeping these essentials in mind, a definition of Life Insurance could be evolved thus, "Life Insurance is contract in which the insurer agree, for a consideration of periodical payments known as premium, to pay an assured sum on happening of some event." A definition of Life Insurance could be found in an English case law in *Dalby v Indian and London Life Insurance Co.* [(1854) 15 CB 365], according to which a Life Insurance is a contract where the insured agrees to pay a certain amount by payment of premium in lien of which the insurer agrees to pay the assured money on the happening of a particular event, namely, the death of the assured or on expiry of a specified period".

6.3. A number of conditions and privileges are attached with Life Insurance.

These condition and privileges may be relating to:

- The Risk
- The Premium
- The continuance of policy
- Lapsed policies
- Renewal

6.3.1 Conditions and Privileges Relating to Risk – The conditions as to risk can be any of the following nature:

1. Conditions as to commencement of risk – On the part of insurer the risk commences when the insurer accepts the proposal and the proposer deposits the first premium. In case the insurer gives acceptance conditionally, the original proposer has to comply with those conditions first then it becomes the clear acceptance by the insurer. These conditions may be relating to payment of premiums or extra premiums or to comply with certain statutory requirement. When complies with all these requirements, the insurer risk commences.

2. Dating back the policies – Where the policy is executed prior to a date of acceptance the proposal, it is called dating back the policies. Sometimes the insured would like to date back his policy with the object of affecting the policy at the younger are so that the premium rate may comparatively low.

3. Conditions as to proof of age – The rates of premium are directly related to the age of assured at the time of commencement of policy. It is more important in endowment policies where the policy amount becomes payable to the assured after attaining certain age. The category and period of insurance are also determined on the basis accurate age.

6.3.2. Conditions and privileges Relating to Premium -

1. Payment of Premium – An insurance policy contains conditions as to the rate of premium payable and the tenure of the policy. The premiums the

conditions as the payable can be monthly, Quarterly, half-yearly or yearly. Some rebate is also given on premiums if they are paid in half – yearly or yearly basis.

2. Days of Grace - Days of grace are the extra days allowed for remitting premiums after the due date. If the premium money is paid during the days of grace, the policy does not lapse. Where the due date falls on any Sunday or any public holiday, the premium can be paid on the next working day. If death occurs on the days of grace, the insurer's liability exists under the provisions of the policy. The LIC allows 30 days as grace period for annual payment of premium. Where premium is payable monthly, the days of grace are 15 days.

3. Notice of Premium – The notice of is issued by the LIC, when the premium becomes due. Again in all the policies, where the premiums are payable other than monthly premium, the LIC issues notices when the premium becomes due. However, the insurer is not bound to issue such notices. If the premium is not remitted in time, the policy may lapse.

6.3.3. Conditions and Privileges Relating to continuance of Policy

1. Lapsing of Policy – A policy can be lapsed or terminated on account of non-payment of premiums at any time when the premiums are overdue. This happens when the assured fails to pay the premiums even within the days of grace.

2. Indisputability of the Policy – According to section 45 of Insurance Act, 1983, a separate clause has to be included in the policy by the insurer. According to this section, a condition is included in the policy that no dispute can be filed against the insurance policy after two years of its issue as a result of failure to present any material fact or any mis-statement. However, any material fact is fraudulently given or hidden the policy is liable to be cancelled.

3. Revival of policy – Revival refers to novation of contract of insurance. This can be done at any time before the expiry of 5 years from the date of lapse of policy, by paying all the dues with interest @7.5 per cent per annum. If revival is done within 6 months of lapsing the policy, no medical examination is needed, otherwise fresh medical examination is required.

4. Alteration in Policy – Generally no change in the policy is possible. However, if the assured wants to change certain conditions of the policy, he may request for the same to the insurer but it is not binding on the insurer to accept such changes.

5. Loss of Policy – Insurance policy is an important document to be surrendered at the time of final claim or at the time of taking loan against the policy. In case of policy, on indemnity bond is to be furnished in getting a duplicate policy issued in the name of the assured.

6.3.4. Condition and Privileges to Lapsed Policies

A policy stands lapsed or terminated on non-payment of premium at any time after the expiry of days of grace. A contract of insurance comes to an end on lapse of policy. The insurer is

not liable on a lapsed policy in which premium was paid for less than 3 years. The rules in this respect are as under:

1. The policy can be got paid – up: this can be done as per the following formula.

$$\text{Paid up value} = \frac{\text{No. of instalments of premium paid} \times \text{sum assured}}{\text{Total No. of Instalments of premium}}$$

In the example, the sum assured is Rs. 40,000; total no. of installments payable are 80; and the installments of premium made so far are 12.

$$\text{Paid up value} = \frac{12 \times 40,000}{80} = 6,000 \text{ Rs}$$

2. Forfeiture of Policies – According to the Insurance Act, 1938, a policy can be forfeited on the following grounds.

(a) In case a default is made for the payment of premiums.

(b) In case of breach of conditions of the policy.

(c) In case of any mis-representation or untrue statement in the proposal.

3. Getting surrender value of policies – In case the assured is not in a position to pay the further premiums, he may voluntarily get the policy surrendered and receive the surrendered value.

6.3.5. Conditions and Privileges relating to Revival or Renewal of Policies –

Where a policy is lapsed on account of nonpayment of premiums, a new contract of insurance can be substituted against the original policy. This can be done at any time before the expiry of 5 years from the date of lapse of policy due to non-payment of premiums.

6.4. Difference between Contract of Indemnity and Life Insurance Contract:

The difference between Contract of Indemnity and the Life Insurance contract may usefully be mentioned.

- (1) In a contract of indemnity, the insurable interest must exist at the time of affecting the insurance as well as at the time when the loss or damage occurred. As against it, in Life Insurance, the insurable interest should exist only at the time of taking the policy.
- (2) Further, in a contract of indemnity, the insured peril may or may not, occur, while in Life Insurance the event is bound to occur i.e. it must occur either in the shape of the death of the insured or maturity of the policy. In the contract of indemnity, the insurance period is short, generally one year. But in Life Insurance the period is long. It is not for one or two years.
- (3) In contract of indemnity the element of investment does not exist, while in Life Insurance there is an element of investment as well as saving.
- (4) No surrender value is allowed under the contract of indemnity whereas it is allowed as per rules in the Life Insurance.
- (5) The principle of subrogation does not apply in contracts of Life Insurance, whereas it applies in the contract of indemnity.
- (6) The principle of contribution applies in the contracts of indemnity while it is not applicable in Life Insurance contracts.
- (7) The subject – matter of interest in Life Insurance contracts is the life or interest in the life, whereas in contracts of indemnity the subject matter is property, interest or liability.
- (8) The object of Life Insurance contract is provision for old age, as well as protection for family in case of premature death, while in the contract of indemnity the object is protection of the property against loss or damage.
- (9) There is no utility of double insurance in the contract of indemnity because the indemnity is conferred to the actual loss suffered, while in the Life Insurance contract the claim would be payable under all policies.

6.5. Whether Notice before Repudiation Necessary?

In *Nandini (Smt.) v. LIC of India* [(1998) 93 Comp. Cases 953 (Kant.)], In this case, claim was repudiated on the ground that the insured had made false statement regarding his health while taking the policy. The petitioner filed a writ petition and contended that the LIC being a statutory body and an instrumentality of the state was bound to act fairly and abide by the minimum requirements of the principle of natural justice in the matter of repudiation of the claim. Flowing from Life Insurance policies in as much as that no notice was issued by LIC to the petitioner before repudiation of the claim and thus LIC had violated the principle of natural justice making the order unsustainable.

On the other hand, the contention of corporation was that the repudiation of a contract for insurance on the ground that the same was vitiated by non-disclosure of material facts was referable to section 45 of the insurance act, 1938 which did not cast any obligation on the corporation to issue a show cause notice or afford any opportunity to being heard in the matter before the corporation could repudiate the liability. It was further contended that the repudiation was based on facts about which there was no dispute and any opportunity to the petitioner to show cause as to why the claim should not be repudiate would have been formality.

The court observed that a public authority, particularly one created under a statute like the respondent is bound to act fairly and in tune with the requirements of natural justice cannot be disputed specially when its action is equally well settled that the principles of natural justice not being codified rules, cannot be put in a strait jacket and that they apply differently in different situations. Thus it was concluded that notice before repudiation of the claim was not necessary given by the corporation to the petitioner.

6.6. When proposal shall be deemed accepted?

In *LIC v. Brazinha D'souza* [(1995) 82 Comp. cases 440 (Bom.)], The deceased had given a proposal for insurance with the LIC along with the amount of premium for which a receipt was issued to him. He expired and a claim was preferred by his wife that was repudiated on the ground that there was no concluded contract as the death had taken place before the acceptance of the

proposal. The contention of the LIC was that mere collection of the amount of premium did not signify that there was acceptance of proposal. The court observed that the memorandum hereby referred that the payment was held in suspense subject to the payment framed in order which meant that some formalities were to be observed before the payment would become acceptable. Admittedly, the deceased had died before the premium could be accepted. It was the current proposition of law that was concluded in a decision of the Supreme Court in LIC of India v Raja Vasireddy Komalavalli Kamba [(1984) 2 SCC 719], A similar situation was before the Supreme Court in the above – mentioned case where it was observed that the contract of insurance was to be concluded only when the party to whom an offer had been made accepted it unconditionally and communicated its acceptance to the person making the offer. The Supreme Court had further observed that though in certain human relationships silence to a proposal might convey acceptance, but in the case of an insurance proposal silence did not denote consent and no binding contract arose until the person to whom an offer is made acts or does something to signify its acceptance. Thus, the contract was found not concluded.

6.7. Legal status of Nominee:

In Shreedevi Venugopal Nair v Divisional Manager, LIC [(2001) 104 comp cases 223 (Guj DB)], the petitioner/appellant was married to the deceased insured (Son of the Respondent No. 2) Before the marriage, i.e. on December 15, 1975, the deceased – insured had obtained a policy on his life in which he had nominated his father (Respondent No.2) as his nominee. The insured died on 1-2-1983. The appellant informed the LIC that the payment of money under the policy be not made to anyone else as the appellant was the only legal heir. The appellant was informed by the LIC that under section 39 of the Insurance Act, 1938 it was bound to make the payment to the person who had been nominated unless there was any order of a competent court restraining the LIC not to make the payment. On receipt of this letter the appellant approached the court under Article 226 of the Constitution praying that the LIC be directed to make payment to her and be restrained to make payment to father of the deceased – insured i.e. Respondent.

2. The single judge rejected the petition on the ground that “this High Court does not take upon itself the duty to deal with all civil disputes or of civil rights. “The order was challenged before the Division Bench.

Referring to the case of *Atmaram Mohanlal Panchal v Gunvantiben @ Geetaben* [(1978) 48 comp cas 250 Guj (DB)] It was argued before the court that nominee is a trustee of the amount of the policy and the rights of the legal heirs are not affected because the nominee is not a class I heir. In that case there was a dispute between the legal heir and the nominee.

The Division Bench had observed:

“We may observe that there is no doubt as regards the legal position that in view of the policy of insurance and the legal effect of Section 39 of the Insurance Act only the person named in the policy as a nominee has a right to receive and collect the money he merely collect it can behalf of the original claimants. If there is a will, the legatees under the will could set it. If the policy holder had died intestate, his legal heirs could get it.”

In view of this authority the court observed that it was clear from the language of section 39 of the Act that the policy holder retains the interest during his life-time and no interest is created in favour of the nominee. It was very clear from the aforesaid decision that the nominee was entitled to receive the money from the insurer and had to disburse the amount as per the provisions of the law, namely, in the instant case as per the section 8 of the Hindu Succession Act. The court further observed that the nomination as seen from sub-section (1) of Section 39 of the Act merely means that the person nominated is the one to whom the monies secured by the policy shall be paid in the event of death of the insured before the maturity of the policy i.e. money forms part of the estate of the deceased policy holder which would be governed by law of succession. In view of this clear position, the legal heir would get the amount but it is for the civil court to decide as to who are the legal heirs and for this court in exercise of jurisdiction under Article 226 of the constitution.

6.8. Life Insurance Corporation Act, 1956:

Till January 1956, Life Insurance in India was under the control of private enterprises. After 19th January, 1956 all the Life Insurance business in the country has been nationalized. As a beginning the Life Insurance (emergency provisions)

ordinance was promulgated on the 10th January 1956. There after the Life Insurance Corporation Act was passed and the, LIC come into existence from 1st September, 1956 by taking over the management and control of Life Insurance business in the hands of Government. At the time of nationalization, 245 insurance companies were in operation.

In the post-independent India the Life Insurance Corporation, Act, 1956 was enacted by which some 245 Indian and foreign insurance companies and provident societies (154 Indian, 16 non-Indian insurance companies and 75 provident societies) were nationalized and Life Insurance Corporation of India came into existence. The domain of LIC, as the name suggests was limited to Life Insurance only. It may be worth white to mention that in whole of the world, India was the first country to nationalize the life insurance business.

6.8.1 Causes of Nationalization – The important causes were:

- Failure of private companies to function in the national “interest”.
- To provide for economic security to common man this was lacking in the hands of private companies.
- Many private companies frittered away their resources over-looking the interest of the policy holders.
- Individuals who were controlling the insurance business misappropriated funds under their management in their other ventures leaving the insurance business to bear losses

6.8.2 Objectives of Nationalization

- To fulfill the objective of establishing socialistic pattern of society in India.
- To accumulate resources to meet the five – year- plan objectives.
- To develop insurance in villages and other remote areas.
- To safeguard the interests of insured’s.
- To accelerate social interests.
- To bring an end to unhealthy competition among private insurance companies.
- To minimize the administrative expenses of insurance.

- To determine reasonable rate of premium.
- To remove the inefficiency of private companies.
- To develop safer economic life among the people.

6.8.3 Objectives of Life Insurance Corporation of India

The main aim of Life Insurance Corporation of India is to achieve the objectives of nationalization. That include:

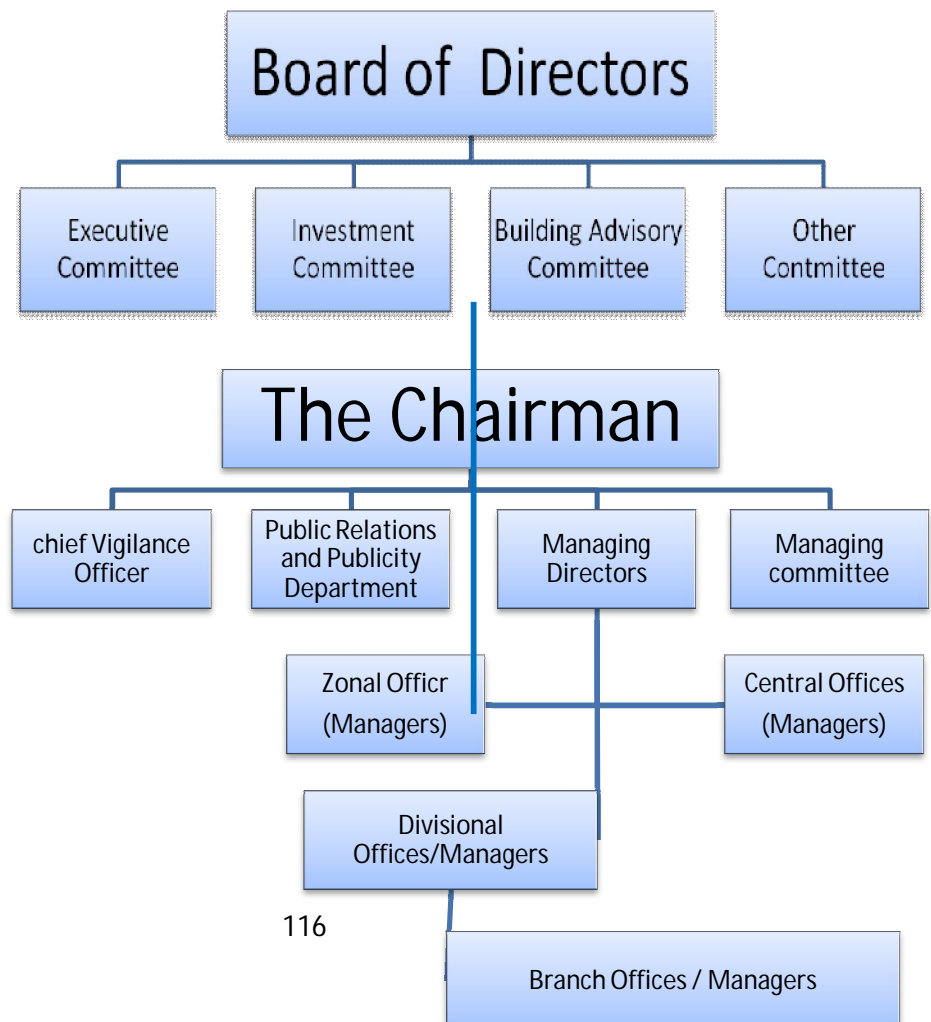
- To publicise and extend the insurance business specifically in rural and remote areas.
- To provide suitable financial security at reasonable cost.
- To make the investment more dynamic by popularizing the savings plan attached with insurance.
- To invest the insurance funds for maximum benefits and to keep interest of assureds.
- To run the insurance business at minimum administrative cost.
- To function as trusts of the insured's.
- To fulfill the needs of society in a changing social and economic environment.
- To make the employees collectively responsible for providing efficient services to the insured's.
- To develop work satisfaction among agents and employees.

6.8.4 Functions of the LIC of India – The important functions of LIC are as follows:

- To spread the insurance business within and outside India.
- To do capital redemption business, annuity and re-insurance business.
- Investment of insurance funds, keeping its security, recovery of investment money timely and sale of property when so needed etc.
- To purchase and sale of property on behalf and interest of the corporation.

- To transfer the insurance business done outside India to any individual/individuals, it is the interest of the corporation.
- To grant loan against security of any fixed or movable assets.
- To borrow money or to obtain funds for the corporation.
- To do all such activities, which are directly related with the rights of the corporation and incidental there to.

The structural frame work of the LIC is shown as under.



6.9. Provisions of LIC Act are not discriminatory:

In *UCO Bank Employees Association v LIC of India* [(2004) 2 GLR 199 (Guj. DB)], The question for consideration before the Division bench of the Gujarat High Court was whether Section 30 of the LIC Act, 1956 is discriminatory and violative of Art. 14 of the Constitution of India? The Bench observed that the provisions of LIC Act enacted by parliament for the nationalization of the insurance business in India. Entrusting the exclusive privilege of the Life Insurance business to the corporation, which functions, subject to the rules of the Central government are neither discriminatory nor arbitrary and the corporation, having regard to its nature and the object sought to be achieved by the provisions of the Act and need felt by parliament for the nationalization of the Life Insurance business, has been rightly treated as a separate class by itself. Therefore the challenge against the provisions of section 30 of the Act on the ground that they violate Article 14 of the Constitution, thereof, fails.

It was expected that after the nationalization, the working of the corporations would improve and they would give better service to the customers but experience shows that LIC has not risen up to the expectations almost every claim filed in courts and before Redressal agencies is contested keenly irrespective of the fact whether the claim is genuine or not, and all sort of pleas and technical grounds are taken just to avoid the liability.

The National Commission in *LIC v Consumer Education and Research Society* [(1994) 2 CPR 655 NC] had to pass remark against the Life Insurance corporation of India in the following words:

“The Life Insurance Corporation being an instrument of the State is expended to conduct its business of insurance fairly, justly and reasonably and its policy should be guided by consideration of service to the people of this land as distinct from an unprincipled, commercial profit oriented approach.” In *Oriental Insurance co. Ltd. V Hemant Bhandari* [(2005) 3 CPJ 418 Delhi state commission], the Delhi state commission in this case had occasion to pass remarks, observing that the insurance companies have the tendency of insuring each and every person under mediclaim policy without verifying or getting examined from their doctor only to enhance their premium and business. The commission referred to *LIC v*

Anuradha [(2004) 10 SCC 131] and LIC v Asha Goel [(2001) 2 SCC 160]. Where the Court has observed that LIC is a **Social Welfare Institution**. More so when life insurance has been nationalized and the service is not available in the private sector it should think of devising a policy available in insurgency – afflicted regions which would take care of the insured and his family members in such areas. The court hinted that the insurance policies with terms and conditions suited to the requirement of people inhibiting insurgency or militancy affected areas should be devised and propagated.

In Asha Goel case the court observed:

“In course of time the corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public is in general and crores of policy-holders in particular, look forward to prompt and efficient service from the corporation. Therefore, the authorities in charge of management of the affairs of the corporation should bear in mind that the credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the corporation in the matter of repudiation of policy admittedly issued by it should be one of extreme, care and caution. It should not be dealt with a mechanical and routine manner.”

6.10 Important provisions of The Life Insurance Act, 1956

- (i) Constitution
- (ii) Capital
- (iii) Function of the Corporation.
- (iv) Transfer of services
- (v) Set-up of the Corporation
- (vi) Committee of the corporation
- (vii) Authorities
- (viii) Finance, Accounts and Audit
- (ix) Miscellaneous

(i) Constitution – Establishment and Incorporation of Life Insurance corporation of India (section 3)

(1) With effect from such date as the Central Government may by notification in the official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.

(2) The corporation shall be a body corporate having perpetual succession and common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property and may by its name sue and be sued.

Section 4 : Constitution of the Corporation

1. The corporation shall consist of such number of persons not exceeding sixteen as the central Government may think fit to appoint thereto and one of them shall be appointed by the central government to be the chairman thereof.

2. Before appointing a person to be a member the Central Government shall satisfy itself that the person has no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functioning as a member, and the Central Government shall also satisfy itself from time to time with respect to every member that he has no such interest; and any person who has consented to be a member shall, whenever required by the central government so to do, furnish to it such information as the Central Government considers necessary for the performance of its duties under this sub-section.

3. A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the corporation shall as soon as possible report to the corporation.

(ii) Capital (Section – 5) The original capital of the corporation shall be five crores of rupees provided by the Central Government after due appropriation made by parliament by law for the purpose, and the terms and conditions relating to the provisions of such capital shall be such as may be determined by the Central Government. The Central government may on the recommendation of the corporation, reduce the capital of the corporation to such extent and in such manner as the central Government may determine.

(iii) Functions of the Corporation – It is the general duty of the corporation to carry on Life Insurance business, whether in or outside India, and the corporation shall so exercise its power under this Act as to secure that the Life Insurance business is developed to the best advantage of the community. The corporation also;

(a) Carries on capital redemption business, annuity certain business or reinsurance business in so far as such reinsurance business appertains to Life Insurance business;

- (b) Invests the funds of the corporation in such a manner as the corporation may think fit and to take all such steps as may be necessary or expedient for the protection or realize of any investment, including the taking over of and administering any property offered as security for the investment until a suitable opportunity arises for its disposal;
- (c) Acquires, holds and dispose of any property for the purpose of its business;
- (d) Transfers the whole or any part of the Life Insurance business carried on outside India to any other person or persons, if in the interests of the corporation it is expedient so to do;
- (e) Advances or lends money upon the security of any moveable or immovable property or otherwise;
- (f) Borrows or raises any money in such manner and upon such security as the corporation may thinks fit;
- (g) Carries on either by itself or through any subsidiary any other business in any case where such other business was being carries on by a subsidiary of an insurer whose controlled business has been transferred to an vested in the corporation under this act.
- (h) Carries on any other business which may seen to the corporation on to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the corporation; and
- (i) Doing all such thing as may be incidental conducive to the proper exercise of any of the power of the corporation.

(iv) Transfer of Services (Section 12) – All the employees except chief agent will be vested into new life – business. The salary and terms of employment will remain the same unless the insurance business being thinks fit to change the terms of employment for the benefit of the policy-holder. If any term is not acceptable to an employee, he can be terminated by paying three months salary as compensation. Subject to such rules as the Central Government may make in this behalf, every whole-time salaried employee of a Chief Agent of an insurer whose controlled business has been transferred to and vested in the corporation, and

- (a) Who was employed by the Chief Agent wholly or mainly in connection with the controlled business of the insurer;

(b) Whose salary on the appointed day did not exceed five hundred rupees per mensem; and

(c) Who was in the employment of Chief Agent for a continuous period of not less than one year immediately before the appointed day shall on and from the appointed day, become an employee of the corporation and the provisions of section 11 shall, so far or relation to a whole- time employee of the insurer provided that this section shall not apply except in cases where the Chief Agent of the insurer was required under the terms of his contract with the insurer to render the prescribed service to policy-holders of the insurers.

(v) Set-up of the Corporation – Offices, Branches and Agencies (Section 18)

(a) The Central office of the corporation shall be at such a place as the Central Government may be notification in the official gazelle specify.

(b) The corporation shall establish a Zonal office at each of the following places, i.e. Bombay, Calcutta, Delhi, Kanpur and Madras and subject to the previous approval of the Central Government, may establish such other zonal offices as it thinks fit.

(c) The territorial limit of each zone shall be such as may be specified by the corporation;

(d) There shall be established as money divisional offices and branches in each zone as the Zonal Manager thinks fit.

(vi) Committee of the Corporation [Section 19] – The corporation may entrust the general superintendence and direction of its affairs and business to an executive committee may exercise all powers and do all such acts and things as may be delegated to it by the corporation.

The Corporation may also constitute an Investment committee for the purpose of advising in it matters relating to the investment of its funds, and, the investment committee shall consist of not more than eight members of whom not less than three shall be members of corporations and the remaining members hall be persons (Whether members of corporation or not) who have special knowledge and experience in financial matters, particularly matters relating to investment of funds.

The corporation may constitute such other committees as it may think fit for the purpose to discharge such of its functions as may be delegated to them.

(vii) Authorities -

(a) Managing Director – The corporation may appoint, one or more persons to be the Managing Director or Directors of the corporation and every Managing Director shall be a whole time officer of the corporation, and exercise such powers and perform such duties as may be interested or delegated to him by the executive committee or the corporation.

Corporation to be guided by the Directions of central Government – In the discharge of its function under this Act, The corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of Central Government thereon shall be final.

(b) Zonal Managers - The corporation may entrust the superintendence and direction of the affairs and business of a Zonal office to a person, whether a member or not, who shall be known as a zonal manager and the zonal manager shall perform all such functions of the corporation as may be delegated to him with respect to the area within the jurisdiction of the Zonal Office.

The Corporation may constitute for each zone a Board consisting of such number of person as it thinks fit to appoint there to for the purpose of advising the zonal manager in respect of such matters as are referred to it under the regulation made by the corporation.

The corporation shall constitute in the prescribed manner for each zonal office an employees and agent relations committee consisting of such number of person as it thinks fit and every such committee shall consist of representatives of the corporation and of its employees and agents.

(viii) Finance, Accounts and Audit

(a) Audit (Section 25) – The accounts of the corporation shall be audited by the auditors duly qualified to act as auditors of companies under the law for the time being in force relating to companies, and the auditors shall be appointed by the corporation with the previous approval of the Central Government and shall

receive such remuneration from the corporation as the Central Government may fix.

Every auditor in the performance of his duties shall have at all reasonable time access to the books of accounts and other document of the corporation.

The auditors shall submit their report to the corporation and shall also forward a copy of their report to the Central Government.

(b) Actuarial Valuation [Section 26] – The corporation shall; once at least in every two years, cause an investigation to be made of actuaries into the financial condition of the business of the corporation, including a valuation of the liabilities of the corporation and submit the report of the authorizes to the Central Government.

(c) Annual Report of Activities of Corporation [Section 27] – The corporation shall, as soon as may be , after the end of each financial year, prepare and submit to the central government in such form as may be prescribed a report giving an account of its activities during the previous financial year, and the report shall also give an account of the activities, if any, which are likely to be undertaken by the corporation in the next financial year.

(d) Obligation of Surplus [Section 28] - If as a result of any investigation undertaken by the corporation under section 26 any surplus emerges, 95% of such surplus shall be allocated to or reserved for the policy – holders of the corporation. And the remainder may be utilized for such purposes and in such manner as the Central Government may determine.

(e) Reports to be laid before Parliament [Section 29] – The Central Government shall cuase the report of the auditors under Section 25, the report of the actuaries under section 26 and report giving an account of the activities of the corporation under section 27 to be laid before both House of Parliament as soon as may be after such report is received by the Central Government.

(ix) Miscellaneous :-

(a) Corporation to have the exclusive privilege of carrying on Life Insurance business [Section - 30] – Except to the extent otherwise expressly provided in this Act, on and from the appointed day the corporation shall have the exclusive privilege of carrying on Life Insurance business in India; and on and from the said day any certificate of registration under the insurance act held by any

insurer immediately before the said day shall cease to have effect in so far as it authorize him to carry on Life Insurance business in India.

(b) Exclusive privilege of corporation to cease [section 30 A] – Notwithstanding anything contained in this Act, the exclusive privilege of carrying on Life Insurance business in India by the corporation shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and corporation shall, therefore carry on Life Insurance business in India in accordance with the provisions of the Insurance Act, 1938.

(c) Power of Corporation to have official seal in certain cases (section 32)

The corporation may have for use in any zonal office, divisional office or in any office outside India an official seal which shall be a facsimile of the common seal of the Corporation, with the addition on its face of the name of the zonal office, divisional office or other office where it is to be use, and any such official seal may be affixed to any deed or document to which the corporation is a party.

(d) Requirement of Foreign Laws to be Complied with in certain cases (section 33): Where any property or rights pertaining to the controlled business of an insurer are transferred to and vested in the corporation under this Act or would be so transferred and vested but for the fact that such transfer and testing are governed otherwise than by the law of India, the insurer shall comply with such directions as may be given to him by the corporation for the purpose of securing that the ownership of the property or, as the case may be, that the right is effectively transferred to the corporation.

(e) Reverting of certain shares vested in the Administrator General (Section 34): Notwithstanding anything containing in the Insurance Act, all shares which have vested in the Administrator General of any State under subsection (8) of Section 6A of that Act and which have not been disposed of in accordance with the provision of that sub-section before the appointed day, shall, on payment of the amount of expenditure, if any, incurred by the Administrator General in relation to such shares by the persons who would have been entitled to those shares if the said sub-section had not been enacted, revert in such persons.

(f) Reputation of assets and liabilities in the case of foreign insurers in certain cases (Section 35):

1. Any insurer incorporated outside India may, before the appointed day, make an application to the Central Government stating that among the assets pertaining to the controlled business of the insurer there are assets brought into India by the insurer for the purpose of building up his Life Insurance business in India which, notwithstanding anything contained in section 7, should not be transferred to and vested in the corporation.
2. On receipt of an application under sub-section (1), the Central government shall determine the value of the assets of the insurer appertaining to his controlled business in existence on the 31st day of December, 1955, computed as at that date in accordance with the provisions contained in paragraph 3 of part B of the First Schedule, and deduct there from the total amount of the liabilities of the insurer appertaining to this controlled business in existence on the 31st day of December, 1955, computed as at that date in accordance with the provisions contained in the second schedule; and if there is any excess, the Central Government may, by order, direct that such assets equivalent in value to the excess as may be specified in the order shall not be transferred to or vested in the corporation, or where the order is made after the appointed day, that the corporation shall be divested of the said assets.
3. In the case of any insurer incorporated outside India, the Central Government may also, by order, direct that any such liabilities in respect of Life Insurance policies expressed in any foreign currency issued on the lives of persons who are not citizens of India as are specified in the order together with any such assets necessary to meet the liabilities, as may be so specified, shall not be transferred to or vested in the Corporation or, if the order is made after the appointed day, that the Corporation shall be divested of such liabilities and assets as aforesaid:
4. The amount of liabilities in respect of the policies referred to in an order made under sub-section (3) shall be computed as at the 31st day of December, 1955:
 - (a) In any case where in respect of the insurer concerned as order has been made under sub-section (2), in accordance with the provisions contained in clause (b) of the Second Schedule; and
 - (b) In any other case, in accordance with method A specified in the second schedule. Explanation: In computing the amount of liabilities in amount of the

policy referred to in this sub-section, allowance shall be made for receipts and payments in respect of such policies from the 31st day of December, 1955, up to the date of the order.

5. Every order made by the Central Government under this section shall be carried out by the corporation in such manner as the Central Government may direct.

(g) Contracts of chief agents and special agents to terminate (section 36)

Notwithstanding anything contained in the Insurance Act or in any other law for the time being in force, every contract appertaining to controlled business subsisting immediately before the appointed day:

- Between an insurer and his chief agent or between an insurer and a special agent; or
 - Between the chief agent of an insurer and a special agent;
- Shall, as from the appointed day, cease to have effect and all rights accruing to the chief agent or the special agent under any such contract shall terminate on that day.

Provided that in every such case compensation shall be given by the corporation to the chief agent or the special agent, as the case may be, in accordance with the principles contained in the Third Schedule, and the provisions of sub-section (2) of section 16 shall, so far as may be apply in every such case.

(h) Policies to be Guaranteed by Central Government (Section 37)

The sums assured by all policies issued by the Corporation including any bonuses declared in respect thereof and, subject to the provisions contained in Section 14 the amount assured by all policies issued by any insurer the liabilities under which have vested in the corporation under this Act, and all bonuses declared in respect thereof, whether before or after the appointed day, shall be guaranteed as to payment in cash by the Central government.

(i) Liquidation of Corporation (Section 38)

No provisions of law relating to the winding up of companies or corporations shall apply to the corporation established under this Act, and the

corporation shall not be placed in liquidation save by order of the Central Government and in such manner as that government may direct.

(j) Special Provisions for Winding up of Certain Insurers (Section 39)

Where any insurer being a company (other than a composite insurer) Whose controlled business has been transferred to and vested in the corporation under this act has accordance with the provisions of this Act collected and distributed any moneys paid to him by the corporation by way of compensation or otherwise and has also complied with any direction given to him by the corporation for the purpose of securing that the ownership of any property or any right is effectively transferred to the Corporation, the Central Government may on application being made to it in this behalf by such insurer grant a certificate to the insurer that there is no reason for the continued existence of the insurer and where such a certificate has been granted shall cause the certificate to be published in the official Gazette and upon the publication thereof the insurer shall be dissolved.

(k) Penalty for withholding Property etc. (Section 40)

If any person willfully withholds or fails to deliver to the corporation as required by section 13, any property or any books, documents or other papers which may be in his possession or unlawfully retains possession of any property of an insurer which has been transferred to and vested in the corporation under this Act or willfully applies any such property to purposes other than those expressed in or authorized by this Act, he shall, on the complaint of the corporation, be punishable with imprisonment which may extend to one year, or with fine which may extent to one thousand rupees, or with both.

(l) Tribunal to have exclusive jurisdiction in certain matters (section 41)

No civil court shall have jurisdiction to entertain or adjudicate upon any matter, which a tribunal is empowered to decide or determine under this Act.

(m) Enforcement of decisions of Tribunals (Section 42)

Any decision of a Tribunal may be enforced in any civil court within the local limits of whose jurisdiction the person against whom the decision is to be enforced actually and voluntarily resides or carries on business or personally works for gain or owns any property, as if it were a decree passed by that court.

(n) Application of the Insurance Act (Section 43)

(1) The following sections of the Insurance, Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely:

Section : 2, 2B, 3, 18, 26, 33, 41,

(2) The Central Government shall, as soon as may be after the commencement of this Act, by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the corporation subject to such conditions and modifications as may be specified in the notification, namely:

Sections : 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114 and 116A and section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a license to act as an agent for the purpose of soliciting or procuring Life Insurance business for the corporation as if the reference to an officer authorized by the Controller in this behalf in sub-section (1) thereof included a reference to an officer of the corporation authorized by the Authority in this behalf.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub-section (2), shall apply to the corporation subject to such conditions and modifications as may be specified in the notification.

(4) Every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than 30 days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

(5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation.

(o) Act not to apply in certain cases (section 44)

Nothing contained in this Act shall apply in relation to:

(a) Any insurer whose business is being voluntarily wound up or is being wound up under the orders of the court;

(b) Any insurer to whom the Insurance Act does not apply by reason of the provisions contained in Section 2E thereof;

(c) Any composite insurer in respect of the management of whose affairs an Administrator has been appointed under Section 52A of the Insurance Act;

(d) The scheme run by the Central Government known as the post office Life Insurance fund;

(e) Any approved superannuation fund as defined in clause (a) of section 58 N of the Indian Income Tax Act, 1922 which is in existence on the appointed day;

(f) Any scheme in existence on the appointed day or any scheme framed after the appointed day with the approval of the Central government whereby, in consideration of certain compulsory deductions made by Government from the salaries of its employee as part of the conditions of service, the payment of money is assured by Government on the death of the employee concerned or on the happening of any contingency dependent on his life.

(p) Special Provisions Regarding Transfer of Controlled Business of Certain Composite Insurers (Section 45)

Notwithstanding anything contained in clause (c) of section 44, the Central Government may, by notification in the official Gazette, direct that on and with effect from such date as may be specified in the notification the assets and liabilities appertaining to the controlled business of a composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act shall be transferred to and vested in the corporation, and on the issue of such a notification the provisions of this Act shall, so far as may be, apply in relation to such insurer and to the transfer and vesting of the assets and liabilities of his controlled business in the corporation subject to the modification that references in this act to the appointed day shall be constructed as references to the day specified in the notification.

(q) Defects in Constitution of Corporation or Committees not to Invalidate acts or Proceedings (Section 46)

No act or proceeding of the Corporation or of any committee of the Corporation shall be called in question on the ground merely of the existence of any vacancy or defect in the constitution of the corporation or committee, as the case may be.

(r) Protection of Action taken under Act (Section 47)

No suit, prosecution or other legal proceeding shall lie against any member or employee of the corporation for anything which is in good faith done or intended to be done under this Act.

(s) Power to make Rules (section 48)

(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matter, namely:

- (a) The term of office and the conditions of service of members;
- (b) The manner in which the moneys and other assets belonging to any such fund as is referred to in section 8 shall be apportioned between the trustees of the fund and the corporation;
- (c) The services, which the chief agent should have rendered for the purpose of the provision to section 12;
- (d) The jurisdiction of the Tribunals constituted under section 17;
- (e) The manner in which, and the persons to whom, any compensation under this Act may be paid;
- (f) The time, within which any matter, which may be referred to a Tribunal for decision under this Act, may be so referred;
- (g) The manner in which and the conditions subject to which investments may be made by the corporation;
- (h) The manner in which an Employees and Agents Relations committee may be constituted for each zonal office;
- (i) The form in which the report giving an account of the activities of the corporation shall be prepared;
- (j) The conditions subject to which the corporation may appoint employees;
- (k) The fees payable under this Act and the manner in which they are to be collected;
- (l) Any other matter which has to be or may be prescribed.

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible. After they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

(t) Power to make Regulations (Section 49)

(1) The Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with this Act and the rules made there under to provide for all matters for which provisions is expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for:

- (a) The powers and functions of the Corporation, which may be delegated to the zonal Managers;
- (b) The method of recruitment of employees and agents of the corporation;
- (c) The number, term of office and conditions of service of members of Boards constituted under section 22;
- (d) The territorial limits of each zone established under this Act and the business to be transacted in each zone;
- (e) The manner in which the fund of the corporation shall be maintained;
- (f) The maintenance of separate funds and accounts at each of the zonal office;
- (g) The jurisdiction of each divisional office and the establishment of councils representative of policy-holders in each area served by a divisional office for the purpose of advising the divisional office in respect of any matter which may be referred to it;
- (h) The conduct of business at meetings of the corporation;
- (i) The formation of committees of the corporation and the delegation of powers and functions of the Corporation to such committees, and the conduct of business at meetings of such committees;
- (j) The form and manner in which policies may be issued and contracts binding on the corporation may be executed;
- (k) The classification of policies, whether issued by the corporation or by any insurer whose controlled business has been transferred to and vested in the corporation for the purpose of declaring differential bonuses, wherever necessary;
- (l) The manner in which and the intervals within which the accounts of the various zonal offices, divisional offices and branch offices may be inspected and their accounts audited;
- (m) The conditions subject to which any payment may be made by the corporation.

6.11. Summary:

The Life Insurance Act, 1956 is a very important Act and understanding of this is also equally useful like the Insurance Act, 1938. The administration, power relating to monitor and expansion life insurance business was exclusive before the entry of the private insurance companies in this sector. Different important

conditions and applicability of various important provisions of LIC Act, 1956 is useful for the students to understand after the completion of this.

6.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow

- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

6.13. Check Your Progress:

A. Which of the following statement is true or false:

1. A number of privileges and conditions are attended with life insurance policies.

2. There is no utility of double insurance in the contract of indemnity.

3. Objective of nationalization is to safeguard the interest of insured's.

4. Application of Insurance Act, 1938 is defined under Section 43 of the LIC Act, 1956.

5. In contract of indemnity the element of investment does not exist.

B. Fill in the blanks:

1. A definition of life insurance could be found in an English case law in

2. Legal status of nominee discussed under the case law.....

3. LIC is a institution.

4. Set-up of the Corporation- office, branches and agencies defined under.....

5. Liquidation of Corporation is defined under.....

6.14. Answer to check your progress:

A. 1. True/2. True/ 3. True/ 4. True/ True

B.

1. Dalby v. Indian and London Life Insurance Co.

2. Shreedevi Venugopal Nair v. Divisional Manager, LIC

3. Social Welfare

4. Section 18

5. Section 38

6.15. Terminal Questions:

Q.1. Discuss is the structure of LIC?

Q.2. Discuss the important provisions of LIC.

Q.3. Whether notice before repudiation is necessary?

Q.4. Discuss conditions and privileges related to life insurance.

Q.5. What are the Difference between Contract of Indemnity and Life Insurance Contract.

Unit-7

Marine Insurance Act, 1963

Objective:

After going through this unit you should be able to:

- To understand the importance of marine insurance
- To understand the various legal provisions of the Marine Insurance Act, 1963
- To understand the applicability of Indian Marine Act, 1963

Structure:

7.1. Introduction

7.2. Definition of Marine Insurance

7.2.1 Insurable Interest

7.2.2 Disclosure and Representations

7.3. Classification of Marine Insurance

7.4. Warranties in Marine Insurance

7.4.1 Nature of Warranty

7.4.2 When breach of Warranty is excused

7.4.3 Warranty of Neutrality

7.4.4 Warranty of Sea-worthiness of ship

7.4.5 No implied warranty that goods are sea worthy

7.4.6 Implied condition as to commencement of risk

7.5. Assignment of Policy

7.5.1 When and how policy is assignable

7.5.2 Assured who has no interest can not assign

7.6. Included and excluded losses

7.7. Partial Total Loss

7.8. Actual Total loss

7.9. Partial Loss

7.10. Right of Insurer on Payment

7.11. Summary

7.12. Some Useful Books

- 7.13. Check Your Progress
- 7.14. Answer to Check Your Progress
- 7.15. Terminal Questions

7.1. Introduction:

The oldest and the earliest records of marine policy relates to a Mediterranean voyage in 1347. In the year 1400, a book was written by a merchant of Florence which indicates premium rates charged for the shipments by sea from London to Pisa. Marine Insurance spread from Italy to trading routes in other countries of Europe. Later on, in the year 1556, Phillip II made marine insurance regulations for Spain. In 1563 for Antwerp (America) insured three ships on a voyage from Hawaii to Central America. In 1575, during Queen Elizabeth I, opened the Chamber of Assurance in the Royal exchange for the registration of marine parcels. Following this, an Act of Parliament was passed in 1601 to deal with disputes relating to marine insurance. During the period of 1720-1824 the two chartered companies, viz London Assurance and Royal Exchange Assurance enjoyed dominant position in the field of marine insurance with the introduction of steamship and growth of international trade, specialized marine services were introduced. Following this, the Lloyd's Association founded in 1892 and originated from coffee house run by Edward Lloyd, became the major centre of marine insurance.

In earlier days travelers by sea and land were exposed to risk of losing their vessels and merchandise because of piracy on the open seas. Moreland has maintained that the practice of insurance was quite common during the rule of Akbar to Aurangzeb, but the nature and coverage of insurance in this period is not well known. It was the British insurers who introduced general insurance in India, in its modern form. The Britishers opened general insurance in India around the year 1700. The first company, known as the Sun Insurance Office Ltd was set up in Calcutta in the year 1710. This was followed by several insurance companies of different parts of the world, in the field of marine insurance, In 1972, the General Insurance business was nationalized by the Government of India by forming General Insurance corporation. The following four companies have been

authorized to carry on general insurance business including marine insurance in the country; viz; the National Insurance Company, New India Assurance Company, Oriental Fire and General Insurance Company, and United India Fire and General Insurance Company.

7.2. Definition of Marine Insurance:

The marine insurance has been defined in section 3 of the Marine Insurance Act, 1963:

“A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure” “Marine Insurance Business” as defined in sanction 2 (13-A) of the Insurance Act, 1938, means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water or both, and whether or not including warehouse risks or similar risks in addition or incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies.

The ‘Marine adventure’ has been defined in Section 2(d) of the Marine Insurance Act, 1963 as under:

1. Any insurable property is exposed to maritime peril;
2. The earning or acquisition of any freight, passage money, commission profit or other pecuniary benefit, or the security for any adventure, loans or disbursements is endangered by the exposure of insurable property to maritime perils;
3. Any liability to a third party may be insured by the owner of or other person interested in, or responsible for, insurable property by reason of maritime peril.

In section 2(e) of the Act, “Maritime perils” means the perils consequent on, or incidental to, the navigation of the sea, that is to say perils of the seas fire, war perils, pirates, rovers, thieves captures, seizures, restraints and detainments of princess and peoples; jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy.

Where no marine adventure took place, the goods which were not delivered were not due to any maritime peril and therefore the insurer was not liable for the loss or damage.

7.2.1 Insurable Interest:

Avoidance of Wagering contract [Section 6] :-

- (1) Every contract of marine insurance by way of wagering is void;
- (2) A contract of marine insurance is deemed to be a wagering contract;
 - (a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered in to with no expectation of acquiring such an interest; or
 - (b) Where policy is made "interest or no interest" or "without further proof of interest" than the policy itself or "without benefit of salvage to the insured" or subject to any, other like term;

Provided that, where there is no possibility of salvage, a policy may be affected without benefit of salvage to the insurer.

Insurable Interest defined [Section 7]:

- (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in marine adventure.
- (2) In particular a person is interested in a marine adventure where he stands in my legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage there to or by the detection thereof, or may incur liability in respect thereof.

When interest must attach [Section 8]:

- (1) The assured must be interested in the subject matter insured at the time of the loss, though he not be interested when the insurance is effected: provided that, where the subject matter is insured "lost or not lost" the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the insured was aware of the loss, and the insure was not.
- (2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

7.2.2 Disclosure and Representations

Insurance is *uberrimae fides* (Section 19) – A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

Disclosure by assured [Section 20]:

(1) Subject to the Provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstances which is, know to the assured, and the assured is deemed to know every circumstance which in the ordinary course of business; ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

(a) Any circumstance which diminish the risk;

(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of his business such, object to know;

(c) Any circumstance as to which information is waived by the insurer.

(d) Any circumstance which it is suspicious to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term “circumstance” includes any communication made to, or information received by the assured.

Disclosure by agent effecting insurer [Section 21]:

Subject to the provisions of the preceding section as to circumstances which need not be disclose, where insurance is effected for the assured by an agent, the agent must disclose to the insurer.

(a) Every material circumstance which is known to himself, and an agent to insurer is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to him; and

- (b) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

7.3. Classification of Marine Insurance:

The marine insurance could be classified as:

- (i) Hull Insurance.
- (ii) Cargo Insurance; and
- (iii) Freight Insurance

(i) **Hull Insurance** – Literally, hull means body or frame of the ship or vessel and its machinery thus, this type of Insurance covers ship or vessel and its machinery. Thus, this type of Insurance covers ships and its equipments. The ship or vessels may be classified as sea going vessels, sailing vessels etc. The hull policies may also cover the risk while the vessel is under construction. These insurance are generally for one year.

The complainant company was engaged in the business of drilling well in Bombay High. The complainant obtained combine hull policy/package policy for Rs. 52,45,00,000.00. An accident took place in which the crane boom got twisted and the bridge line broke as a result. Boom fell on the top of the Schlumberger unit. A claim was preferred where the cost of repairs/replacement was estimated to exceed 15 million rupees. A surveyor was deputed. In *Jagson International Ltd. v New India Assurance Co. Ltd.* [(2005) 3 CPJ 12 NC], the complainant company submitted a bill of Rs. 80 lakh which contained air freight charges amounting to Rs. 17 Lakh as the spare parts were required to be brought by air because it was urgently required. Here was no condition in the policy that air freight would be excluded. The Insurance company deducted 20 Lakh by applying 30% depreciation.

The stand of the Insurance Company was that there was no damage to the hull of the drilling barge covered by the policy, but the damage was only to the crane which is not the hull of the drilling barge but only equipment. The commission observed that it was difficult to hold that the equipment which was part of the hull could not be said to be part of the hull. The commission further observed.

“It has been rightly pointed out that the property insured is jack up drilling Rig Mat drill which consists of hull and machinery of the drilling barge, hull and crane cannot be treated as separate items crane is an integral part of hull and not equipment. There is nothing on record to hold that crane is not part of the hull of

the drilling barge In an any case, if the term of policy is vague, benefit certainly goes to the insured and not to the insurer. "

(ii) Cargo Insurance : Cargo means the goods carried on a ship thus as the terms suggests, cargo insurance is taken in respect of the cargo carried by the ship from one place to another. The cargo insurance policy may be 'time policy' or 'voyage policy'. When the policy is for a definite period, it is known as 'time policy' If it is for a particular voyage it is known as 'voyage policy' and there is no time limit. There may be mixed time and voyage policies.

(iii) Freight Insurance – The freight is the rent or amount paid for the transportation of cargo. Generally , the ship-owner and the person receiving the freight is one person. The freight could be paid in advance or at the destination. Under the marine law the freight could be paid only if the cargo reaches safely at the destination port. Therefore, if the freight has been paid in advance, it poses no difficulty. But the problem sometime arises when the freight is payable at the destination and the cargo may got lost during the voyage and could not reach destination. In that event the freight is lost. In order to overcome such contingency, the freight insurance is taken. However, if the freight has been paid in advance it cannot be recovered in case the cargo is lost during the voyage [Section 14 of the Marine Insurance Act, 1963]

Kinds of Marine Policies:

There are various types of policies as defined in the different sections of the Marine Insurance Act, 1963 namely, Time policy (Section 27), voyage policy (Section 27), mixed time and voyage policy, valued policy (Section 29), un-valued policy (Section 30), floating policy (Section 31), Blanket policy, Fleet policy, Named policy, currency Policy and PPT Policy.

A blanket policy is a policy where the maximum amount of protection is estimated for which the premium is payable in advance which is adjustable at the end of the term of the policy. A fleet policy, as the terms itself suggests, is a policy which covers a number of vessels under a single policy. The advantage in the type of the policy is that if each vessel is insured separately, the amount of premium may be much more further, if some vessels are in such a condition that those cannot be insured because of their condition, those are also covered in a fleet policy In named

policies the name of the ship and value of the cargo are mentioned by name. The policy issued in foreign currency is known as currency policy.

7.4. Warranties in Marine Insurance:

7.4.1 Nature of warranty [Section 35]:

(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranties which the assured undertakes that some particular things shall or shall not be done, or that some condition shall be fulfilled, or whereby the affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of breach of warranty, but without prejudice to any liability insured by him before that date.

7.4.2 When breach of warranty excused [Section 36]:

(1) Noncompliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances, of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defense that the breach has been remedied, and the warranty complied with, before loss.

(3) An express warranty does not exclude implied warranty unless it be inconsistent therewith.

7.4.3 Warranty of Neutrality [Section 38]:

(1) Where insurable property whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "Neutral", there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to

establish her neutrality, and that she shall not falsify or suppress her papers, or use stimulated papers. If any loss occurs through breach of any condition, the insurer may avoid the contract.

No implied warranty of Nationality [Section 39] – There is no implied warranty as to the nationality of a ship, or that her nationality shall not change during the risk.

7.4.4 Warranty of Sea Worthiness of ship – In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be sea worthy for the purpose of the particular adventure insured. [Section 41(1)]

Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonable fit to encounter the ordinary perils of the port. [Section 41 (2)]

Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage. [Section 41(3)]

A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured. [Section 41 (4)]

In a time policy there is no implied warranty that the ship shall be sea-worthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in on unseaworthy stage, the insurer is not liable for any loss attributable to un sea worthiness. [Section 41(5)]

7.4.5 No implied warranty that goods are seaworthy [Section 42]:

(1) In a policy on goods other movables there is no implied warranty that the goods or movables are sea-worthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only sea-worthy as a ship but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

Warranty of legality – There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can contract the matter, the adventure shall be carried out in a lawful manner. [Section 43]

7.4.6. Implied condition as to commencement of risk [section 44] :

(1) Where the subject matter is insured by a voyage – policy “at and from” or “from” a particular place, it is not necessary that the ship should be at that place when the contract is concluded but there is an implied condition that the adventure shall be commenced in reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negative by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

(a) Alternation of part of departure – Where the place of departure is specified by the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. [Section 45]

(b) Sailing for different destination – Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. [Section 46]

(c) Change of voyage [Section 47]:

(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of the voyage, the insurer is discharged from liability as from the time of change, that it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

(d) Deviation [Section 48]:

(1) Where a ship, without lawful excuse deviates from the voyage contemplated by the policy, the insured is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy.

(a) Where the course of voyage is specially designated by the policy, and that course is departed from; or

(b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial there must be a deviation in fact to discharge the insurer from his liability under the contract.

(e) Excuse for deviation or delay [Section 51]

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused –

- (a) Where authorized by any special term in the policy; or
- (b) Where caused by circumstances beyond the contract of master and his employer; or
- (c) Where reasonably necessary in order to comply with an express or implied warranty; or
- (d) Where reasonably necessary for the safety of the ship or the subject matter insured; or
- (e) For the purpose of saving human life or aiding a ship in distress where human life may be in danger; or
- (f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) Where caused by the barratrous conduct of the master or crew; if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate the ship must resume her course, and prosecute her voyage with reasonable dispatch. As observed in *Overseas Commodities Ltd. v Style* [(1958) 1 Lloyd's Rep 546], "It has long been well established law that on express warranty requires a strict and literal performance" As stated in *Arnold on Marine Insurance*, "every policy, in fact, in which an express warranty is inserted is a conditional contract to be binding if the warranty be literally complied with, but not otherwise."

In *New India Assurance Co. Ltd. v Syed Mohammed* [AIR 1991 Ker 368 DB], a fishing boat was missing in heavy rains. The warranty clause in the policy had provided that when boat is not in use, the vessel should be safely anchored, moored or secured with proper watch and ward. There was no watch and ward at the crucial time on the vessel. Thus, it was held that the warranty clause was not complied with, and therefore, the owner of the boat was not entitled to any compensation from the insurance company. It was, however, contended that

someone was sleeping in a shed on the seashore but it was not regarded as sufficient compliance with the warranty clause in the policy.

7.5. Assignment of Policy:

7.5.1 When and how policy is assignable [Section 52]

(1) A marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment, It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to make any defense arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was affected.

(3) A marine policy may be assigned by endorsement there on or in other customary manner.

7.5.2 Assured who has no interest cannot assign [Section 53]

Where the assured has parted with or lost his interest in the subject matter insured, and has not, before at the time of so doing expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative; Provided that nothing in this section shall affect the assignment of a policy after loss.

7.6. Included and excluded losses [Section 55]:

(1) Subject to the provisions of this act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is liable for any loss which is not proximately caused by a peril insured against.

(2) In Particular –

- (a) The Insurer is not liable for any loss attributable to the willful misconduct of the assured, but unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
- (b) Unless the policy otherwise provides the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;
- (c) Unless the policy otherwise provides the insurer on ship or goods is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject – matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

7.7. Partial and Total Loss [Section 56]

- (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.
- (2) A total loss may be either an actual total loss, or a constructive total loss.
- (3) Unless a different intention appears from the terms of the policy, an insurance against total loss, include a constructive, as well as an actual, total loss.
- (4) Where the assured brings a suit for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.
- (5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss if any is partial and not total.

7.8. Actual Total Loss [Section 57] :

- (1) Where the subject matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.
- (2) In the case of an actual total loss no notice of abandonment need be given.

(a) Constructive Total Loss defined [Section 60]

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss -

(I) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and

(a) It is unlikely that he can recover the ship or goods, as the case may be, or

(b) The cost of recovering the ship or goods, as the case may be would exceed their value when recovered; or

(II) In Case of damage to ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired, or

(III) In case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

In *Akooji Jadwat (P) Ltd. v Oriental Fire & General Insurance Co. Ltd.* [AIR 1972, Cal 228], Pakistan waged war on India and the ship belonging to the plaintiff, which was covered by valued policy of Rs. 10 lakh for peril of capture, seizure, arrest, restraint and detainment, etc. was captured. It was held that where the ship insured against the perils of capture, seizure, detention in consequence of hostility is captured by an enemy nation and condemned by the Prize court of that nation, the insurer cannot avoid the responsibility to pay the agreed sum on the ground that there was no formal declaration of war by the capturing state or on the ground that the war and hence the condemnation, were illegal when the insurers have not protected themselves from any consequence of

an unlawful or an under cleared or an informal war and have not taken any of the pleas relating to the character of the war.

The court further observed;

“Capture of enemy merchant ships during a state of war whether at high seas or within the territorial waters of the capturing state is always a lawful prize and they are liable to be condemned by the Prize Court. Where the prize is brought within the territory of a capturing state, the Prize Court of that state immediately vested with the jurisdiction over the prize Pakistan created a state of war and then captured her during this state of war and she was captured within the territorial waters of Pakistan. She was taken to West Pakistan and prize court at Dacca had ample jurisdiction to condemn her and it is wholly immaterial to decide whether Pakistan waged a formal or an informal war.”

The court while dealing with what the proximate cause of loss is, discussed various case law and observed:

“The loss which is produced by direct, efficient and predominating cause is the proximate cause of the loss in the law of marine Insurance. Mere intrusion of a new cause is of no moment so long it does not wither away the efficiency of the direct, efficient and predominating cause. Merely because a cause has intervened does not make it a *nova cause superveniens*. The intervening cause must of its own force destroy the efficacy of the existing cause and it must become an independent and a direct, efficient and predominating cause of the loss before it can be said that the loss is proximate caused by *nova cause superveniens*.” The court also explained as to what is included in “actual loss” it observed;

“Capture followed by condemnation by the sentence of Prize Court of competent jurisdiction extinguishes the title of the owner in the res. It is judgment in rem.” Seizure and capture followed by condemnation stand to the same footing and in both the cases. The title in the *res* vested in the capturing state. Where the *res* is restated to its former owner after condemnation it is a gift to him and a new title flows from the date of the grant. This title in the *res* is also gone by a seizure followed by a hostile confiscation by an enemy state in the law laid down by our supreme court in T.R. Bhavani Shankar Joshi v Somasundara moopnar [AIR 1965 SC at p . 319]”.

(b) Effect of Constructive Total Loss [Section 61] – Where there is a constructive total loss the assured may either treat the loss as a partial loss, or

abandon the subject – matter insured to the insurer and treat the loss as if it were an actual total loss.

(c) Notice of abandonment [section 62]:

(1) Subject to the provisions of this section where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make enquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where at the time when the assured receives information of loss, there would be no possibility of benefit of the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him.

(d) Effect of abandonment [Section 63]:

(1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the

casualty causing the loss, loss of the expenses of earning it incurred after the casualty; and where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty coming the loss.

(e) Insurance for total and constructive total loss only: Whether partial Loss payable?

In *Kalyanji Jethalad Shah v National Insurance Co. Ltd.* [(2001) 1 CPR 104 NC]. A ship was purchased by the complainant firm for breaking. A marine hull policy was issued by the opposite party Insurance Company for journey of the ship from Bombay Harbour to Powder Works Bunder Darukhana Ship Breaking yard by towing. The cover note mentioned the interest insured as under.

"Interest insured Hull and Machinery Trading warranties Total Loss, Constructive Total Loss, Salvage charges, 4/4th RDC with an excess of ½% of the sum insured for higher all claims other than TL/CTL. Subject to warrant that adequate crew is maintained on board all the time."

While at ship breaking yard, the laborers employed by the ship breakers had left the ship for lunch at the time the fire broke out causing partial loss. Thus, there was no one on board at that time. Had the crew been on board they could have doused the fire when it broke out. Someone gave a ring to the complainant that the ship had caught fire and then the complainant informed the fire brigade. However, the claim was repudiated by the insurer on several counts. The contention of the complainant was that the risk covered under the policy included "any risk arising due to fire" The Insurance Company strongly denied all allegation and alleged that the words "any risk arising due to fire" was not in the original policy and that was the result of the interpretations made by the insured. The view of the commission was that this contention of the insurer was prima facie correct. The questionnaire filled by the complainant at the time of insurance showed that the insurance was for total loss and constructive total loss, and the loss caused by fire had been incorporated therein by the words "including fire" Thus, what was insured was total loss and constructive total loss that may be due to various causes including fire. The commission also found that the absence of crew members on board the ship was in clear violation of the insurance contract. The question before the commission was whether the complainant was entitled to damages under these circumstances.

The Commission considered various definitions in the Marine Insurance Act, namely, total loss and constructive total loss [Sections 56, 57 and 61], and the effect of constructive total loss [section 61] and referred to an English case, namely, ***Price v Maritime Insurance Co. Ltd. [(1901) 2 KB 412]***. In this case a ship along with its cargo was insured for a voyage to Southampton. After covering some distance, it became a constructive total loss. The ship was covered for total loss but only a partial loss took place. It was held that since the loss was only partial while the insurance was for total loss, the action by the insured must fail. Repelling the argument that it would be very inconvenient that persons covering themselves by insurance should not be entitled to recover because the entire ship and cargo was not lost, Stirling L.J. observed, "The answer to that suggestion seems to be that they could insure, not against total loss only, but against partial loss also" Thus, the commission observed that in the case in hand also the insured could have covered him not only for total loss but also for partial loss which they did not. The commission also observed that according to the affidavit of the Insurance Company the partial loss policies are not issued as a matter of practice for this type of voyages because outbreak of fire in the ship breaking yard is very frequent and, as such, usually such risks are not covered.

In this connection the commission also referred to *continental Grain co. Inc. v. Twitchell* (Vol. 78 Lloyd's LR 251) where the material words in the policy were as under:

"Anticipated earnings and/or interest, warranted free of all average. Only against total and/or constructive total loss of vessel as per clause attached hereto."

After setting out the material words, Lord Goddard observed:

"As I read that policy, it means this: 'We, the underwriters, are willing to insure the earnings which you, the assured, anticipate you will make in respect of this ship, but only against the loss of those earnings through a total or constructive total loss of the vessel; and as it is warranted free of all average, we will pay you only if you sustain a total and not a partial loss of these earnings.'"

The Commission then referred to another English case, namely, *Western Assurance Co. of Toronto v. Poole [(1903) 1 KBB 376]* where the owner of the ship insured her with the plaintiffs for a voyage from Santa Rosalta to Portland (Oregon) By the terms of the policy, which was against partial as well as total loss, the sound value of the ship was agreed at \$19,000? By a policy of reinsurance the

plaintiffs reinsured themselves with the defendant (amongst other underwriters) 'against the risk of total and/or constructive total loss only', therein to be 'valued as per original policy' One of the questions before the court was whether the owners of the ship could recover for partial loss under the policy on reinsurance. It observed:

"The first question is whether there has been any constructive total loss within the meaning of the contract sued on. It is quite a common practice for an insurer against total and partial loss to reimburse the risk of total loss while keeping himself uncovered as to partial loss. Of course, he does it at a premium much lower than which he himself receives for the double risk, and in the event of the insured vessel sustaining damage by the perils insured against it is very much to his interest that the damage should be sufficiently serious to constitute a constructive total loss, for in that event only can he get his loss recouped by his reinsurer, and secure his profit, namely, the difference between the two premiums. So, in the present case, the plaintiffs are anxious to make that which the ship owners treated as a partial loss under the original policy, a total loss under the reinsurance policy."

Ultimately, it was held in that case that the risk covered by the policy of reinsurance did not extend to partial loss. It was found that it was not the case of constructive or actual total loss.

On the basis of the various definitions and the observations in the above referred cases, the commission observed that the principle is that if a policy of insurance is taken for total loss, or constructive total loss, the insurance company will not be liable to pay the partial loss. The partial loss has to be separately insured. The commission also referred to Section [56 (4)] of the Marine Insurance Act and observed that this section enables the court to award compensation even for the partial loss when a claim is brought for total loss, unless there are words in the insurance policy ruling out that possibility. The commission, in this connection, referred to O' May on Marine Insurance, 1993 Edn. This reads as under:

"Similarly, 'where the assured brings an action for a total loss and the evidence proved only a partial loss', Section 56(4) of Marine Insurance Act, 1906 states that the 'assured may recover for a partial loss' If, of course, the policy 'otherwise provides' as, for instance, the cover is against 'total loss only', there would be no alternative claim for partial loss."

In the instant case, the commission observed, there was no insurance against partial loss and what had taken place was partial loss. The claim was also for partial loss only. Thus, the complaint by the complainant company was dismissed.

7.9. Partial Loss (Including salvage and General Average and Particular charges):

(a) Particular Average Loss [Section 64]:

(1) A particular average loss is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular charges.

(b) Extent of Liability of Insurer for Loss [Section 67]:

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of valued policy or to the insurable value in the case of an unvalued policy.

(c) Liabilities to third parties [Section 74]:

Where the assured has affected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, in the amount paid or payable by him to such third party in respect of such liability.

(d) Suing and Laboring clause [Section 78]:

(1) Where the policy contains a suing and laboring clause, the engagement there by entered in to is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly

incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charge, as defined by this Act, are not recoverable under the suing and laboring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and laboring clause.

(4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

7.10. Right of Insurer on Payment:

(a) Right of Subrogation [Section 79]:

(1) Where the insurer pays for total loss, either of the whole, or in case of goods of any apportionable part, of the subject matter insured, he thereupon becomes entailed to take over the interest of the assured in whatever may remain of the subject matter so paid for, and he is there by subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject matter insured, or such part of it may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

(3) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject matter insured, or such part of it may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this act, by such payment for loss.

(b) Return of Premium

(I) Enforcement of return [82] – Where the premium, or a proportionate part thereof, is, by this Act, declared to be returnable –

(a) If already paid, it may be recovered by the assured from the insurer; and

(b) If unpaid it may be retained by the assured or his agent.

(II) Return by agreement [Section 83]

Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or as the case may be, the proportionate part thereof, on the happening of a certain event, and that even happens, the premium or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

(III) Return for failure of consideration [Section 84]

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured;

(2) Where the consideration for the payment of the premium is apportion- able and there is a total failure of any apportion able part of the consideration, a proportionate part of the premium, is under the like conditions thereupon returnable to the assured;

(3) In particular

(a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided there has been no fraud or illegality on the part of the assured, but if the risk is not apportion able, and has once attached, the premium is not returnable.

(b) Where the subject matter insured, or part thereof, has never been imperiled the premium, or as the case may be, apportion able part thereof, is returnable.

Provided that where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable; unless, at such time, the insurer knows of the safe arrival.

(c) Where the assured has no insurable interest throughout the currency of the risk the premium is returnable, provided that this rule does not apply to a policy affected by way of wagering.

(d) Where the assured has a defensible interest which is terminated during the currency of the risk, the premium is not returnable.

(e) Where the assured has over insured under an unvalued policy a proportionate part of the premium is returnable;

(f) Subject to the foregoing provisions, where the assured has over insured by double – insurance, a proportionate, part of the several premiums is returnable;

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

(c) Rules of Tariff Advisory Committee not binding unless insured informed:

A good case for refund of the premium came up before the Uttaranchal State commission where the complainant had obtained a Marine Insurance (Special Declaration) Policy (Cargo,) which was renewal of the earlier policy, covering transit all risks for the consignments of finished pulp and paper through rail or road from the factory/go down to anywhere in India. The Insurance Company had agreed to renew the policy for a further period of one year on same terms and conditions for which a heavy premium of more than 18 lakh of rupees was paid. The sum assured was Rs. 375 crores. Monthly declarations required under the policy were submitted by the insured in time. During the period of policy, the complainant requested the Insurance company to adjust the premium based on the monthly declarations and to refund the excess premium towards unutilized amount of the sum insured of Rs. 12,834.95 lakh. This amount was calculated by the

complainant as per the terms and conditions of the policy. Despite several reminders, the amount was not refunded. After a lengthy correspondence for over a year the Insurance Company, desired to refund a sum of Rs. 34,415 towards the unutilized premium for which a cheque was issued but the complainant refused to accept this amount and filed a complaint.

The contention of the Insurance company was that there is a Tariff Advisory committee where tariff and rules are provided which have statutory force and binding on all concerned. It was further contended that in Marine Special Declaration Policy, if the claim ratio for three years excluding immediately preceding year or for any shorter period for which experience is available is more than 70%, the premium rate has to be appropriately loaded in such a way that after the loading, the loss ratio does not exceed 70% at the loaded rate. The ratio had exceeded more than 100% . Thus it was contended that in accordance with the terms and conditions and rules laid down by the Tariff advisory committee the premium was loaded in such a way that the ratio arrived at was 70% Hence, the balance unutilized premium was calculated at Rs. 34,415 which was sent to the complainant.

The question before the commission was whether the tariff and rules were binding on the complainant and whether those had any statutory force. The commission then discussed the terms and conditions of the policy and the law relating to them and concluded the said tariff and rules of the Tariff Advisory committee were not mentioned in the policy. The policy was the backbone of the contract between the parties and the parties could not go beyond it. Any terms and conditions not contained in the policy could not be attached afterwards to defeat the claim of the complainant. It is settled principle of law. The commission observed that if any term or condition is not incorporated in the policy and is not conveyed to the insured that is not binding on the insured.

In reply to the contention of the insurer that the rules of Tariff Advisory committee have statutory force, the commission observed that the rules were neither notified nor published in the official Gazette nor was there any notification for the information of the general public. The commission then referred to a decision of

the National commission, namely, *Ramaseshasaya Raw and Boiled Rice mill v United India Insurance Co. Ltd.* [(1993) 1 CPJ 56 NC]. Where also tariff rules were in dispute National Commission had observed in that case that confidential tariff rules of the company is not binding unless those have been published in some Gazette. The National Commission, while making the aforesaid observation, quoted a decision of the supreme court, namely, *Harla v. State of Rajasthan* [(AIR 1951) SC 467] where the court had observed:

“The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even the accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of Resolution without anything more is abhorrent to civilized man. It shocks his conscience. In the absence, therefore, of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential”

The state commission also referred to para 8 of the decision of the National commission (*supra*) where it was observed:

“The so-called tariff rules are not statutory rules because rules framed under section 114 of the Insurance Act have to be mandatorily published in the Gazette of India which obviously had not been done inasmuch as the rules are said to be confidential rules or instructions which have not been disclosed to the complainant at any stage and whose terms have not been disclosed to the complainant at any stage and whose terms have not been incorporated in the insurance policies or the additional risk cover notes cannot in law bind the policyholder. ”

The State commission also referred to *Mantora Oil (p) Ltd. v Oriental Insurance co. Ltd.* [(1991) 1 CPJ 323 NC]. Where also there was a similar policy with a condition that if the value of the quantity of goods transferred falls short of the insured amount, the Insurance company was to refund the proportionate amount of premium. The amount of premium was calculated but the Insurance Company took a stand that it was by mistake less than what was required to be paid. The national

commission observed that this unilateral mistake on the part of the Insurance Company was not binding on the complainant. The insured was not informed about this alleged mistake during the entire period the policy was subsisting.

The case of Lallacherra Tea co. Ltd. v United India Insurance co. Ltd. also had similar dispute where the West Bengal State commission held:

“The calculation of alleged arrear of premium as per recommendation of the Tariff advisory committee on the basis of 30% loading over and actual production and the tariff rate fixed in this regard which is not incorporated in the original policy is illegal and not tenable.”

However, the Insurance Company placed reliance on a decision of the Karnataka High Court, where it was held that the rates fixed by the advisory committee will become statutory and binding on all the insurers (and not to the insured). Thus in view of all the aforesaid discussion, the complaint was allowed and the Insurance Company was ordered to refund the unutilized portion of the premium.

(d) Refund of premium by mistake.

Where the refund of the premium was made by the Insurance Company by mistake, it is entitled to that amount from the insurer. In *K.S.K. Fisheries (P) Ltd. v. United India Insurance Co. Ltd.* the insured fishing vessel was under repairs in the dry dock for a certain period. The complainant requested for the refund of premium for the layup period which was allowed by the Insurance Company. Later on the Insurance Company discovered that the amount was refunded by mistake. The policy was under CRO condition which did not provide for return of lay-off of the vessel. Therefore, the Insurance Company was held entitled to the refund of the amount that was paid by mistake.

7.11. Summary:

The Marine Insurance Act, 1963 is exclusively talking about marine insurance. The important principles of contract of insurance are discussed at length in this legislation. The partial loss, actual loss, deviation of voyage and important relevant provisions are the unique feature of this Act. The understanding and application of various important provisions in marine insurance give strength to the students.

7.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub. All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co. Nagpr
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Pub., Jaipur

7.13. Check Your Progress:

A. Which of the following statement are true or false?

1. Marine insurance is defined under Section 3 of the Marine Insurance Act, 1963.

2. Every contract of marine insurance by way of wagering is void.
3. Hull means body or frame of the ship or vessel and its machinery.
4. No implied warranty that goods are seaworthy.
5. Deviation or delay in prosecuting the voyage contemplated by the policy is not excused.

B. Fill in the Blanks:

1. Marine adventure has been defined in of the Marine Insurance Act, 1963.
2. Disclosure by agent effecting insurer is defined..... of the Act, 1963.
3. Warranty of seaworthiness of ship is defined under.....
4. A marine policy may be transferred by
5. Right of subrogation is defined under.....

7.14. Answer to Check Your Progress:

A. 1. True/ 2. True/ 3. True/ 4. True/ 5. False

B. 1. Section 2(d)/ 2. Section 21/ 3. Section 41/ 4. Assignment/ 5. Section 79

7.15. Terminal Questions:

Q.1. What is the definition of Marine Insurance?

Q.2. Discuss in detail the classification of Marine Insurance.

Q.3. Discuss in detail the importance of Warranties.

Q.4. what is Assignment?

Q.5. what is importance of seaworthiness and deviation in Marine Insurance?

Unit-8

Fire Insurance

Objective:

After going through this unit you should be able to:

- * To understand the importance of Fire Insurance
- * To understand the general and specific principles of fire insurance
- * To understand the application under specific conditions the eligibility of the policy-holder

Structure:

- 8.1. Introduction
- 8.2. Meaning, Nature, Significance, Principles, Scope
 - 8.2.1 Meaning of Fire Insurance
 - 8.2.2 Characteristics or Nature of Fire Insurance
 - 8.2.3 Significance of Fire Insurance
 - 8.2.4. Important Principles of Fire Insurance
 - 8.2.5 Scope of Fire Insurance
- 8.3. Procedure of Effecting Fire Insurance
- 8.4. Hazards in Fire Insurance
- 8.5. Perils insured and Proximate Cause
- 8.6. Importance of Interpretation of 'reasonable care'
- 8.7. Fire whether manipulated and its effect
- 8.8. Burden on Insurer to prove fire was intentional
- 8.9. Fire in Military Operation
- 8.10. Fire during Riot
- 8.11. Summary
- 8.12. Some Useful Books
- 8.13. Check Your Progress
- 8.14. Answers to check your progress
- 8.15. Terminal Questions

8.1. Introduction:

The history of Fire insurance began in XVI century. According to them it started in Germany where the fire victims were indemnified against a small amount of premium. From there it spread in other countries. It is said that this type of insurance gathered momentum after the Great Fire of London in the year 1666. Initially, such type of insurance covered the loss due to fire as commonly understood. Later, the area and scope widened and it embraced perils like loss due to explosion, loss caused by spontaneous, loss due to fire caused by chemical reactions, etc.

The word 'fire' has not been defined in the Insurance Act, 1938. The definition of Fire Insurance business and General Insurance business was initially missing from the Act. These terms were inserted by Section 3 of Act 47 of 1950 with effect from 1-6-1950 by introducing Sections 2(6-A) and 2(6-B) which runs as under:

"2 (6-A) 'fire insurance business' means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies

2 (6-B) 'general insurance business' means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them".

8.2. Meaning, Characteristics or Nature, Significance, Principles and Scope of Fire Insurance:

8.2.1. Meaning of Fire Insurance:

Fire insurance is a contract to indemnify, to the insured for destruction of or damage to property caused by fire. The insurer undertakes to indemnify the insured against loss due to fire caused to the property insured against, not in excess of the maximum amount stated in the policy. A contract of fire insurance is essentially a contract of indemnity, and not against accident, but against loss caused by fire. For example, if a person has insured his house of Rs. 1.00 lakh against loss by fire, the insurer is not liable to pay the sum, unless the

house is destroyed by fire, but actual loss subject to the maximum limit of Rs. 1.00 lakh.

Meaning of Fire in contract of Insurance:

The word fire means “loss by fire” and in literal sense means a fire which has broken bounds. Therefore, fire which is used for ordinary domestic purposes or even for manufacturing is not fire. ‘Fire’ in fire insurance must have the following two features:

1. Production of Ignition, light and heat.
2. Fire by accident.

1. Production of Ignition light and heat – According to Justice Boyles (in Everett V/s London Ass. Co. 1895) “Fire means the production of light and heat by combustion and unless there is actual ignition, there is no fire within the meaning of the term in ordinary policy.”

LOSS CAUSED BY FIRE:-

Heating unaccompanied by ignition is not fire. “Loss or damage” occasioned by fire means loss or damage either by ignition of the articles consumed or by damage either by ignition of the articles caused or by ignition of that part of the premises, where the article is. In one case there is loss, in the other case, a damage occasioned by fire. Thus, it can be stated that no claim possible without flame.

In the following cases, the loss by fire is not considered:

- (1) Loss of goods by excessive heat due to the closure of doors and ventilations.
- (2) The damage of goods due to heavy humidity.
- (3) Changes of particles (Sugar) in liquidity form due to heavy sun shines.
- (4) Evaporation of items by chemical reactions or heat.
- (5) Damage of articles due to heavy temperature.

- (6) Damage by explosives provided the explosion causes no actual ignition.
- (7) Damage from lightning provided it does not cause actual ignition.
- (8) Loss or damage by earth quake, riot, military power or civil commotion.
- (9) Damage to uses of articles as a result of smoke without flame.
- (10) The loss or damage caused by electricity.

All these situations do not fall under the definition of 'fire' and therefore to the loss due to such things do not be covered by the fire insurance policy.

The losses by the following instances or losses subsidiary to fire are as follows:

- (1) Damage which occurs as a result or smoke or of putting out the fire would be covered by the fire risks.
- (2) Any loss resulting from apparently necessary and bona fide efforts to put out a fire, whether it be by spoiling goods by water or throwing articles of furniture out of window, are covered by the fire risks.
- (3) Even by damages to a neighboring house by explosion done for the purpose of arresting fire, would be covered by the fire risks.
- (4) Every loss directly or if not directly at least consequently resulting from the fire is within the policy (In Stanley V/s Western Ins. Co., 1968).
- (5) Loss of theft during a fire is covered as a fire risk (In Stanley V/s Bailey, 1831).
- (6) Even loss by fire caused by the insured's negligence is covered by the policy (IN Harris V/s Poland, 1941).

(7) Any loss occurred while putting out the fire.

2. FIRE BY ACCIDENT:-

In the case of fire insurance, the occurrence of fire is accidental, then only it is covered by the policy. In case the fire is the deliberate act of the insured, the insurer is not liable to compensate. The fire which is used for ordinary domestic purposes or even for manufacturing is not fire as long as it is confined within the usual or proper limits. Thus, fire by accident means the production of light and heat by combustion and with actual ignition and heating unaccompanied by ignition is not fire.

8.2.2 Characteristics or Nature of Fire Insurance:

1. It is a means of security against risk of fire on any material or property.
2. It is a contract of indemnity.
3. The insurer undertakes to indemnify the insured against actual loss subject to the maximum limit of sum insured.
4. It is a contract of utmost good faith, the insurer and the insured must disclose all material facts relating to the subject matter of insurance.
5. A fire insurance policy is usually issued for one year only with the option to the parties to renew it for a further period on payment of stipulated premium.
6. If the property is insured with more than one insurer and on loss by fire, all the insurers are called upon to contribute towards the claim.
7. The insurer is not liable for payment of any claim if the fire is caused deliberately.
8. In British Law, the fire insurance policies can be assigned only with prior permission of the insurer, but under Indian Law the consent of the insurer is not necessary to make valid assignment of policy, only a notice of information is sufficient.

9. On occurrence of fire, a notice of fire should be given to the insurer so that the insurer may take prompt steps forth with to safeguard his interests, in dealing with salvage and also judge the cause and nature of fire, and the extent of the loss.

10. It is the duty of the insured to act as a man of ordinary prudence to take necessary steps to save the property from loss of fire, as in the absence of any insurance against the property.

8.2.3. SIGNIFICANCE OF FIRE INSURANCE

The industry, trade and commercial articles have been developing and diversifying at faster rate in India. Along with the growth of industrial and commercial articles the infrastructural fields like transport, communication, finance, advertising, stock marketing etc., have also been developing continuously so as to cope with the pace of economic development. The importance of foreign trade also has been very much for a developing country like India. All these developments in various fields brought in much risks and uncertainties in business activities. Insurance is the only fields that provide security, against business risks. The role of the fire insurance has been increasing day-by-day as a means against destruction or damage of business property caused by fire.

The significance of fire insurance can be discussed under the following points:

(1) As a source for minimizing losses: Fire can destroy property in goods and fixed assets of crores of rupees or can create damages to the business property. Fire Insurance indemnifies losses or damages due to fire and resources the mental worries of businessmen.

(2) Decreases in probabilities of fire losses: The increasing uses of energy like petrol, electricity, gas and other such items have increased the probability of losses or damages to goods and property. In order to minimize this calamity, various type of fire extinguishing devices has been discovered

throughout the world. Moreover, the fire insurance is another device to indemnify the losses thus removes mental worries by extending financial support.

(3) Increase in production of fire proof materials: Fire Insurance cannot prevent occurrence of fire, but can reduce the losses. Today various devices are produced in the country like fire extinguisher. Fire brigades are set up by the government and local bodies in every city and town to extinguish fire to prevent loss of property.

(4) Decrease in social loss of fire: Social awareness has been created in the country to put out fire and to reduce the effect of fire. The social organizations provide training to the people in the use of the fire extinguishing devices and caution them in the use of such items which causes or produces fire.

(5) Asset valuation: Assets are valued for obtaining a fire insurance policy. It requires the insured to be more cautious in protecting his property or goods.

(6) Loss preventing efforts and advice by the insurer: An insurer not only indemnifies against fire losses, but also advises the insured to reduce the incidence of fire. Fire Insurance companies establish, 'salvage corps', to extinguish fire so that the extent of loss can be minimized.

(7) Helpful in business progress: Due to the facilities provide by the fire insurance companies, the business enterprises undertake large scale production and invests in business and marketing activities without any botheration. This leads to continuous progress in industrial and commercial activities, lead to economic growth.

(8) Beneficial for new industries: The new industrial units usually face complex problems of production, finance, competition and sales etc. In such a situation, they cannot afford the losses/damages due to fire. The fire insurance relieves such entrepreneurs from worries by indemnifying the loss/damages, if any, from the occurrence fire.

(9) Credit facility: Where the assets are secured by fire insurance, it becomes easier for such enterprises to get credit from banks and other financial institutions. This will increase the credit worthiness of the enterprise.

(10) Distribution of risks: Fire insurance is an effective device to distribute the risks in a group, enabling the individual or the institution to maintain its efficiency.

8.2.4. IMPORTANT PRINCIPLES OF FIRE INSURANCE:-

(1) INSURABLE INTEREST:

In the case of fire insurance, the insured must have insurable interest in the subject matter both at the time of affecting the policy and at the time of loss. In the case of goods, insurable interest arises on account of ownership, possession and control. Ownership may be absolute or limited. It may be legal or equitable. In the case of immovable property such as insurance of buildings may be affected by any one interested in them. The owner can always insure. The principle of insurable interest requires that the insured must have an actual interest in the subject matter of insurance. The insured must be "so situated with regard to the things insured that he would have been benefited by its existence, loss from its destruction." (In *Lucena V/s Crawford*, 1806). Any person may be said to have an interest in the subject matter of insurance that may be injured by the risks to which the subject matter is exposed.

(2) UTMOST GOOD FAITH:

A contract of insurance is a contract based on utmost good faith and if the utmost good faith is not observed by either party, the contract may be avoided by the other. Since insurance transfers risks from one party to another, it is essential that there must be the utmost good faith and frankness between the insured and the insurer. The whole truth must be disclosed about the subject matter of insurance and all circumstances surrounding it, in order that underwriters may know the extent of his risk and how much he must charge for the insurance. The willful or innocent withholding of any relevant information is a most serious matter, and the insurer can declare the contract void on discovering the truth. This

obligation to make full and true disclosure applies to all type of insurance such as life insurance, marine, fire etc. In the case of fire insurance the insured should act in good faith in all the matters such as presenting the claim for payment and similarly act as a man of ordinary prudence when there is a fire by taking necessary steps to put out the fire so that the extent of loss could be minimized.

(3) PRINCIPLE OF INDEMNITY:-

A contract of fire insurance is a contract of indemnity. This means that the assured in the case of loss against which the policy has been made shall be fully indemnified but subject to a limit of the policy. The insurer undertakes to indemnify the insured the actual losses by the happening of the event upon which the insurer's liability is to arise, and in no case is the insured entitled to make a profit of his loss.

In addition to the liability of actual loss, the insurer also undertakes to bear the consequential loss, for the loss of profits which the insured sustains through interruption or cessation of his business as a result of fire.

8.1.5 SCOPE OF FIRE INSURANCE:-

The scope of fire insurance is much wider. This can be understood from Section 2 of Indian Insurance Act, 1938. According to this provision, the scope of fire insurance involves the following types of risks.

1. The risks directly involved by fire.
2. The risks indirectly involved (that have been traditionally included within the fire insurance policy).

For the convenience of study, the scope of fire insurance can be classified on the following basis:

- i. Ordinary Scope
- ii. Special Scope, and
- iii. Comprehensive Scope

8.3. Procedure of Effecting Fire Insurance:

The steps to be followed in connection with affecting fire insurance are as under:

1. **Selection of insurer:** The selection of the insurance company is the first step. The insured is required to select a suitable company for this purpose amongst a large number of companies engaged in this business. After the nationalization of general insurance business in India, the first insurance business is undertaken by four subsidiary companies of the General Insurance Corporation (GIC) of India, viz.: (1) The National Insurance Co. Ltd., Kolkata; (2) New India Assurance Co. Ltd. (3) Oriental Fire and General Insurance Co. Ltd. (4) United India Fire and General Insurance Co. Ltd. Chennai. These companies have branches all over India.

The proposer can select any of these companies according to his convenience, rationality, goodwill of the company, its financial soundness, premium rates, policies and services provided etc.

2. **Presentation of proposal in the prescribed form:** After the selection of the insurance company a proposal form is obtained and furnished with the insurer or his agent. The particulars about the name, address, occupation of the proposer, value and nature of the subject matter of insurance, type of policy required, amount of sum insured etc. are to be furnished with care and utmost good-faith. All the facts about the subject matter should be clearly disclosed.

3. **Evidence of goodwill:** The proposer is required to furnish a certificate as evidence of his good will along with the proposal. The format of this certificate is given with proposal form itself. Usually, the insurance agent certifies that he knows the proposer for a period time and his reputation is good in the society. In case the proposer is not known personally to the agent or of doubtful integrity, the proposer will be asked to furnish such evidence from any reputed person in the society.

4. **Recommendations by Agent:** The agent also gives his recommendations in the proposal form at the place provided for this purpose. The

insurer takes the decision to accept a proposal keeping in view of the recommendations given by the agent.

5. Survey of the subject matter: When a proposal for fire insurance is received in the office of the company, it makes a thorough study of the proposal and if necessary, a survey of the subject matter of insurance is conducted. Such a survey is conducted by expert surveyors, who will go into enquire about the conditions of the subject matter, surrounding situations of the subject matter, risks involved etc. The surveyors also verify the accuracy of the details furnished in the proposal.

6. Report by Surveyors: After the survey, the surveyors present a report to the insurance company. This report will state the physical and moral hazards involved in the proposal. This report serves as an important base for determining premium.

7. Acceptance of proposal: After determination of premium on the basis of risk involved, the proposal is accepted and intimation is sent to the proposer asking him to pay the premium within a specified period of time. If the surveyors present an adverse report, the proposal is rejected and a regret letter is sent to proposer.

8. Depositing of premium money: A lawful contract between the insured and the insurer is entered into, when the premium money is deposited by the insured. The risk commences as soon as the premium is remitted.

9. Issue of Cover Note: As soon as the premium money is deposited, the insurer issues a cover note (a provisional policy) indicating there is that the insured has deposited the premium and the insurer has accepted the proposal. On issue of absolute policy the legality of the cover note ends. A cover note can also be insured pending the process of survey of the subject matter and the premium has not been determined.

10. Issue of Insurance Policy: When all the requirements under the risks have been complied with, the insurer issues the policy duly stamped

and containing all terms and conditions. These terms and conditions define the mutual rights and liabilities between the insurer and the insured.

8.4. Hazards in Fire Insurance:

Hazards in fire insurance means the whole causes and circumstances that create loss or increase the quantum of losses. Certain hazards create loss by fire or certain hazards increase chances of taking place of fire. The hazards in fire insurance can be grouped into:

I. Physical Hazards, and

II. Moral Hazards

I. **Physical Hazards:** Physical hazards are concerned with material features or arises from the subject matter of fire insurance can be building, shops, factory, go downs or any houses or any materials etc. Every one of these can be insured. From the proposal form itself, physical hazards can be estimated. For this purpose, the following aspects of the subject matter are to be considered.

1. **Construction of building:** knowledge about the structure of the building is to be estimated first. The materials used for construction of walls of the building its terrace, floors, doors etc. are to be considered for this purpose. In addition to this the age of the building / house, its height, number of floors in the building quality and use of woods in the building, etc. are also to be verified. From each of these factors, the physical hazards can be estimated.

2. **Use of the building or premises:** The fire insurance hazards also influence the building or its premises for what purposes the building is used. The building or its premises can be used for housing, shop, godown, office, hotel, school, hospital etc. The nature of materials kept in the building or the purpose for which the building is used, may increase or decrease the chances of fire insurance hazards. For example, the building or premises which are used for keeping explosive items, or inflammable materials, etc. increase the hazards.

3. **Location of the building or premises:** The location of the building or the premises influences the occurrence of fire insurance hazards.

The use of the house may not increase the hazards, but the location of the building can increase the chance of fire hazards. For example, explosives shop near to a cloth shop. There is very rare chance of fire from the cloth shop. but its nearness to an explosive shop increases the chances of fire.

4. **Electrification:** The method of electrification or its nature can increase or decrease the fire insurance hazards.

5. **Interior Decoration:** At the present time of modern style of living, interior, decoration of the house/ building is a usual matter. The interior decoration is done with the materials like wood, cloth, paper, and paper board, synthetic insulating materials etc. All these materials increase the chances of fire hazards.

II . Moral Hazards.

Moral hazards are the outcome of nature, behaviour and attitude of people. Carelessness, dishonesty, negligence, insanity, lack of proper education, social and economic structure of the society etc. are the causes of moral hazards. The various causes of moral hazards are:

1. **Dishonesty:** With evil intention, the insured property sets on fire. This is done to claim higher amount for less costing property. In many occasions such people make efforts in charging claim for higher amount.

2. **Negligence:** In many occasions, due to negligence of the insured or his employees; the fire takes place in the building or the goods. By hiding the truth, the claim is received from the insurer.

3. **Un-cordial Industrial Relations:** In many occasions, due to un-cordial relations between the employer and employees, the insured property is set on fire. The insured then claims the loss from the insurer.

4. **Mean Mentality:** Sometimes the insured keeps mean mentality towards the insurer, and in order to exploit the reputation of the insurer claims are made for such losses also.

5. Civil Disturbances: Sometimes certain bad elements in the society put fire on the insured property. The insured becomes successful in getting compensation/ claim for the insurer.

6. Non- taste for reducing risks: It is the duty of the insured to take necessary steps to reduce the effects of fire, when a fire is broken in the premises/ building. But many insured's never take any suitable step to reduce the risk.

These types of risks are categorized as moral hazards in fire insurance.

8.5. Perils insured against and proximate cause:

Always it is essential in a fire policy that fire must be the proximate cause of the loss. A shop was insured against loss from any cause whatsoever except fire. A fire broke out on the adjoining premises and spread to the rear of the plaintiff's shop but no further. While the plaintiff was shifting his stock to safety, a mob attracted by the fire, tore down the shop shutters and broke the windows for the purpose of plunder. It was held that the proximate cause of the damage was not fire, but the lawless act of the mob so that the claim was rejected only on that ground. (Marsden v. City and County Assurance, 1865).

It is true that Fire means actual ignition and not merely generation of heat. Certain property was insured against fire. A quantity of gunpowder belonging to a person at some distance from the plaintiff's property exploded, the shock of which shattered the windows and damaged the plaintiff's property. It was held that as the proximate cause of the damage was a concussion of air, and not fire, the plaintiff could not recover. In an English Case, Everet v. London Assurance, (1965) BYLES J. said.

"The expression in the policy which we have to construe is, ' loss or damage occasioned by fire'. Those words are to be construed as ordinary people would construe them. They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is in the one case there is a loss, in the other damage, occasioned by fire. Lord Bacon say: '

It were infinite for the law to judge the causes of causes, and their impulsions one of another, therefore it contented itself with the immediate cause, and judged of acts by that, without looking to any further degree.' If that were not so, a ship in the neighborhood of Mount Etna or Vesuvius during an eruption, and receiving damage from substances projected there from, might be said to be damaged by fire. So, a falling amongst crockery ware might in one sense be said to occasion a loss by fire. But neither of these cases would fall within these words, which must be understood in their plain and ordinary sense"

In an English Case *Austin v. Drew*, (1816) ,Where a servant, due to his negligence, failed to open the cover of an oven, concentrated smoke and heat escaped damaging some sugar which was being refined; this was held to be not a loss due to fire. The court said that there was no more fire than always existed when the manufacturing was going on. Nothing was consumed by fire. The loss was due to the negligent management of the machinery. The sugar was chiefly damaged by the heat; and what produced that heat, not any fire, but the fire, but the fire for heating the pans which was usual. The servant forgot to open the register by which the smoke ought to have escaped, and the heat to have been tempered. Gibbs CJ , observed :

"If there is a fire, it is no answer that it was occasioned by the negligence or misconduct of servants; but in this case there was no fire except in the stove and the flue, as there ought to have been, and the loss was occasioned by the confinement of heat. Had the fire been brought out of the flue, and anything had been burnt, the company would have been liable. But can this be said, where the fire never was at all excessive, and was always confined within its proper limits? This is not a fire within the meaning of the policy, nor a loss for which the company undertake. They might as well be sued for the damage done to drawing – room furniture by a smoky chimney"

Any loss resulting from an apparently necessary and bona fide effort to put out a fire, whether it be by spoiling the goods by water, or throwing the articles of furniture out of a window, or even the destroying of a neighboring house by an explosion for the purpose of checking the progress of the flames, in a work every loss that clearly and proximately result, whether directly or

indirectly from the fire, is within the policy. The expenses caused in shifting the business to some other place after a fire and the loss of profits resulting from the loss of business is not losses caused by the fire.

In *Harris v. Poland*, 1941, If there is a fire, it is no answer that it was occasioned by the negligence or misconduct of the servants or of the owner himself. Thus, where a woman having insured her jewellery under a comprehensive cover, including fire, hid it in the sitting room grate. Subsequent to that and completely forgetting the jewellery, she ignited the fireplace and the jewellery was damaged by the fire. The insurer was not permitted to escape liability. It was a loss by fire and it mattered not whether the fire came to the insured property or the insured property came to the fire.

Excepted perils:

Fire policies often provide that there would be no liability for loss caused by gas, explosion, riot, civil commotion or war. Such risks constitute the excepted perils. Sometimes an explosion leads to a fire or a fire to an explosion. The court has to determine whether the loss was due to fire or due to an excepted peril. In a policy of fire which excepted "explosion by gas", *Kelly CB* said in *Stanley v. Western Insurance Co.*, (1968):

In my opinion we must construe the words used in the policy according to their usual and popular signification, not to their strictly philosophical and scientific meaning. The policy goes on to say: "Neither will the company be responsible for loss nor damage by explosion, except for such loss of damage as shall arise from explosion by gas". The parties, when they used the expression "explosion by gas", must have contemplated an explosion arising from a cause that is now frequently a cause of accidents- namely the ignition of gas used for illuminating purposes. It is quite clear that this was not an explosion by gas of that character. It appears that in the process of the plaintiffs manufacture a highly – inflammable product was generated, which, on coming into contact with the atmosphere ignited. The question is whether that product was gas within the meaning of this policy, and I think it was not, It may be ' gas', using the term in its strict philosophical and scientific sense; the water of the ocean is composed of

gases in the strict sense of the word; but this is not what is meant in popular parlance by the word "gas".

In a policy of insurance against fire there was a provision that the insurer shall not be liable in case the house was burnt by reason of any invasion, foreign enemies, or any military or usurped power. A mob protesting against high prices damaged the house and later in another mob waive the house was burnt. The insurer was held liable, for the activities of a lawless mob were not covered by the above stated exception and the house was lost by fire. "What is the true idea," said WILMOT CJ, Conveyed to the mind by the words "usurped power"? The rule to find it out, is to consider the words of the context, and to attend to the popular use of the words. My idea of the words burnt by usurped power, from the content, is, that they mean burnt, or set on fire by occasion of an invasion from abroad, or of an internal rebellion, when armies are employed to support it.

The words "military power" in a fire policy has been held to include damage caused by a foreign military power. In this case a bomb from an enemy Zeppelin during an air raid damaged a building which was insured under a fire policy excluding damage from "insurrection, riots, civil commotion or military or usurped power". It was held that "military power" included foreign military power, and that therefore the insurer was not liable under the policy.

Where the insurance company took possession of the premises in order to minimize the damage by salvaging operation but instead aggravated it by allowing water to remain on the premises for a longer time than was necessary for putting out the fire, the company was held liable for the increased damage.

Procedure and burden of proof:

It is the responsibility and duty of the insured to show that loss was caused by fire. This makes out a prima facie case on his part. The insurer may then show in defense that the fire was caused by the insured himself or that it was due to his connivance. This principle was applied in a case in which a yacht was totally destroyed by fire. The court did not accept the plea of the insurer that it

was for the insured to disprove that the fire was not caused with his consent or connivance. SALOMON LJ stated the principle in *Slattery v. Mance* (1962) :

" The Point which I have to decide depends on whether the principles enunciated in the cases to which I have referred put the onus on the plaintiff, where the claim under the policy is for 'loss by fire', to exclude a fire caused by his own act. The point as far as I know has never been decided, and counsels have been unable in their researches to find any case bearing directly on this point. In my judgment, the onus of proof in cases such as the one before me is different from the onus of proof in the 'perils of the sea' cases. The risk of fire insured against is quite obviously not confined to an accidental fire. If the ship had been set alight by some mischievous person without the plaintiff's connivance, there could be no doubt that the plaintiff would be entitled to recover. Of course the plaintiff cannot recover if he was the person who fired the ship or was a party to the ship being fired."

8.6. Importance of Interpretation of "reasonable care"

Provisions in insurance policy:

Provisions as to the duty of the insured to take reasonable care of the thing insured came into policies because no underwriter wished that his policy should become a license for laxity. The questions arose as to what meaning is to be given to the words "reasonable care". If they are taken to mean simple negligence, the very purpose of taking out an insurance policy would be defeated. A situation of theft without negligence would require the state of robbery. The courts have been of the view that simple negligence should not be taken as ousting the insurer's liability. There must at least be a state of recklessness.

According to R.Birds : INSURANCE (1998) explained "Benevolent judicial construction avoided that consequence, by reading the provisions not to deny liability where the insured has been only ordinarily negligent, but only if there has been proven disregard of ordinary standards, a measure of recklessness" .

In *Fraser v. B.N. Furman (Productions) Ltd.* (1967) , DIPLOCK LJ stated the requirement for the insurer to repudiate liability to be shown affirmatively that the failure to take precautions was done recklessly, " that is to say with actual recognition of the danger.....and not carting whether or not that danger was averted". In *W.J. Lane v. Spratt* (1970) the court held the insurer liable by restricting the due care obligation to steps relating to the physical safeguarding of the goods, not the taking of precautions in employing the participant driver, who absconded with his first load. The case did not thus involve consideration of the level of care and the policy; covered commercial risks.

Also discussed in *Devco Holder Ltd. v Legal and General Assurance Society Ltd.* (1993) the driver of the insured car left it, with keys in the ignition and unlocked, in a car park at a station while he went to his office across the road. He was somewhat delayed and the car was stolen. The natural defense raised by the insurer was that leaving the keys in the ignition and the car unlocked was deliberate. In the chosen passages from the judgment of DIPLOCK LJ had laid considerable stress on not so construing the condition so as to frustrate or largely emasculate the commercial purpose of the policy, which in the context of the earlier case meant "it is not enough the employer's omission should be negligent, it must be at least reckless.. .." The thrust of the appellant's case was that the reckless test was misapplied by the trial judge in the present case but that defense was rejected. They said that the driver had been "deliberately courting a danger" SLADE LJ said:

"If the keys had been left in the ignition merely by inadvertence the position would have been quite different on the facts, and might well have been different on the law...even on the assumption that the test applied in *Fraser* was the right test to apply....the learned judge..... reached the right conclusion" .The insured lost the case .

In particular the judge cited the citation by LLOYD LJ in that case of the dictum of DIPLOCK LJ in *Fraser v Furman* (1967):

"Reasonable' does not mean reasonable as between the employer and the employee. It means reasonable as between the insured and the

insurer having regard to the commercial purpose of the contract, which is inter alia to indemnify the insured against liability for his (the insured's) personal negligence."

It is not enough that the employer's omissionShould be negligent; it must be at least reckless". The judge in this case did not find the brother reckless, so e allowed the insured's claim. The Bureau rejected a case in which a hand bag containing a ring valued at £ 2950 was left in full view on the passenger sent in a locked car. The owner was away for half an hour. The bag with the ring was stolen. In a review petition, the following passage of DIPLOCK LJ was relied upon as reiterated in the Soft case:

"The legal position is that the insured...must 'court' a danger the existence of which he recognizes. He courts danger by taking measure which he knows are inadequate to avert it of indeed no measures at all. Recognition of the dangers is subjective as is knowledge of the adequacy (or lack) as the steps taken so avert the risk"

8.7. FIRE WHETHER MANIPULATED and its Effect:

The repudiation of claim by the Insurance Companies on the ground that either the complainant himself manipulated the fire or someone else manipulated the same on his behalf, or that someone in retaliation put the property of the complainant on fire. In essence, the plea of the Insurance companies in such cases is that the fire was not accidental. Sometimes finding the contention correct, such pleas are accepted but at times these are not accepted on the ground that such pleas were taken just to make out a ground for repudiation of the claim. The following judicial decisions of different commissions will clear the picture.

Fire by neighbour in retaliation: In *Oriental Insurance Company Ltd. v. Annamma K. Abraham*, (1995) 3 CPR 226 Kerala State Commission , the complainant had insured his printing press, accessories, stock-in process, including stock of papers and types for a total sum of Rs. 2,40,000 with the opposite parties. It was alleged by the complainant that on 17-12-1991 the neighboring tenant of the same building came along with few rowdies and destroyed the separating wall of the rented rooms and entered into the press room and caused serious damage to the

press against the neighbor. The Incident was also reported to the first opposite party who deputed a surveyor for assessing the damage. The matter was not settled and, therefore, a complaint was made to the third opposite party on 06-04-1992 on which the second opposite party appointed another surveyor to assess the loss. However, after receiving the report of the surveyor, the second opposite party informed that since a criminal case was pending against the alleged erring tenant, the matter shall be taken up after finalization of the said case. The second opposite party also informed through a letter that the claim was repudiated on the ground that the accident occurred during the course of action by the complainant's neighboring shop owner in retaliation of altering and constructing a common wall of the shop. Thus, a complaint was filed claiming Rs. 55,000 along with compensation for mental agony, etc.

The contention of the opposite party was that a surveyor was immediately appointed who reported that a trespass was committed by a neighboring tenant along with his henchmen with whom the complainant had some dispute regarding a common wall. The police had registered two cases regarding the incident and those cases were pending in the competent court. The Insurance Company also deputed another surveyor and both the surveyors reported that the complainant had demolished the partitions wall of adjacent shop and the later in reappraisal encroached upon the premises of the complainant's printing press. The reports also revealed that both parties unlawfully removed the goods and, therefore, the opposite party repudiated the claim of the complainant.

The District Forum found that the loss sustained by the complainant was covered by the policy and, therefore, allowed the complainant. Feeling aggrieved by the said order, the Insurance Company preferred an appeal where it was contended that the claim was repudiated under Exclusion Clause (d) of para 15 of the policy. This exclusion clause says that loss or damage occasioned by permanent or temporary dispossession of any building or plant or unit or machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery in prevention of access to the same. The view of the Commission was that the case of the complainant did-not-fall under the aforesaid into the premises of adjoining tenant and it was in retaliation that that neighboring tenant committed the damage. In view of the Commission, a mere entering into the

premises of the complainant and causing loss and damage couldn't be brought under the aforesaid clause (d) because under the said clause it was necessary that loss or damage should occasion by permanent or temporary dispossession of any building or point or unit or machinery resulting from the unlawful occupation by any person of such building or point or unit or machinery in prevention of access to the same, which was not present in the case. It was further argued that pendency of the criminal proceeding between the complainant and his neighbors also cannot be considered a valid ground to repudiate the claim under any exclusion clause of the policy. Thus, the appeal of the Insurance Company was dismissed.

8.8. Burden on insurer to prove fire was intentional:

Once the insured had shown that the loss was caused by fire, he had made out a prima facie case and the onus shifts on the insurer to show on a balance of probability that the fire was connived by the assured, it is decided in the case *Murari Woollen Mills Ltd. v. United India Insurance Co. Ltd.* (2005) 3 CPJ 118 National Commission.

In *Slattery V. Mance*, (1962) 1 all ER 525, also a similar observation was made. It was observed that once the insured had shown that the loss was caused by fire, he had made out a prima facie case and the onus shifted on the insurer to show on a balance of probability that the fire caused was connived at by the assured. This authority was followed by the National Commission in *Murari Woollen Mills Ltd. v United India Insurance Co. Ltd.* (2006) 3 CPJ 118 National Commission, where also the contention of the Insurance Company was that the fire was manipulated. The complainant had prima facie proved his case and, therefore, the burden was shifted on the insurer to prove that it was manipulated fire, and in that attempt the insurer failed.

8.9. FIRE IN MILITANCY OPERATION:

In *Ashok Kumar Baroo v. National Insurance Co. Ltd.*, (1998) 1 CPR 613 J&K State Commission, where the complainant had insured his household goods for Rs. 45,000 which covered the loss by fire and malicious damage including terrorist action. Due to militancy he had to migrate from the valley. On 15-9-1991 while the Insurance policy was in force, his house was

ransacked and the militants took household goods. On visiting his house he found the locks and doors open and the house was damaged and nothing was left in the house. The damage was also done to sanitary ware and water taps. The matter was reported to the police and an FIR was registered under Sections 457 and 390, IPC which was subsequently added by section 3 of the terrorist Act as evident by the letter of the S.P. However, the case was closed as not traceable.

It transpires that a claim was preferred to the Insurance Company where the defense was that the terms and conditions of the policy were not valid for theft and burglary. A report was sought from a private investigating agency which reported that the FIR disclosed a case in respect of house breaking and theft which did not fall in the category of offences under TADA. Thus the file was closed as 'no claim'.

It seems that one Sri Jaswant Singh, a retired DIG, had given some report and was examined to prove the said report as the repudiation of the claim made by the Insurance Company was based on that report. After going through this report and hearing the submission of the parties, the Commission observed:

"....the testimony tendered by Sri Jaswant Singh was in the nature of an opinion... It is very sad that the Insurance Company is laboring under the impression that opinions are binding on us also. What is required is that in the first place the Insurance Company should have independently applied its mind to the case which in fact has not been done. If the legal opinion was required then the proper course was to seek opinion from some highly placed and recognized legal luminary. It is a common knowledge that for their own purpose the insurance Companies are approaching some private agencies who are tendering opinion against payment of fees. Such opinions are always suspecting in the eyes of law because they are tendered by the people who are neither experts in the field nor they are tendering such opinion gratis. In any case it has no value excepting that of an opinion authority can close its eyes to the facts of the case."

The ransacking of the house, looting of the property and the extent of damage caused were not disputed by the insurance Company. What was disputed was that it had no liability. On this point the Commission observed:

".....the FIR clearly goes to show that the damage has taken place during the period when the insurgency in the Valley was on its peak. The complainant had migrated from the place. In the state of this gun culture where everybody was fleeing for safety anything was possible at any moment of day or night. The facts show that it is not a case of normal theft or burglary which usually takes place when the people are fast asleep in their houses and the thieves make their entry either by breaking open the house or somehow succeed in removing the goods from somebody's possession. In a situation like this as a matter of fact there is no need for criminals to do things of this nature in the stealth of darkness. The gun yielding people have been doing it open in the broad day light and there is no question of offering any resistance to it. The facts mentioned in the application which was made by the complainant to the police clearly shows that its was not a case of normal theft or burglary but is a case of forcible removal of goods of the house and also causing damage to the house including sanitary ware, etc. Thieves or burglars have no time for all these things. They just make entry into house and steal the goods before anybody wakes up in the house. In this state of things it is unfair to argue that the goods were left behind uncared.... It was in these circumstances that the case was not treated as of the rank of Superintendent of police found it to be a case covered by the provisions of TADA. Mr. Jaswant Singh who has tendered the opinion seems to have taken a simplest view of the matter without taking into consideration all these facts. Devoid of these facts nobody can take such a view. It is for this reason that we have rightly in the beginning said that this opinion a part from being the opinion of an individual cannot be given too importance as a piece of evidence. Since the rejection of the claim is also based on the report of Shri Jaswant Singh we find it absolutely unsustainable."

Thus, the Commission allowed the claim of the complainant along with awarding Rs. 10,000 as compensation for loss and injury.

8.10. FIRE DURING RIOT:

An appeal against the order of the Andhra Pradesh State Commission came up before the National Commission in a case *P. Venkateshwara Rao v. New India Assurance Co. Ltd.*, (1998) 3 CPR 24, where the insured lorry or the complainant was diverted by some persons who were agitating the exploitation of tribal people and then set it on fire. The claim was repudiated by the Insurance company on the ground that under the policy conditions any loss or damage caused by war, invasion, the act of foreign enemies, hostilities or war like operation (whether war be declared or not), civil war, mutiny assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection, military usurped power or any act of any person acting on behalf of or in connection with any organization with activities directed towards the overthrow by force of the Government de jure or de facto or to the influence of it by terrorists or violence or by the direct or indirect consequences of the said occurrences is not payable. The state commission accepted this contention of the Insurance Company. Feeling aggrieved by the said order the complainant came up before the National Commission is appeal.

The National Commission quoted the clause relating to riot and strike and observed: "It is clear from the reading of the conditions of this policy that the act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lock-out or not) or the action of any lawfully constituted authority suppressing or attempting to suppress any such disturbance or in minimizing the consequences of such disturbance is not covered by the word 'riot and strike'. However, one of the exceptions in this condition, namely, exception (b) referring to mutiny, assuming the proportion of or amounting to popular rising, military rising, rebellion, insurrection, military or usurped power or any act of any person acting on behalf of or in connection with any organization with activities directed towards the overthrow by force of the Government de jure or de facto or to the influence of it by terrorism or violence or by the direct or indirect consequences of the said occurrences, provides an exclusion from the riot and strike clause and the consequent risk there from. From the order of the State Commission we find that while lodging the FIR with the police, the loss caused to the truck was attributed to Naxalite activity, whereas the fact is that five persons claiming themselves as Girjan member of

Dandkaranya Girijanna Ryotu Cooli Sangram of Visakha Zilla branch, had set fire to the lorry... We are of the opinion that the agitation by the cooli Sangram cannot be described as mutiny or a popular rising assuming the proportion of rebellion etc. as mentioned in clause (b) of exceptions under 'I.M.T.21: Riot and Strike in the policy document'. In our view it is covered by Condition 1, viz., 'the act of any person taking part together with others in any disturbance of the public peace (Whether in connection with a strike or lock-out or not) or the action of any lawfully constituted Authority in suppressing or attempting to suppress any such disturbance or in minimizing the consequence of such disturbance'."

Thus, the National Commission was of the opinion that the stand taken by the Insurance Company that the policy did not cover the risk of riot, strike and fire was not consistent with the policy conditions,. Therefore, the appeal was allowed and the claim of Rs. 2, 40,000 as assessed by the surveyor was awarded.

8.11. Summary:

There is no separate legislation to deal with Insurance like marine and life insurance. The growth of the fire insurance is tremendous and the law has taken shape on the basis of legal pronouncements. The specific incidences and on the basis of involvement of the risk the insurance companies entering into a fire contract of insurance. All the principles of indemnity are applicable on the fire insurance.

8.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Publisher, Allahabad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.

- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Company, Nagpur
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

8.13. Check Your Progress:

A. Which of the following statement are true or false:

1. The word 'fire' has not been defined in the Insurance Act, 1938
2. It is true that fire means actual ignition not merely generation of heat.
3. Always it is essential in a fire policy that fire must be the proximate cause of the loss.
4. 'Reasonable care' is not an important element of the fire insurance policy.
5. 'Accidental fire' is covered only under the Fire Insurance Policy.

B. fill in the Blanks:

1. The history of fire insurance began in
2. Oriental Insurance Company Ltd. v. Annamma K Abraham is related to fire by

3. 'Fire insurance business' is defined under..... of the Insurance Act, 1938.

4. Burden on.....to prove that fire was intentional.

5. Ashok Kumar Baroo case is related to fire in

8.14. Answers to check your progress:

A. 1. True

2. True

3. True

4. False

5. True

B. 1. XIV Century

2. Neighbor is retaliation

3. Section 2(6-A)

4. Insurer

5. Militancy Operation

8.15. Terminal Questions:

1. What is the meaning of fire insurance?

2. What are the important characteristics of the fire insurance?

3. What is the significance of the fire insurance?

4. What are the important principles of the fire insurance?

5. Write a note on 'fire during military operations and riot'.

Unit-9

Motor Insurance

Objectives:

- To understand the importance of Motor Insurance
- To understand the importance of Motor Vehicle Act, 1988 and its related provisions
- To understand the application of important provisions of Motor Vehicle Act, 1988

Structure:

- 9.1. Liability without fault in certain cases
- 9.2. Provisions as to other right to claim compensation for death or permanent disablement
- 9.3. Permanent disablement
- 9.4. Definitions
- 9.5. Necessary for insurance against third party
- 9.6. Requirement of policies and limits of liability
- 9.7. Rights of third parties against insurers on insolvency of the insured
- 9.8. Settlement between insurers and insured persons
- 9.9. Transfer of Certificate of insurance
- 9.10. Scheme for payment of compensation in case of hit and run case
- 9.11. Summary
- 9.12. Some Useful Books
- 9.13. Check Your Progress
- 9.14. Answer to check your Progress
- 9.15. Terminal Questions

9.1 LIABILITY WITHOUT FAULT IN CERTAIN CASES:

There is Liability to pay compensation in certain cases on the principle of no fault-
Section 140: (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall,

jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163A.

9.2. Provisions as to other right to claim compensation for death or permanent disablement:

Section 141: Provisions as to other right to claim compensation for death or permanent disablement.- (1) The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to [any other right, except the right to claim under the scheme referred to in Section 163A (such other right hereafter)] in this section referred to as the right on the

principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force].

(2) A claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

9.3. Permanent Disablement:

142. Permanent disablement.- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving:—

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

143. Applicability of Chapter to certain claims under Act 8 of 1923.- The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in sub-section (1) of Section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

144 Overriding effect: The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

9.4. Definitions:

Section 145 of the Motor Insurance Act, 1987,

Definitions:-

(a) "authorised insurer" means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalization) Act, 1972, and any Government insurance fund authorised to do general insurance business under that Act;

(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of certificate has been issued, all those certificates or that copy, as the case may be;

(c) "liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140;

(d) "policy of insurance" includes "certificate of insurance";

(e) **“property”** includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;

(f) **“reciprocating country”** means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter;

(g) **“third party”** includes the Government.

9.5. Necessity for insurance against third party:

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146. Necessity for insurance against third party risk.- (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation.- A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) That appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:-

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

- (b) any local authority;
- (c) any State Transport Undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.- For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and-

- (i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;
- (ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;
- (iii) in relation to any other State Transport Undertaking or any local authority, means that Government which has control over that undertaking or authority.

9.6. Requirement of policies and limits of liability:

147. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

- (a) is issued by a person who is an authorised insurer; or
- (b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised

representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six

thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favor of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made there under is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

148. Validity of policies of insurance issued in reciprocating countries.- Where, in pursuance of an arrangement between India and any reciprocating country, the motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in Section 147 but subject to any rules which

may be made under Section 164, such policy of insurance shall be effective throughout the route or area in respect of which, the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favor of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

- (b) for organized racing and speed testing, or
- (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
- (d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.- For the purposes of this section, "Claims Tribunal" means a Claims

Tribunal constituted under Section 165 and “award” means an award made by that Tribunal under Section 168.

9.7. Rights of third parties against insurers on insolvency of the insured:

—
150: Rights of third parties against insurers on insolvency of the insured.- (1)
Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then-

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor’s rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties there under upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but-

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

151. Duty to give information as to insurance.- No person against whom a claim is made in respect of any liability referred to in clause (b) of Section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager

of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by Section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties there under upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person or whom the duty is so imposed to be inspected and copies thereof to be taken.

9.8. Settlement between insurers and insured persons:

152. Settlement between insurers and insured persons.- (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of Section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

153. Saving in respect of Sections 150, 151 and 152.- (1) For the purposes of Sections 150, 151 and 152 a reference to “liabilities to third parties” in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of Sections 150, 151 and 152 shall not apply where a company is wound-up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

154. Insolvency of insured persons not to affect liability of insured or claims by third parties.- Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of Section 150 shall, notwithstanding anything contained in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of Section 147; but nothing in this section shall affect any rights against the insurer conferred under the provisions of Sections 150, 151 and 152 on the person to whom the liability was incurred.

155. Effect of death on certain causes of action- Notwithstanding anything

contained in Section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

156. Effect of certificate of insurance.- When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then-

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

9.9. Transfer of certificate of insurance:

157. Transfer of certificate of insurance.- (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

158. Production of certain certificates, license and permit in certain cases.- (1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce-

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving license; and

(d) in the case of a transport vehicle also the certificate of fitness referred to in Section 56 and the permit,

relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving license and permit referred to in sub-section (1) to a police officer, he shall produce the said certificates, license and permit at the police station at which he makes the report required by Section 134.

(3) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of Section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Section 146.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.

159. Production of certificate of insurance on application for authority to use

vehicle.- A State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either-

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which Section 146 does not apply.

160. Duty to furnish particulars of vehicle involved in accident.- A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

161. Special provisions as to compensation in case of hit and run motor accident.- (for the purposes of this section, Section 162 and Section 163-

(a) **“grievous hurt”** shall have the same meaning as in the Indian Penal Code, 1860 (45 of 1860)

(b) **“hit and run motor accident”** means an accident arising out of the use of a motor vehicle or motor vehicles the identify whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) **“scheme”** means the scheme framed under Section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalization) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under Section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation-

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees.

(4) The provisions of sub-section (1) of Section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

162. Refund in certain cases of compensation paid under Section 161.- (1) The payment of compensation in respect of the death of, or grievous hurt to, any person under Section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under Section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of,

or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than Section 161) or any other law, the Tribunal, Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under Section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall,-

(a) if compensation has already been paid under Section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1)

(b) if an application for payment of compensation is pending under Section 161 forward the particulars as to the compensation awarded by it to the insurer;

Explanation.- For the purpose of this sub-section, an application for compensation under Section 161 shall be deemed to be pending-

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

9.10. Scheme for payment of compensation in case of hit and run motor accidents:

163. Scheme for payment of compensation in case of hit and run motor accidents.-

(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other

matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that-

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority'

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

163A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

163B. Option to file claim in certain cases.- Where a person is entitled to claim compensation under Section 140 and Section 163A, he shall file the claim under either of the said sections and not under both.]

164. Power of Central Government to make rules.- (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter, other than the matters specified in Section 159.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the forms to be used for the purposes of this Chapter;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance lost, destroyed or mutilated;
- (d) the custody, production, cancellation and surrender of certificates of insurance;
- (e) the records to be maintained by insurers of policies of insurance issued under this Chapter;
- (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter.

(g) the furnishing of information respecting policies of insurance by insurers;

(h) adopting the provisions of this Chapter to vehicles brought into India by persons making only a temporary stay therein or to vehicles registered in a reciprocating country and operating on any route or within any area in India by applying those provisions with prescribed modifications;

(i) the form in which and the time limit within which the particulars referred to in Section 160 may be furnished; and

(j) any other matter which is to be, or may be, prescribed.

165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under Section 140 and Section 163A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation.- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.

9.11. Summary:

There is no separate legislation is for Motor Insurance. The important Chapters and legal provisions of Motor Vehicle Act, 1988 is relevant in motor insurance. Particularly the award of compensation in case of partial disablement, permanent disablement, and in hit and run cases is the unique feature of Motor Insurance under the Motor Vehicle Act, 1988. The applicability of important legal provisions and role of Motor Accident Claim Tribunal is unique and due to this it is called special piece of social legislation.

9.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub. All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co. Nag.
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal , J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Pub. Jaipur

9.13. Check your progress:

A. Which of the following statement are true and false:

1. In case of an accident the owner of vehicles shall jointly or severally liable to pay compensation.
2. Under Section 140 of the Motor Vehicle Act for claim, the claimant shall not require to plead.
3. Section 147 is related to requirement of policies and limits of liability.
4. The policy is void on the ground that it was obtained by the non-disclosure of material facts.
5. Section 150 is related to rights of third parties against insurers on insolvency of the insured.

B. Fill in the blanks:

1. is related to liability to pay compensation in certain cases on the principle of no fault liability.
2. is related to provisions as to other right to claim compensation for death or permanent disablement.
3. Certificate of insurance means a certificate issued by an
4. Policy of insurance includes
5. Third party includes the

9.14. Answer to check your progress:

A.

1. True

2. True
3. True
4. True
5. True

B.

1. Section 140
2. Section 141
3. Authorised insurer
4. Certificate of insurer
5. Government

9.15. Terminal Questions:

- Q.1. Discuss the permanent disablement.
- Q.2. Explain the scheme for payment of compensation in hit and run case.
- Q.3. Why insurance against third party is necessary?
- Q.4. Discuss the rights of third party against insurer.
- Q.5. What is settlement procedure between insurer and insured person?

Unit-10 Miscellaneous Insurance

Objectives:

After going through this unit you should be able to understand:

- the various miscellaneous insurance policies.
- the specific cases of miscellaneous insurance.

Structure:

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 - 10.2. Householder's Comprehensive Insurance
 - 10.3. Crop Insurance Policies
 - 10.4. Livestock Insurance
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10.1. Introduction:

In addition to fire and Marine insurances, many other types of insurance policies are popular in General Insurance business. In recent year, a large number of non-traditional policies have also been developed to provide more security to human life and property.

The description of all those types of miscellaneous policies cannot be made here. Only the following types of policies are described below.

1. Householder's Comprehensive Insurance

2. Crop Insurance Policies.
3. Livestock Insurance policies.
4. Burglary Insurance Policies, and
5. Personal Accident Insurance policies.

10.2. HOUSEHOLDER'S COMPREHENSIVE INSURANCE:

Damage by tree roots: Where tree roots extruded to the adjoining house from the house of the assured and caused damage for which the assured had to compensate, he was allowed to recover indemnity from his insurer under a policy which covered the assured in respect of all sums of money which the assured as occupier may be held legally liable in respect of claims made by any person for damage to property causes by accident. The damage in question was held to be an accidental damage. In *Mills v. Smith*(1963) PAUL J. said:

"I would ask and seek to answer two questions. One: has there been at any moment of time (or at particular moments of time) some expected event (or event) which has (or have) led to damage? My answer to that question is, Yes. It is true that foundation settle, that is tend to drop a little at one of more points, and that settling may be gradual. In this case, however, there has come a point of time when the movement has overstepped the safety limit, if I may use that expression and a crack in the concrete of in the brickwork at or near the south-east corner of the house has started. This may have happened several times, that is, there many have been more than one crack. In humans, the overstepping of movement may cause a fracture or a hemorrhage. In a building, it may cause a fracture of the concreter or of the brickwork. There is no accident until the overstepping takes place. The second question is; what was the cause of the overstepping of the safety limit? My answer is that the cause is the nuisance of the roots the penetrating into the plaintiff's soil and draining away the moisture necessary to keep the movement of the house from overstepping that safety limit. In my judgment, these answers result in judgment in favor of the defendant for a

declaration that the insurers are bound to indemnify him against any sums which he may have to pay the plaintiff by reason of my judgment in the action."

OCCUPIER:

To be an "occupier" is an essential condition of liability. It is not a mere description of the person to whom liability attaches. In the case *Struge v. Hachett* (1962), A person was insured under a householder's comprehensive policy which covered him in respect of "all sums to which the assured (as occupier) ... may be held legally liable". he was the of occupier of a flat in a manor house, and attempted to smoke out some bird's nests in the caves outside the flat with the aid of a pole to which was attached a burring paraffin soaked reg. A fire resulted, and the whole house burnt down and the assured has to pay its owner £ 51,000 by way of damages. He claimed an indemnity from the insurers.

It was held that he was entitled to an indemnity as he was an occupier of the premises concerned, and these included the eaves outside the flat. DIPOCK LJ. said:

"We are, therefore, of opinion that upon the facts as he had found them the learned judge was wrong in law in holding that no part of the decorative cornice was included in the premises demised to [the assured]. In our view, all that part of it which was fixed to the eternal wall at a level below the underside of the floor joists of the attic flat formed part of the demised premises and were in the occupation of [the assured]. The sparrow's nest in which the relevant fire started was against the cornice below that level and within the wire fixed to and enclosing the cornice. The fire which caused the damage started on and escaped from premises of which he was occupier. It was started negligently and as such occupier he was liable for damage caused by its escape, quite apart from his liability as the actual person whose own negligent act started the fire."

Storm: The meaning of storm was explained in *Oddy v Pheonix Assurance Co. Ltd* (1966):

"A bungalow was insured under a householder's comprehensive policy. Amongst the risks insured against was loss by 'storm' of

tempest'. A wall on adjoining land becomes subjected to pressure because of water building up behind it over a long period. There was because of persistent heavy rain in the area. The wall 'collapsed on the bungalow. The insured claimed that the loss was caused by 'storm' or 'tempest'."

The action failed. The court said that the wall was insufficient in design and collapsed from the pressure of water. No. violent wind caused any part of it to fall. "storm" meant a violent wind. It did not mean heavy persistent rain, and "tempest" meant a violent storm.

VEALE, J said; It is in all these circumstances that I have to ask myself. "Has the plaintiff shown that the collapse occurred because of storm or tempest or flood?" It is certainly not flood. "Tempest", in my view, only means a severe storm. Therefore the operative word is "storm". I must approach this question much as a jury would approach it. "Storm" means Storm, and to me it connotes some sort of violent wind usually accompanied by rain or hail or snow. Storm does not mean persistent bad weather, nor does it mean heavy rain or persistent rain by itself. I do not think that any violent wind caused any part of this wall to fall. It fell for the reasons that I have stated, and finally, because of the build-up of pressure from the percolation of water through the cracks. In those circumstances I can only conclude that the plaintiff has not brought herself within the wording of the policy and I think her claim must fail.

10.3. Crop Insurance policies:

India is basically an agricultural country and different varieties of crops have been cultivated here. Cultivation of agricultural and commercial crops have been faced with many problems, such as:

1. Adverse climatic conditions causing draughts, floods, untimely rains, storms, cold winds, fog, frequent changes in temperatures, etc.
2. Pests and insects causing damages to crops.
3. Wild animals, etc.

The important agricultural cultivated in the country include:

1. Food Crops- wheat, jawar, millet, paddy, etc.
2. Plantation crops- coffee, tea, rubber, etc.
3. Fruits orchards- apples, oranges plantains, etc.
4. Commercial crops- cotton, jute, tobacco, groundnuts. etc.

The farming and agricultural activities have been involved with various types of risks, such as (i) risks arising from the environment of nature, (ii) social risks, (iii) economic risks, and (iv) risks from agricultural workers. Because of larger and extensive risks of loss; efforts have been made in India since a long time in the past to introduce crop insurance.

Efforts towards Crops- Insurance India

Efforts have been continuously made in India since last six decades to implement the crop insurance plan more successfully. Many agricultural and institutions of farmers have been active in this direction.

As the first time in 1939, the crops insurance (food crops) plan was formulated by the Mysore Government. This effort was followed by the erstwhile Baroda state also. In 1973, a compulsory crop insurance scheme was developed in Dewas (M.P.). During this period, certain committees were also set up by the government to assess the losses of crops grown by farmers and to extend assistance to them. In 1946, a crop insurance proposal was presented to the Government of Madras. The Agricultural Research Institute of India had also developed a crop insurance plan for certain selected crops for introducing it in selected divisions of Madras, Bombay and Madhya Pradesh. Subsequently, in 1950, another crop insurance scheme based on the U.S. model was prepared and presented to the government by G.S. Priyolkar.

All these efforts in the field of crop insurance could not be implemented successfully due to some other difficulties. It was then felt that the state Government is the appropriate agency for introducing crop insurance, but the state governments could not implement this plan due to the economic crisis.

In the year 1950, the Central Government prepared a 'pilot Scheme' for implementation by the state governments. But none of the state governments was prepared to implement it because of the inability to undertake the financial liability. It was after the nationalization of General Insurance Business, special efforts have been made towards the implementation of crop insurance plan. finally, during the period between 1974 and 1976, the General Insurance Corporation implemented the crop insurance in food crops (cotton, wheat and potatoes) in the states of Gujarat, Andhra Pradesh, Karnataka, Tamil-Nadu and west Bengal, However, due to the following reasons, the food crop insurance plan had to be withdrawn later.

1. Problems relating to collection of premiums and calculation of crops output.
2. Incurring of more expenses in management of the scheme, than the premiums collected.
3. Introduction of scheme in limited number of crops.
4. Larger risks following large number of claims.
5. Inability of the state government to support the plan.
6. Inadequate facility to minimize risks.
7. Dependency on large fertilizer companies.
8. Lack of coordination between the functioning units.

In 1978- 79, the General Insurance Corporation introduced a "Pilot Crop Insurance Plan" and continued this plan till 1985-86 when this plan was withdrawn and in its place, a "comprehensive crop Insurance Plan" has been introduced throughout the country.

Objects of Crop Insurance:

New methods of cultivation and high yielding crops have been developed in country in the areas of food crops and commercial crops. In spite of these developments, the Indian farmers still have to bear heavy losses from

unfavorable climatic condition. Most of the agricultural based countries do not have suitable means of resources to overcome such losses arising out of failure of crops. The objectives of crop insurance are to indemnify the farmers from the losses occurring due to the following causes.

- (1) Climatic uncertainties like draughts, floods, heavy storms and cyclones, etc.
- (2) Diseases spread in crops and plants.
- (3) Damages to crops from the spread of insects and pests.
- (4) Riots and strikes, etc.

Advantages of crop insurance:

The important advantages of crop insurance are:

- (1) Provide security for agricultural production: The crop insurance not only protects the crops but also caution the farmers to keep away the crop from diseases, by using pesticides.
- (2) Provides rights to farmers: The crop insurance provides indemnity against damage or losses to crop, which now becomes a right of farmers.
- (3) Certainty of payment: where the loss arises, the insurance company bound to make the payment of claims, whereas the government extends assistance to the farmers depending on the economic conditions of farmers.
- (4) Stability to agriculture economy: Crop insurance is a gift to the agricultural economy, which helps substantive Production in the agriculture sector.
- (5) Strength to basic structure of agriculture: The crop insurance provides strength to basic structure of agriculture since it gives strength to irrigation schemes and water supply sources, conservation of soils, forests etc.
- (6) Increase in income : In the case of damages to crops, the farmers cannot bear the expenses on cultivation and for paying rents and taxes. But

crop insurance provides a regular income and extends support to increase purchasing power of the farmers.

(7) Assistance to industries: Indirectly, the crop insurance is a support to agriculture based industries. In the absence of crop insurance, these industries would have been facing difficulty in getting the regular supply of raw materials.

(8) Refund of agricultural credit : Crop insurance is an important source of income to the farmers. This source of income will facilitate in returning the loans and taxes to some extent.

(9) Acts as a coordinating agency of the government : Crop insurance is a step forward to increase the agricultural production. It acts as a coordinating agency of the government in the development of agriculture in the country.

Plans of crops insurance:

The important plans of crop insurance are as follows :

(1) Pilot Crops Insurance plan : This plan was first introduced by the General Insurance Corporation in 1978-79, and it was in operation till 1984-85 and thereafter withdrawn.

(2) Comprehensive Crop Insurance Plan : This scheme was implemented by the Central Government for the Kharif season of 1985 at the national level after the withdrawal of Pilot Crop Insurance Plan. This scheme is managed by the General Insurance Corporation on behalf of the Central Government.

Objects: The objects of this scheme are :

To provide economic assistance to farmers in case of loss to crops by floods , draughts etc.

To re-determine the eligibility criteria for loans for the next crops, where the farmers suffered losses ,

To extend assistance to the farmers for the cultivation of food crops, spices and oil seeds.

Features of the scheme: The important features of this scheme are as follows :

(1) **Insured crops:** Insurance cover is provided for the cultivation of rice, wheat, millet, oil seeds and spices.

(2) **Security to farmers:** Crop insurance is provided to all the farmers who obtain credit from cooperative credit societies, commercial banks and regional rural banks for the purpose of increasing agricultural production.

(3) **Crop insurance made essential for obtaining credit:** Where the agricultural credit is available for increasing production, it was made essential for the farmers to get their crops insured while receiving credit from the above stated financial institutions.

(4) **Partnership in sharing risk:** The risk involved in crop insurance is borne by the central and state governments in the proportion of 2:1 but the expenses towards the management of the scheme are equally distributed by the Central Government and General Insurance Corporation.

(5) **Creation of 'insurance fund:** The central government has created a fund called 'Insurance Fund' for the crop insurance plan. Similarly, such a fund was created by every state government.

(6) **Premium:** The premium rates are very less. The present rates are as follows :

In the case of wheat, paddy and millet, sum equal to 2 percent of the sum insured.

In the case of oil seeds and spices, sum equals to 1 percent of the sum insured.

(7) **Assistance towards premium: 50** percent of the premium is provide to small

and marginal farmers by the government towards economic assistance. This expenditure is met out the by the central and state governments equally.

(8) **Minimum production:** Under the scheme, the minimum agricultural production shall be equivalent to 80 percent of the average production of preceding five years.

(9) **Extension of the scheme:** This scheme at present is operative in 15 states and 2 centrally ruled territories of the country.

(10) **State Level 'Crop Insurance cell' :** In order for effective implementation and better coordination between state governments and related institutions the General Insurance Corporation has set up a state level 'Crop Insurance Cell' at every state capital.

(11) **The functions of Central Insurance Fund:**

To collect the crop insurance premiums of the policies being issued and from financial institutions and make Settlement of claims immediately,

Giving all technical guidance and supervision of the state funds.

Collection and dissemination of statistical information,

To motivate the state government for needful marketing and publicity matters,

To establish coordination between crop insurance and agriculture development programs.

(12) **Role of the State Governments:** The role of state governments in the crop insurance scheme is as under:

(a) To delegate power to State Crop Insurance Fund to act as co-insurer for all the crop insurance policies issued in the state.

(b) To extend 25 per cent assistance to all insured small and marginal farmers against insurance premiums.

(c) To provide managerial assistance in respect of making available information relating to agricultural production and publication of such information etc.

(13) Monitoring and Feed back: The crop insurance scheme monitored from time to time and evaluated its progress every year. The Agricultural Ministry prepares its reports.

Progress of comprehensive Crop Insurance plan;

In the beginning (1985-86) the plan was implemented by 16 states and has benefited 26 lakh farmers. A total of 8391 lakh claims were settled. The policy amount collected was a tune of Rs.54.2 crore. This plan has been progressing continuously as is evident from the latest progress report available for 1994-95. During the year 1994-95, the government has received from the farmers a total premium of Rs. 166.66 crore against a total claim of Rs.963.42 crore. As per the report of ministry of Agriculture, since 1985 to 1995, a total of 414.41 lakh farmers have been benefited by insuring for a total a 719.84 lakh Hectare agriculture land to a total sum of Rs.10,004 crore. Against a total of Rs.166.66 crore collected from the farmers towards premiums, claims have been paid for Rs. 963.62 crore At present this scheme is operating in 19 states and 4 Centrally ruled territories in the country.

10.4. Livestock Insurance:

The importance of livestock insurance is increasing gradually in India since the nationalization of General insurance. Some insurance companies at the private sector made efforts to introduce livestock insurance in the country, but due to increasing number of claims than the premiums this program could not be succeeded.

In 1974, after the nationalization of General insurance business in India livestock insurance scheme was introduced at the national level. During this year itself nearly 30 thousand livestock insurance were made. Under the live stock insurance, the insurance of cows, oxes, buffaloes, camels, horses, dogs etc can be made. The main object of this insurance is to provide economic assistance to farmers in the case of death or accident of these animals.

The premium rates, conditions of insurance, and restrictions relating to livestock insurance between insurance companies necessitated the general insurance company to start 'Market Contract' for the live- stock insurance.

The purpose was to bring uniformity in the premium rates, condition and other restrictions in the field of livestock insurance. The ' market contract' was introduced from April 1, 1976 under which all the subsidiary companies of the GIC, have developed practicable plans of livestock insurance, by following uniform insurance standards by following uniform premium rates, condition and other prohibitions between the subsidiary companies.

Main elements of 'Market Contract:

(1) Contract: All the subsidiary companies have to follow the premium rates, conditions of insurance and the restriction determined by the contract between them.

(2) Setting up of a Central livestock Committee: A Central livestock committee consisting of General Insurance Corporation and its four subsidiary companies have been set up to ensure the effective operation of market contract.

(3) Age limits for insurance: Different age limits has been accepted for different categories of animals to be insured.

(4) Insurance Cover: Under the livestock policy, the insured shall be identified for the reasons of death, involving accident, surgical operation, riot and strikes. Insurance cover is also provided for permanent disability of the animals, by paying little more rate of premium.

(5) Risks not covered by the policy: The following risks are not covered by the policy and, therefore, the insurance company shall not liable to indemnity:

Death of animal arising out of war and allied risks, strikes, riot and civil connotation, Slaughter of the animals without prior consent of the insurers , fire, lightening seagoing transit, surgical operators and breeding.

(6) Sum insurable and valuation: The market value of the animal shall be determined from time to time keeping in view of the category of the animal and the area.

(7) Premium Rates: The premium rates shall differ at 6 per cent gross rate to a minimum of 2.25 per cent per annum.

(8) Exception from premium: Payment of premium is exempted to the livestock which is under the assistance of the Integrated Rural Development Programme.

(9) Minimum Premium: The minimum premium for a cow is Rs. 25 per annum and ox Rs. 20.

(10) Medical examination by medical practitioner: Medical examination of the cattle is necessary by approved medical practitioner.

(11) Identification Mark: Providing with identification mark made for the cattle insured is very important.

(12) Duration of policy: The livestock insurance is usually made for a year only. The indemnity principle is applicable in every policy.

(13) Conditions attached with livestock policy: The conditions regarding utmost good faith., medical fitness, efforts by the insured to minimize the loss as a man of ordinary prudence and the payment of claim by the insurer, etc. are stated in the policy.

Insurance plan for livestock assisted under Integrated Rural Development Programme.

The aim of integrated Rural Development programme (IRDP) is to uplift the small and marginal farmers, landless labourers, rural artisans scheduled tribes and castes, as economically backward people and to make available the source of employment to them. Under the IRDP, purchases of cow, camels, ox, sheep and goats, buffaloes etc. are made provide them to poor families. The cattle so purchased are covered by the following three special insurance plans; such as:

Insurance of milk giving cattle. (This plan was started from 1977).

Insurance of special breed cabs. (This plan was started from 1980).

Insurance of oxen used for agricultural purposes.

10.5. Burglary insurance:

Burglary insurance was developed to provide security against theft, dacoit, and house breaking etc. to business enterprises. Bank dacoit, theft of valuable property from the shops, break of locks of business enterprises and houses, etc. are the part and parcel of city life in modern days.

Characteristics of Burglary insurance:

- (1) It is a part of property insurance.
- (2) It is indemnity insurance.
- (3) It is a non-tariff insurance that means the tariff is not uniform in all the policies. The tariff (premium rate) is determined keeping in view of various factors that will differ in individual cases.
- (4) The claim can be paid in the form of cash, repairing of the property, replacement, etc.
- (5) The principle of utmost good faith has much importance.
- (6) It also covers by the principle of subrogation and contribution.
- (7) Burglary insurance can be:
 - (a) Burglary insurance (Business premises), and
 - (b) Burglary insurance (Private dwellings).

Proposal From:

The proposal form is different in the case of Burglary insurance for business premises and for private dwellings. The information to be furnished in both, are uniform, namely:

- (1) Name and address of the proposer.
- (2) Business or occupation of the proposer.
- (3) Location of the premises.
- (4) Type of construction.
- (5) Proposed sum to be insured.
- (6) History of the past insurance, if any, and its claim.
- (7) Full details of present burglary insurance proposal.

Under-writing considerations in Burglary Insurance:

A number of considerations are there before the insurer, before the proposal of burglary insurance is accepted, which can be divided into three categories.

- (1) General factors.
- (2) Report of inspection of risks.
- (3) Security checking

(1) General Factors: The factors include nature of insured property, surroundings of the insured property, usual thoroughfare in the building, history of any previous insurance of the same building etc.

(2) Report of inspection of risks: Burglary insurance is not accepted unless the property is properly surveyed and a favorable report is presented to the insurer.

(3) Security Checking: Security checking is essential before the proposal is accepted by the insurer: The risks factors are studied thoroughly in this checking.

Burglary Insurance policies:

The major burglary insurance policies are as below:

1. Burglary (Business premises) policy.
2. Burglary (Private residence) policy
3. Jewellery and valuable insurance policy.
4. All risks policy.
5. Baggage insurance policy.

1. Burglary and House breaking policy (Business premises):

This policy extends security against the risks and losses if forcible entry of house breaking. It is indemnity insurance; the claim is paid to the extent of sum insured. Unless expressly stated by the insured, certain risks are not covered by the policy, such as, damage to the property while executing any legal activity, the risks that can be covered by fire insurance or motor insurance policy, risks relating to war perils, earth-quakes, etc.

These are certain special conditions under which the insurer is not liable to indemnify the losses. The circumstances include:

- (1) Where the building is kept aloof for 7 days and nights.
- (2) Where some major alterations have been made in the building, which increases the risks.
- (3) Where the insured property is taken out from the building

The policy can be fully valued policy, (non-declaration policy or stock declaration policy) and 'First loss' burglary insurance.

Procedure of claim: The following procedure is followed for settlement of claim under this type of policy.

A notice of loss within 7 days to the insurance

(2) Inspection of the books of accounts by the insurer with the help of chartered accountant or professional valuers as soon as the notice of loss is recovered by him.

(3) Valuation of the stock by comparing the policy and claim.

(4) An enquiry about the financial position of the insured, with regard to his financial position, business, value of the goods lost by burglary etc.

(5) In addition to the books of accounts, other documents such as vouchers, invoices and certificates are demanded from the insured.

(6) The insurer then satisfies himself by considering the following facts:

(a) Whether the property lost was the same that all the proof relating to valuation of the property.

(b) Whether the company has received all the proof relating to valuation of the property.

(c) Whether the claim is within the policy limit, etc.

If satisfied with all these facts, the claim is paid to the insured.

2. Burglary (Private residence) Insurance Policy: The subject-matter to be covered under this policy includes furniture, general household goods, personal articles, jewellery and other valuables.

All these things can be insured at their total cost. In the case of jewellery and other valuables, the limit is one-third of the total policy. By paying excess premium, this can be exceeded.

The following things are not covered by burglary insurance:

(1) Deeds, bill of exchange, promissory notes, cheques, securities, Stamp duties, medals and like articles.

(2) Jewellery which have been wearing on the body or which is in the process of making.

(3) Other items which have been excluded from burglary (business premises) policy:

3. Jewellery and valuable insurance policy: All the restrictions and limitations applied to Burglary (private residence) Insurance policy are equally applicable to this policy. This policy provides security against theft. But the jewellery; which is in the process of making of which is wearing on the human body shall not be covered by this policy.

4. All Risks Insurance Policy: The policy also covers the risks of theft and house breaking. Decision is taken for "Accepted Value Principle" of the insured value of the policy, for the payment of claims. But the valuation is done with the help of professional valuers.

5. Baggage Insurance Policy: This policy covers all the valuable materials in transit, except the jewellery and other valuables. This policy provides security against losses happening during the course of transit by accident, fire or theft, or damages. The security under this policy is entitled within the territory of India only. However, by paying additional rate of premium, the scope of the policy can be extended throughout the world.

10.6. Personal Accident Insurance:

Personal accident insurance is the insurance designed to replace a substantial part of earned income lost by disability to a person caused the loss due to death, leading to the accidental injury.

Nature of personal accident insurance

1. It is a category of different type of insurance.
2. It is a policy designed for an individual or a group of persons.
3. It is a part of the non-traditional insurance.
4. It is a supplement to life insurance, since it indemnifies the loss in case of injury leading to death.

5. It is tariff insurance under which the rate indemnity or every type of accident and physical inability has been determined. From January, 1977, personal accident insurance was brought under tariff insurance.

6. It is an insurance based on the principle of utmost good faith.

7. Strictly speaking, it is not a contract of indemnity. Firstly, the physical or life indemnity cannot be indemnified in terms of money, since the life is an invaluable asset.

Secondly, the policy under personal insurance is issued as a benefit policy. This means that a specified amount of claim is paid to the insured on happening of an event, without considering the actual monetary loss. This predetermined amount usually can be more than the actual monetary loss. It does not mean that the insurer is not aware of this fact; he will see that the principle of indemnity is fully observed.

8. The principles of subrogation and contribution do not apply to personal accident insurance. This means that an insured can get any number of accident policies and are benefited.

Types of personal accident insurance:

Some Important types of policies are as below:

1. Janta individual types of policy.
2. Third party/ passenger/ driver accident policy.
3. Accidental policy issued by aviation department.
4. Group insurance personal accident policy for school children.
5. Rural personal accident policy.
6. Personal accident family package policy.
7. Medical (Hospital and house) treatment policy.

Classification of risks:

The amended rules in regard to personal accident policy have been implemented from April 1, 1994. According to this direction, the personal accident risks are classified into four categories.

1. Risk Group I: It includes accountants, doctors, advocates, artisans, Consultant, engineers, teachers, bankers' administrative officers and others form professional field.

2. Risk group II: It includes architects, contractors, superintendent engineers, veterinary doctors, vehicle drivers, and others from the same trade, but not doing any manual work.

3. Risk group III: All such persons, excluding the risk group IV, engaged in physical labour, such as garage and motor mechanics, machine operators, driver's of trucks, or other heavy vehicles, sportsmen and athletics' carpenters and others engaged in this type of risks.

4. Risk group IV: Person engaged in underground mines, and armory, persons engaged in electricity generation, circus, horse race hunters, mountaineers, winter sports, ice hockey, hand gliding, polo-players, and other belonging to such field.

The insurance cover provides for all over the world.

Insurance cover/benefits in personal accident policy:

1.	In case of death	Full sum assured
2.	Permanent Disablement (damages to both hands/legs, or both eyes, or one eye and one leg)	Full sum assured
3.	In the case of damages to one hand/leg or one eye	50 per cent of the sum assured
4.	Other kind of permanent	100 percent

Disablement in addition to damages
happened by injury

5. Temporary or total disablement Paid on weekly basis and
benefits current rate is 1 per cent
of the

sum assured per week

6. Temporary or partial disablement Paid on weekly basis and
the
benefits current rate is 3 percent of the

sum assured per week

Benefit (5) and (6) are together payable for a maximum of 104 weeks.

Premium rates on below one year policy

Where a personal accident policy is issued for less than one year
period the following rates are applicable:

- | | |
|---------------------|--------------------------------|
| - Upto one month | - $\frac{1}{4}$ of yearly rate |
| - Upto three months | - $\frac{1}{2}$ yearly rate |
| - Upto six months | - $\frac{3}{4}$ yearly rate |
| - Above one year | - yearly rate |

Age limit:

The minimum age limit is five years of age at the time of entry and the maximum 70 years. However, the insurance company has the power to grant exemption from minimum and maximum age limits keeping in view the standard of the case, provided higher rate of premium is paid. In the case of "Family Package Cover" policy the minimum age limit of children can be 5 years and the maximum 25 years.

Assured sum ordinarily for a person the sum assured shall not be more than the sum equivalent to his 72 months' salary or income received from occupations. For exceeding this limit, the prior approval of the head of regional office of the insurer is required.

Extension of Insurance cover:

In order for expansion of insurance cover to meet the expenses on medical treatment either by 25 percent of the claim money or by 10 percent of the sum insured (which even is less) and an additional 10 percent more of the original premium is required to be paid to the insurer.

Exclusion from claims:

The death, injury or disablement occurred due to the following are not indemnified by the insurer.

While on the duties or services of defense services of the country.

Injury occasioned by or contributed to by venereal diseases or pregnancy.

Consciously committing injury, or efforts to commit suicide.

Injury sustained under the influence of wine or intoxicants.

Medical and surgical treatment (which are not covered by the policy).

Injury by atomic energy materials.

Air travel for the purpose of any trade or technical operation or as an air crew except in a licensed air craft.

Any action taken by the appropriate authority against the violation of legal provisions done with the object of committing a criminal act.

Other special benefits:

The following types of special benefits are given in the case of personal accident insurance without paying any additional rate of premium. These are:

The expenses to be made for bringing the dead body to home of the insured in case of death: 2 percent of the insured sum or of Rs.2500.00 whichever is less

Cumulative bonus: Every year when the policy is renewed, 5 percent of the insured value is incurred which can be upto 50 percent of insured value

Educational grants: In case of death or permanent disablement of the insured the following educational grants are sanctioned:

Dependant single child below the age of 25 years Grants upto 10 percent of the insured sum subject to a limit of Rs. 5000

Dependent children (More than one) below the age of 25 years: 10 per cent of the sum assured or Rs.10000 whichever is less.

The minimum premium payable in the case of adult person is Rs. 30 and in the case of group accidental policy the minimum is Rs.100

Family package cover:

The family package cover in the personal accident policy is as under :

Miscellaneous Insurance

1.	In the case the insured and his/her spouse are earning members.	Upto full sum assured
2.	In case the spouse of insured assured or is not an earning member.	50 per cent of the total sum 1.00 lakh whichever is less
3.	Children from 5 to 25 years of to Age.	25 per cent of total sum assured every child or Rs. 50000 whichever is less.

10.11. Summary:

The important miscellaneous insurance is the sign of growth of insurance sector with reference to General Insurance. The House Insurance Comprehensive Insurance Policies, Crop Insurance, Live Stock Insurance, Burglary Insurance, Personal Accident Insurance Policies and other important miscellaneous insurance policies discussed at length. General insurance principles and specific insurance principles are also simultaneously applicable on these insurance cover.

10.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub. All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co. Nag
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal , J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow

10.13. Check your Progress:

A. Which of the following statement are true or false?

1. To be an “occupier” is an essential condition of liability.
2. Indian farmers still have to bear heavy losses from unfavorable climatic conditions.

3. The importance of live stock insurance is increasing gradually in India.

4. Burglary insurance was developed to provide security against theft, decoity, house breaking etc.

5. Personal accident insurance is the insurance designed to replace a substantial part of earned income lost by disability or accident.

B. Fill in the Blank:

1. The meaning of storm was explained in

2. India is basically ancountry

3. As the first time in 1939, the crop insurance plan was formulated by

4. The crop insurance providesagainst damages or losses to crop.

5. The aim of Integrated Rural Development Programme (IRDP) is tothe small and marginal formers.

10.14. Answer to Check Your Progress:

A.

1. True

2. True

3. True

4. True

5. True

B.

1. Oddy v Phenix Assurance Co. Ltd.

2. Agriculture

3. Mysore Government

4. Indemnity

5. Uplift

10.15. Terminal Questions:

Q.1. Discuss in detail about Comprehensive Insurance Policies.

Q.2. Discuss the Crop Insurance and its features.

Q.3. Discuss the Live Stock Insurance.

Q.4. Discuss Burglary Insurance.

Q.5. Discuss the Personal Insurance.

Unit-11

Insurance Regulatory Development Authority Act, 1999

Objectives:

After going through this unit you should be able to:

- Understand the importance of Insurance Regulatory and Development Authority Act, 1999
- Understand the relevant legal provisions related to establishment of the Authority
- Understand the application of Act, 1999 to monitor and regulate insurance business in India

Structure:

- 11.1. Introduction
- 11.2. Establishment and incorporation of Authority
- 11.3. Removal from office
- 11.4. Duties, power and functions of the Authority
- 11.5. Power of Central Government to issue directions
- 11.6. Furnishing of returns to Central Government
- 11.7. Power to make rules
- 11.8. Establishment of Insurance Regulatory Advisory Committee
- 11.9. Power to make regulations
- 11.10. Important Amendments in Corresponding Acts
 - 11.10.1. Amendments in Insurance Act, 1938
 - 11.10.2. Amendments in LIC Act, 1956
 - 11.10.3. Amendments in General Insurance Business (Nationalization) Act, 1972
- 11.11. Summary
- 11.12. Some Useful Books
- 11.13. Check Your Progress
- 11.14. Answer to check your Progress
- 11.15. Terminal Questions

11.1. Introduction:

In April, 1993, the Government set-up a high powered committee headed by Shri R.N. Malhotra, former Governor, Reserve Bank of India, to examine the structure of the insurance industry and recommend changes to make it more efficient and competitive keeping in view the structural changes in other part of the financial system of the country. The Committee which submitted its report on the 7th January, 1994 felt that the insurance regulatory apparatus should be activated even in the present set up of the nationalized insurance sector and recommended, interalia, the establishment of a strong and effective Insurance Regulatory Authority in the form of a statutory autonomous body on the lines of Securities and Exchange Board of India.

.The recommendations of the Committee were discussed at different forums including the Consultative Committee of the Parliament attached to the Ministry of Finance, Managements of the LIC and GIC and its subsidiaries companies, trade unions, Chambers of Commerce and consumer interest groups. The recommendation to set up an autonomous Insurance Regulatory Authority found wide support. In view of the general support received, the then Government decided to bring a legislation to establish an independent Regulatory Authority for the insurance industry.

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 (Nationalisation) Act, 1972.

11.2. Establishment and incorporation of Authority (Section 3 of the Act):

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called "the Insurance Regulatory and Development Authority".

(2) The Authority shall be a body corporate by the name aforesaid have perpetual secession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority may establish offices at other places in India.

Composition of Authority S.4 – The authority shall consist of the following members, namely:-

- a) A Chairperson;
- b) Not more than five whole time members;
- c) Not more than four part-time members,
to be appointed by the Central Government from amongst person of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

Tenure of office of Chairperson and other members S.5 – (1) The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as a Chairperson after he was attained the age of Sixty-five years:

Provided further that no person shall hold office as a whole-time member after he has attained the age of Sixty-two years.

(2) A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

(3) Notwithstanding anything contained in sub-section (1) or (2), a member may –

a) Relinquish his office by giving in writing to the Central Government notice or not less than three months; or

b) Be removed from his office in accordance with the provisions of section - 6.

11.3. Removal from office (Section 6)

(1) The Central Government may remove from office any member, who –

a) is, or at any time has been, adjudged as an insolvent; or

b) has become physically or mentally incapable of acting as a member; or

c) has been convicted of any offence which in the opinion of the Central Government, involves moral turpitude; or

d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

e) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No such members shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Salary and allowances of Chairperson and members S.7 –

(1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.

(2) The part-time member's shall receive such allowances as may be prescribed.

(3) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after appointment.

Bar on future employment of member S.8 – The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept –

a) Any employment either under the Central Government or under any State Government; or

b) Any appointment in any company in the insurance sector.

Administrative of Authority S.9 – The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of Authority S.10 –

(1) The Authority shall meet at such times and places and shall observe such rules and procedures in regard to transaction of business at its meetings (including quorum at such meetings) as may be determined by regulation.

(2) The Chairperson, or if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

11.4. Duties, powers and functions of Authority

(Section14)

(1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and Re-insurance business.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include:-

a) Issue to the applicant a certificate of registration, renew, modify, withdraw suspend or cancel such registration;

b) Protection of the interests of the policy-holders in matters concerning as signing of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

c) Specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

d) Specifying the 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 the insurance and Re-insurance business;

g) Levying fees and other charges for carrying out the purposes of this Act;

h) Calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance, intermediaries and other organizations connected with the insurance business;

i) Control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);

- j) Specifying the form and manner in which books of accounts shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- k) Regulation investment of funds by insurance companies;
- l) Regulating maintenance of margin of solvency;
- m) Adjudication of disputes between insurers and intermediaries of insurance intermediaries;
- n) Supervising the functioning of the Tariff Advisory Committee;
- o) Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations referred to in clause (f);
- p) Specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- q) Exercising such other powers as may be prescribed.

11.5. Power of Central Government to issue direction:

(Section 18): (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time;

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of the policies or not, shall be final.

1.3.11 Power to Central Government to supersede Authority S.19 –

- (1) If, at any time the Central Government is of the opinion –
- a) That on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
 - b) That the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
 - c) That circumstances exist which render it necessary in the public interest so to do.

The Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under Section 2B of the Insurance Act, 1938 (4 of 1938), if not already done;

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

- (2) Upon the publication of a notification under sub-section (1) superseding the Authority -
- a) The Chairperson and other members shall, as from the date of supersession, vacate their offices as such;
 - b) All the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall until the Authority is reconstituted under sub-section (3) be exercised and discharged by the Controller of Insurance; and

c) All properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of super session specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

11.6. Furnishing of returns, etc., to Central Government:

(Section 20)

(1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

Chairperson, members, officers and other employees of Authority to be public servants S.21 –The Chairperson, members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provision of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Protection of action taken in good faith S.22 – No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made hereunder:

Delegation of Power S.23 –

(1) The Authority may, by general or special order in writing, delegate to the Chairperson or any other members or officer of the Authority subject to such conditions, if any, as may be specified in the order such of its powers and functions under this Act as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

11.7. Power to make regulations:

(Section 24)

(1) The Central Government may, by notification, make rules for carrying out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a) The salary and allowances payable to and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section – 7;

- b) The allowances to be paid to the part-time members under sub-section (2) of section 7;
- c) Such other powers that may be exercised by the Authority under clause (q) of sub-section (2) of section 14;
- d) The form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;
- e) The form and the manner in which and the time within which returns and statements and particulars are to be furnished to be Central Government under sub-section (1) of section 20;
- f) The matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority.
- g) Any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

11.8. Establishment of Insurance Advisory Committee:

(Section 25):

- (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.
- (2) The Insurance Advisory Committee shall consist of not more than twenty-five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organizations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.
- (3) The Chairperson and the members of the Authority shall be the ex officio chairperson and ex officio members of the Insurance Advisory Committee.

(4) The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations under section 26.

(5) Without Prejudice to the provisions on sub-section (4) the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

11.9. Power to make regulations:

(Section 26):

(1) The authority may, in consultation with the Insurance Advisory Committee, by notification make regulations consistent with the Act and the rules made hereunder to carry out the purposes of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing power, such regulation may provide for all or any of the following matters, namely:-

a) The times and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;

b) The transactions of business at its meetings under sub-sections of business at its meetings under sub-section (4) of section 10;

c) The terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;

d) The powers and functions which may be delegated to Committees of the members under sub-section (2) of section 23;

e) Any other matter which is required to be, or may be, specify by regulations or in respect of which provisions is to be or may be made by regulations.

Rules and regulations to be laid before Parliament S.27 – Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made,

before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both that the rule or regulation should not be made, the rule or regulation shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule or regulation.

Application of other laws not barred S.28 – The provision of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

Power of remove difficulties S.29 –

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament

11.10. Important Amendments in corresponding Acts:

11.10.1. Important Amendments in Insurance Act, 1938:

1. In the Act, except in clause (5-B) of Section 2 and Section 2-B, for “Controller” wherever it occurs, substitute “Authority” and such consequential changes as the rules of grammar may require shall also be made.

2. For Section 6, substitute the following:

"6. Requirement as to capital: No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the IRDA Act, 1999, shall be registered unless he has-

- (i) A paid-up equity capital of 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 are insurer;

3. For Section 33, substitute the following:

"33. Power of investigation and inspection by Authority:

- 1. The Authority may, at any time by order in writing, direct any person specified in order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority (IA).
- 2. The IA may at any time and shall on being directed so to do by the Authority, cause an inspection to be made one or more of his officers of any insurer and his books of account; and IA shall supply to the insurer a Copy of his report on such inspection.
- 3. It shall be the duty of every manager, managing director or other officer of the insurer to provide all books of accounts, registers, and other documents in his custody.
- 4. Any IA may examine on oath.
- 5. The IA shall report to the Authority on any inspection made.
- 6. On receipt of any report the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as in the opinion of the Authority, seems reasonable by order in writing,
 - a. Require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think it; or
 - b. Cancel the registration of the insurer; or
 - c. Direct any person to apply to the court for the winding up of the insurer.

4. Section 42, (a) for sub-section (1), substitute the following:-

“(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a license to act as an insurance agent for the purpose of soliciting or procuring insurance business.

5. After Section 42-C, insert the following:

“42-D. Issue of license to intermediary or insurance intermediary: (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority, and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a license to act as an intermediary or an insurance intermediary under this Act.”

6. For section 102 to 105, substitute the following:

Section 102: Penalty for default in complying with or act in contravention of this Act, if any person, who is required under this Act, or rules or regulations made there under,

- a. To furnish any document, statement, account, return or report to the Authority, fails to furnish the same;
- b. To comply with the directions, fails to comply with such directions;
- c. To maintain solvency margin, fails to maintain such solvency margin;
- d. To comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties, he shall be liable to a penalty not exceeding five Lakh rupees for each such failure and punishable with fine.

Section 103: Policy for carrying on insurance business in contravention of Section 3, 7 and 98: If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true.

Section 104: Penalty for false statement in document: If a person fails to comply with the provisions of Section 27 or Section 27-A or Section 27-B or Section 27-D, he shall be liable to penalty not exceeding five Lakh rupees for each such failure.

Section 105: Wrongfully obtaining or withholding property: If any director, manager or managing director or other officer or employee of an insurer wrongfully obtains possessions of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two Lakh rupees for each such failure.

11.10.2. Amendments in LIC Act, 1956: Amendments to the Life Insurance Act, 1956 (31 of 1956):

1. In the Act, for “Controller” wherever it occurs, substitute
“Authority”

2. After Section 30, insert the following:-

“30-A. Exclusive privilege of Corporation to cease:- Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the Corporation shall cease on and from the 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.”

11.10.3. Amendments in General Insurance Business (Nationalization) Act, 1972: Amendment to the General Insurance Business (Nationalization) Act, 1972 after section 24, inserts the following:

“24-A. Exclusive privilege of Corporation and acquiring companies to cease:- Notwithstanding anything contained in this Act, the exclusive privilege of the Corporation and acquiring companies of carrying on 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 accordance with the provisions of the Insurance Act, 1938.”

11.11. Summary:

The Insurance Regulatory and Development Authority is playing a very important role in orderly growth of insurance sector in India through proper regulations and monitoring. The relevant provisions of the IRDA Act giving very wide powers to IRDA in this regard to investigate in case of non compliance of the rules and regulations issued by the IRDA or Central Government in particular.

11.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub. All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co. Nagpu
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Publishers, Jaipur

11.13. Check Your Progress:

A. Which of the following statements are true and false:

1. In April, 1993, the Government set-up a high powered committee headed by Shri R.N. Malhotra.
 2. The Authority shall consist of not more than five whole time members.
 3. Section 19 is related to power of Central Government to supersede the Authority.
 4. Power to make rules defined under Section 24.
 5. A paid-up equity capital of rupees one hundred crores is required in case of life insurance or general insurance.
- B. Fill in the Blanks:
1. An Authority to protect the interest of policy holders to regulate,..... and ensure orderly growth of the insurance industry.
 2. The Chairman and other part time members of the Authority shall hold office for a term of
 3. is related to removal of the members and Chairman.
 4. The bar on future employment of members is up to
 5. Duties, power and functions of the Authority is defined underof the IRDA Act, 1999.

11.14. Answer to check your Progress:

- | | | |
|----|---------------|---------|
| A. | 1. True | |
| | 2. True | |
| | 3. True | |
| | 4. True | 5. True |
| B. | 1. to monitor | |
| | 2. five Years | |

3. Section 6

4. Two Years

5. Section 5

11.15. Terminal Questions:

Q.1. Discuss the power of Central Government to issue directions to the Authority.

Q.2. Discuss the duties, powers and functions of the Authority.

Q.3. Discuss the composition, tenure and removal clause under the IRDA Act, 1999.

Q.4. What is the power to make rule of Central Government?

Q.5. Discuss the establishment of Insurance Advisory Committee.

Unit-12

Insurance Ombudsman

Objectives:

After going through this unit you should be able to:

- Understand the importance of the Insurance Ombudsman;
- Understand the role of Insurance Ombudsman in settlement of the cases between insured and insurer;
- Understand the concept of consumer and its relationship particularly in case of disputes.

Structure:

- 12.1. Introduction
- 12.2. Appointment of Insurance Ombudsman
- 12.3. Territorial Jurisdiction of Ombudsman
- 12.4. Power of Insurance Ombudsman
- 12.5. Procedure of Redressal of Public Grievances
- 12.6. Manner of Complaint
- 12.7. Power of Insurance Ombudsman
- 12.8. Insurance business and consumer Law
- 12.9. Insurance Ombudsman-Structure in existence in India-Practical aspect
- 12.10. Grievance Redressal Cell of IRDA
- 12.11. Summary
- 12.12. Some Useful Books
- 12.13. Check Your Progress
- 12.14. Answer to Check Your Progress
- 12.15. Terminal Questions

12.1. Introduction:

The History of the Ombudsman: **The First Ombudsman**

In 1697, when he was only 15 years old, Charles XII became King of Sweden. For the next 17 years, however, Charles was out of the country fighting wars, mostly

against Russia. During this time, because he was away from the country, Charles signed a law creating an office called the King's Highest Ombudsman. The job of the King's Highest Ombudsman was to make sure that while the king was away the government workers, judges, and the military were acting properly and following the rules the King had left for them. When the wars were over and the King returned to Sweden, the office of the ombudsman disappeared for several decades, but it was not forgotten.

The word 'ombudsman' comes from Sweden which in 1809 established the position of *Justitie ombudsman* to oversee government administration. The title loosely translates as 'citizen's defender' or 'representative of the people'. Since 1809, it has been adopted in many parts of the world, in both government and private industry (eg. banking and insurance) settings. However, the role has changed considerably and nowadays the Ombudsman functions in Sweden and elsewhere do not generally involve acting on behalf of complainants in the way that an advocate or lawyer would do. Nor does the Ombudsman represent the agency being complained about. Rather, an Ombudsman acts in an impartial and independent way¹.

About a hundred years later, in 1809, Sweden had a different king but it was still fighting wars with Russia. The war was not going very well for Sweden. In fact, the king had been taken prisoner by the Russian army. Without a King to make final decisions and settle disputes, the Swedish Parliament brought back the idea of the ombudsman. The ombudsman who was appointed in 1809 was responsible to Parliament and his job was to protect the rights of citizens against unfair or oppressive decisions of the bureaucracy. His name was Lars Augustin Mannerheim.

The appointment of this parliamentary ombudsman in Sweden in 1809 is generally regarded as the birth date of the modern ombudsman. Most of the public or parliamentary ombudsmen around the world are modeled on what happened in Sweden in 1809. A common definition that is accepted today says that a public or parliamentary ombudsman is "a public official appointed by the legislature to

¹ http://www.ombudsman.wa.gov.au/About_Us/History.htm

receive and investigate citizen complaints against administrative acts of government”.

The Ombudsman in Saskatchewan:

Canadian provinces began to create ombudsman offices in the late 1960s. Saskatchewan passed a law creating the office of the ombudsman and then appointed Saskatchewan’s first Ombudsman in 1973.

The Ombudsman in Saskatchewan is called an Independent Officer of the Legislative Assembly. This means that the Ombudsman is not part of the government. The Ombudsman is separate and apart from the government. The Ombudsman is appointed for a five year term and may be appointed for no more than two terms.

There have been six ombudsmen in Saskatchewan since the first one was appointed in 1973. The current Ombudsman is Mary McFadyen².

Development in India: The Malhotra Committee also recommended setting up of the institution of ombudsman with a view to reduce litigation and to protect the consumer’s interest in the backdrop of the insurance sector. The Central Government in exercise of the powers conferred on it by the Insurance Act, 1938 by notification. The institution of Insurance Ombudsman was created by a Government of India Notification dated 11th November, 1998 with the purpose of quick disposal of the grievances of the insured customers and to mitigate their problems involved in redressal of those grievances. This institution is of great importance and relevance for the protection of interests of policy holders and also in building their confidence in the system. The institution has helped to generate and sustain the faith and confidence amongst the consumers and insurers.

12.2. Appointment of Ombudsman:

Rule 6 provides that governing body shall appoint one or more persons as Ombudsman. The governing body of insurance council issues orders of

² www.ombudsman.sk.ca/info/the-history-of-the-ombudsman

appointment of the insurance Ombudsman on the recommendations of the committee comprising of:

- (i) Chairman, IRDA;
- (ii) Chairman, LIC;
- (iii) Chairman, GIC ; and
- (iv) A representative of the Central Government.

Insurance council comprises of members of the Life Insurance council and general insurance council formed under Section 40 C of the Insurance Act, 1938. The governing body of insurance council consists of representatives of insurance companies.

Ombudsman is drawn from Insurance Industry, Civil Services and Judicial Services.

Terms of office: An insurance Ombudsman is appointed for a term of three years or till the incumbent attains the age of sixty five years, whichever is earlier. Re-appointment is not permitted.

12.3. Territorial Jurisdiction of Ombudsman:

he governing body has appointed twelve Ombudsmen across the country allotting them different geographical areas as their areas of jurisdiction. The Ombudsman may hold sitting at various places within their area of jurisdiction in order to expedite disposal of complaints. The offices of the twelve insurance Ombudsman's are located at,

- (1) Bhopal;
- (2) Bhubaneswar;
- (3) Cochin;
- (4) Guwahati;

- (5) Chandigarh;
- (6) New Delhi;
- (7) Chennai;
- (8) Kolkata;
- (9) Ahmadabad;
- (10) Lucknow;
- (11) Mumbai;
- (12) Hyderabad.

The Ombudsman has a secretarial staff provided to him by the insurance council to assist him in discharging his duties. The total expenses on Ombudsman and his staff are incurred by the insurance companies who are members of the insurance council in such proportion as may be decided by the governing body.

12.4. Power of Insurance Ombudsman: Insurance Ombudsman has two types of functions to perform (1) conciliation, (2) Award making. The insurance Ombudsman is empowered to receive and consider complaints in respect of personal lines of insurance from any person who has any grievance against an insurer. The complaint may relate to any grievance against the insurer i.e. (a) any partial or total repudiation of claims by the insurance companies, (b) dispute with regard to premium paid or payable in terms of the policy, (c) dispute on the legal construction of the policy wordings in case such dispute relates to claims; (d) delay in settlement of claims and (e) non-issuance of any insurance document to customers after receipt of premium.

Ombudsman's powers are restricted to insurance contracts of value not exceeding Rs. 20 lakhs. The insurance companies are required to honour the awards passed by an Insurance Ombudsman within three months.

The Ombudsman shall act as counsellor or mediators in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by

the insured person and insurance company. The Ombudsman's decision whether the complaint is fit and proper being considered by it or not, shall be final.

12.5. Procedure of Redressal of Public Grievances:

Complaints- When and who can present a Complaint: (i) The complainants first make a written representations to the insurer and if the insurer had:

- (a) Rejected the claim of the complainants, or
- (b) The complainant had not received any reply within one month after receipt of the complaint by the insurer.

(ii) The complainant may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against, is located.

12.6. Manner of Complaint:

(Rule 13)

(i) Any person who has a grievance against an insurer may himself or through his legal heir make a complaint in writing to the Insurance Ombudsman within his jurisdiction the branch or the office of the insurer is located.

(ii) The complainant shall be in writing duly signed by the complainants or through his legal heirs and shall state clearly the name and address of the complainant, the name of the office or branch of the insurer against which the complaint is made, the fact giving rise to the complaint supported by documents, the nature and extent of loss caused to the complainant and the relief from the Insurance Ombudsman.

(iii) No complaint to the Insurance Ombudsman shall be made unless-

- (a) The complainant had before making a complaint to the ombudsman made a written representation to the insurer named in the complaint and either the insurer had rejected the complaint or the complainant had not received any reply within a period of one month after the insurer concerned received his

representation or the complainant is not satisfied with the reply given to him by the insurer.

(b) The complaint is made not later than one year of after the insurer had rejected the representation or sent his final reply on the representation of the complainant, and

(c) The complaint is not on the same subject-matter, for which any proceedings before any court or consumer forum, or arbitrators is pending or so were earlier.

12.7. Award (Rule 16) and Recommendations:

The ombudsman shall pass an award within a period of three months from the receipt of the complaint. The awards are binding upon the insurance companies. If the policy holder is not satisfied with the award of the Ombudsman he can approach other venues like Consumer Forums and Courts of law for redressal of his grievances. As per the policy-holder's protection regulations, every insurer shall inform the policy holder along with the policy document in respect of the insurance Ombudsman in whose jurisdiction his office falls for the purpose of grievances redressal arising if any subsequently. Steady increase in number of complaints received by various Ombudsman shows that the policy-holders are reposing their confidence in the institution of Insurance Ombudsman.

When a complaint is settled through the mediation of the Ombudsman, he shall make the recommendations which he thinks fair in the circumstances of the case. Such a recommendation shall be made not later than one month and copies of the same sent to complainant and the insurance company concerned. If the complainant accepts recommendations, he will send a communication in writing within 15 days of the date of receipt accepting the settlement. Rule 16 is specifically talk about the Award made by the Insurance Ombudsman in following way:

(1) Where the complaint is not settled by the mutual agreement under Rule 15, the Insurance Ombudsman shall pass an award which he thinks fit in the facts and circumstances of a claim.

- (2) An award shall be in writing and shall state the amount awarded to the complainant.
- (3) The Ombudsman shall pass an award within a period of three months from the receipt of the complaint.
- (4) A copy of the award shall be sent to the complainant and the insurer named in the complaint.
- (5) The complainant shall furnish to the insurer within the period of one month from the date of receipt of the award a letter of acceptance that the award is in full and final settlement of his claim.
- (6) The insurer shall comply with the award within the 15 days of the receipt of the acceptance letter under sub-rule (5) and it shall intimate the compliance to the Ombudsman.
- (7) Under Rule 18, if the Ombudsman deems fit, he may award an exgratia payment. It should be noted that under Rule 17, where the complainant does not intimate the acceptance under sub rule (5) of Rule 16, the award may not be implemented by the insurance company.

12.8. Insurance Business and Consumer Law:

It is important to note that the Consumer Protection Act, 1986 is one of the benevolent social legislation intended to protect the interest of consumers at large from exploitation by the Service Providers like- Insurance Companies, Banks, etc. The ultimate aim and purpose of the Act is to provide cheap, simple and speedy redressal to the consumers. But the big question is this who is consumer? (R.N. Chaudhry: Consumer Protection Law) The term 'consumer' has been defined under Section 2(1) (d) of the Act as:

"Consumer" means any person who-

- (i) Buy any goods for consideration which has been paid or promised or partly paid and partly promised; or under any system of deferred payment and includes any user of goods....
- (ii) Hires and avails any service for consideration which has been paid or promised and includes any beneficiary of such services other than who hires

or avails of service for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment when such services are availed or with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

For the purpose of the Act 'consumer' has been classified as "consumer of goods", i.e., buyer of goods and Hire of services. Contract of insurance under Indian Law are contingent contract though based on the principle of indemnity while English law regards it contract of indemnity except life insurance. Providing insurance is service and not selling of good. Thus policy holder is consumer of services.

Beneficiary of Group Insurance is Consumer-In *Vikas Verkhedkar v. Narmada Electronics (P) Ltd.* [II (1997) CPJ 3 (NC)], complainant was one of the employee of the Narmada Electronics Ltd. This concern was covered by the Group Insurance of the respondent. He met with an accident and lodged a claim but he was not paid in full. It was held that the complainant was beneficiary under the policy of insurance of the group insurance. It was covered by the definition of 'consumer' as defined in Section 2(1) (d) (i) of the Consumer Protection Act. Then the question arises as to what is 'Service'? Service has been defined under Section 2(1) (o) as: "Service" means service of any description which is made available to potential users and includes but is not limited to, the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing, construction, entertainment, amusement or the previewing of news or other information, but does not include rendering of services free of charge or under a contract of personal service.

The above definition specifically includes "insurance" within its scope, what is more required is that such service must be provided for consideration and not free of charge. Whatever insured paid as premium by which services of the insurer is bought and an insurer renders service to the consumer. Thus, it is obvious that a policy holder is a consumer. Thus it is obvious that a policy holder is consumer. So, all the insurance whether life or general are within the purview of Consumer Protection Act.

The other thing which is required is that there must be 'consumer dispute'. Section 2(1) (e) of the Act defines it as:

"a dispute where the person against whom a complaint has been made denies or disputes the allegations contained in the complaint. The complaint is made as to deficiency in service.

The term 'deficiency' has been defined under Section 2(1) (g) as:

"any fault imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

It is to be borne in mind that to be serviced under the purview of the Consumer Protection Act. It is necessary that it should not be given (a) free of charge; and (b) under a contract of service. Here both do not apply a contract of service because insured pays premium for availing insurance service of the insurer and contract of insurance is contract for service and contract of service. While considering 'Contract of Service' and 'Contract for Service' the Supreme Court in the case of Indian Medical Association v. V.P. Shantha [AIR 1996 Sc 550] has explained between the two, as –

"Contract for Service"- "Contract of service implies a contract where by one party undertakes to render service, e.g., professional or technical services to or for another in the performance of which he is not subject to detail direction and contract but exercises professional or technical skill and uses his own knowledge and decisions" (R.N.P. Chaudhry: Consumer Protection).

"Contract for Service"- Contract of relationship implies a relationship of a master and servant and involves the order to obey in the works to be performed and as to its made and manner of performance. Contract of service is out of the purview of this Act. Contract of insurance does not create a relation of master and servant between their insurer and insured. It is purely contract of service. Thus contract of insurance is very well within the domain of the Consumer Protection Act, 1986. The term 'service' under section 2(1) (o) includes insurance. It may be life or

general which may be respectively conducted by LIC and GIC. Since their business is service, so they are amenable before consumer for a. Policy holders and beneficiaries under the policy are consumers within the meaning of the Consumer Protection Act, 1986.

In R.M. LIC v. B.Reddy [1991(2) CPJ 144], it has held that Insurance Services are 'service' within the provisions of Section 2(1) (o) of the Act and consequently within the jurisdiction of Consumer Protection Act, 1986. Thus delay in payment of insurance amount or delay in settlement of claims or faulty determination of claims or non-payment or unreasonable grounds or any other deficiency on the part of the company may amount to deficiency in service within the meaning of the Act.

In Hotel Southern Pvt. Ltd. v. National Insurance Co. Ltd. [(1995) III CPJ 54 NC], the appellants paid insurance premium by cheque for insurance of a car. The cheque was dishonoured for insufficiency of funds. The insurance policy was void ab initio. Non-payment of claim by the insurer did not amount to deficiency in service.

The Supreme Court in United India Insurance Co. Ltd. v. Manubhai D. Gajera [AIR 2009 SC 446], has observed:

"Keeping in view of the role played by the Insurance Companies, it is essential that the Regulatory Authority must lay down clear guidelines by way of regulations or otherwise. No doubt the regulations would be applicable to all the players in the field of duties and functions of the Regulatory Authority, however to see that the service provider must render their services keeping in view the nature thereof. It will be appropriate for the Central Government or the General Insurance Companies also issue require circulars."

Consumer and Insurance Ombudsman: For providing protection to Indian consumers against malpractices and gullible brokers who are out to fleece the customers by raking in quick profits, IRDA has appointed Ombudsman in 12 cities across India to specifically deal with Insurance Grievances and speedy disposal of such cases. In case if a policyholder is dissatisfied by the outcome or the decision taken by the Insurance Company, such an individual has the liberty to approach the Insurance Ombudsman as a last resort after exhausting various options. Each

Ombudsman has been empowered to redress customer grievances in respect of insurance contracts on personal lines where the insured amount is less than Rs. 20 lakhs, in accordance with the Ombudsman Scheme.

12.9. Insurance Ombudsman-Structure in Existence in India:

CONTACT DETAILS	JURISDICTION
AHMEDABAD Office of the Insurance Ombudsman, 2nd floor, Ambica House, Near C.U. Shah College, 5, Navyug Colony, Ashram Road, Ahmedabad – 380 014 Tel.:-079-27546150/139 Fax:-079-27546142 Email:- ins.omb@rediffmail.com	State of Gujarat and Union Territories of Dadra & Nagar Haveli and Daman and Diu.
BHOPAL Sh.Raj Kumar Srivastava Office of the Insurance Ombudsman, Janak Vihar Complex, 2nd Floor, 6, Malviya Nagar, Opp. Airtel, Bhopal – 462 011. Tel.:- 0755-2769200/201/202 Fax:- 0755-2769203 Email:- bimalokpalbhopal@gmail.com	States of Madhya Pradesh and Chattisgarh.
BHUBANESHWAR Shri B.N. Mishra Office of the Insurance Ombudsman, 62, Forest park,	State of Orissa.

<p>Bhubneshwar – 751 009. Tel.: - 0674-2596461/2596455 Fax: - 0674-2596429 Email: - ioobbsr@dataone.in</p>	
<p>CHANDIGARH Sh.Manik B.Sonawane Office of the Insurance Ombudsman, S.C.O. No. 101, 102 & 103, 2nd Floor, Batra Building, Sector 17 – D, Chandigarh – 160 017. Tel.: - 0172-2706196/5861/6468 Fax: - 0172-2708274 Email: - ombchd@yahoo.co.in</p>	<p>States of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and Union territory of Chandigarh.</p>
<p>CHENNAI Sh. Virander Kumar Office of the Insurance Ombudsman, Fatima Akhtar Court, 4th Floor, 453 (old 312), Anna Salai, Teynampet, CHENNAI – 600 018. Tel.: - 044-24333678/664/668 Fax: - 044-24333664 Email: - chennaiinsuranceombudsman@gmail.com</p>	<p>State of Tamil Nadu and Union Territories - Pondicherry Town and Karaikal (which are part of Union Territory of Pondicherry).</p>
<p>DELHI Ms. Sandhya Baliga Office of the Insurance Ombudsman, 2/2 A, Universal Insurance Building, Asaf Ali Road, New Delhi – 110 002.</p>	<p>States of Delhi and Rajasthan.</p>

<p>Tel.:- 011-23239611/7539/7532 Fax:- 011-23230858 Email:- iobdelraj@rediffmail.com</p>	
<p>GUWAHATI Office of the Insurance Ombudsman, 'Jeevan Nivesh', 5th Floor, Nr. Panbazar over bridge, S.S. Road, Guwahati – 781001(ASSAM). Tel.:- 0361-2132204/2131307/2132205 Fax:- 0361-2732937 Email:- ombudsmanghy@rediffmail.com</p>	<p>States of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Nagaland and Tripura.</p>
<p>HYDERABAD Sh. G.Rajeswara Rao Office of the Insurance Ombudsman, 6-2-46, 1st floor, "Moin Court" Lane Opp. Saleem Function Palace, A. C. Guards, Lakdi-Ka-Pool, Hyderabad - 500 004. Tel.:- 040-23325325/23312122 Fax:- 040-23376599 Email:- insombudhyd@gmail.com</p>	<p>States of Andhra Pradesh, Karnataka and Union Territory of Yanam - a part of the Union Territory of Pondicherry.</p>
<p>KOCHI P.K. Vijayakumar Office of the Insurance Ombudsman, 2nd Floor, CC 27 / 2603, Pulinat Bldg., Opp. Cochin Shipyard, M. G. Road, Ernakulam - 682 015. Tel.:- 0484-2358734/759/9338 Fax:- 0484-2359336 Email:- iokochi@asianetindia.com</p>	<p>State of Kerala and Union Territory of (a) Lakshadweep (b) Mahe-a part of Union Territory of Pondicherry.</p>

KOLKATA Shri K.B. Saha Office of the Insurance Ombudsman, Hindustan Bldg. Annexe, 4, C.R. Avenue, 4th Floor, KOLKATA - 700 072. TEL : 033-22124346/22124339 Fax : 033-22124341 Email:- insombudsmankolkata@gmail.com	States of West Bengal, Bihar, Sikkim, Jharkhand and Union Territories of Andaman and Nicobar Islands.
LUCKNOW Shri N.P. Bhagat Office of the Insurance Ombudsman, 6th Floor, Jeevan Bhawan, Phase-II, Nawal Kishore Road, Hazratganj, Lucknow-226 001. Tel.:- 0522-2201188/31330/1 Fax:- 0522-2231310 Email:- insombudsman@rediffmail.com	States of Uttar Pradesh and Uttaranchal.
MUMBAI Sh.A.K.Dasgupta Office of the Insurance Ombudsman, 3rd Floor, Jeevan Seva Annexe, S. V. Road, Santacruz (W), Mumbai - 400 054. Tel.:- 022-26106928/360/6552/6960 Fax:- 022-26106052 Email:- ombudsmanmumbai@gmail.com	States of Maharashtra and Goa.

12.10. Grievance Redressal Cell of IRDA:

– The Grievance Redressal Cell of the IRDA (Insurance Regulatory and Development Authority) looks into the relevant and valid complaints lodged by the policyholders. The complaints against Life and Non-life (General) insurance companies are handled separately. The Grievance Redressal Cell plays a facilitative role by taking up complaints or customer grievances with the respective insurers.

Policyholders who have complaints or grievances against a particular insurance company or a TPA (Third Party Administrator) are required to first approach the Grievance Cell / Customer Complaint Cell of the concerned insurance company. If the complainant does not receive any response from the insurance company within a reasonable period of time or are dissatisfied with the response of the Insurance company, such customers may approach the Grievance Cell of the IRDA for resolving their grievances.

Only insurance cases pertaining to delay in delivering opinion on insurance cases or non-responsive attitude regarding matters relating to Insurance policies and claims are taken up by the Grievance Redressal Cell for speedy disposition of cases.

As claims/policy contracts in dispute require adjudication and the IRDA does not carry out any adjudication process, the policyholders are advised to approach the available quasi-judicial or judicial channels, i.e., the Insurance Ombudsman, Consumer forum or the Civil courts for registering such complaints. Only relevant and valid complaints from the insured individuals or policyholders themselves or the claimants are entertained by Grievance Redressal Cell. The Cell shall not entertain complaints or grievances written on behalf of policyholders by advocates or agents or any third parties. In case, if the complaints or grievances are being sent through e-mail, complainants are requested to submit complete details of the complaint in the prescribed format as specified in the complaint registration form. If the complaint sent via email does not adhere or prescribe to the specified

parameters, the Grievance Redressal Cell will not be in a position to register or entertain such a complaint.

Registration of Complaints

Policyholders who desire or wish to register complaints with the IRDA are requested to use the registration form put on the websites:

- a) www.irdaindia.org
- b) www.irda.gov.in

Contact information:

Complaints against Non-life (General) Insurance Companies:

Insurance Regulatory and Development Authority (IRDA),
Parishrama Bhawanam,
5-9-58/B, Basheerbagh,
Hyderabad - 500004
Tel: (040) 23240034
e-mail ids: nonlifecomplaints@irda.gov.in

Complaints against Life Insurance Companies:

Insurance Regulatory and Development Authority (IRDA),
Parishrama Bhawanam,
5-9-58/B, Basheerbagh,
Hyderabad - 500004
Tel: (040) 66820964/66789768 Extension: 251
e-mail id: lifecomplaints@irda.gov.in

12.11. Summary:

Insurance being the institutions of financial importance in every part of the world, the resolution of the complaints relating to their conduct is also an essential attribute of consumer satisfaction. Therefore the ombudsman or the officer for

dealing with consumer complaints regarding the Insurance has been appointed by an authority in various nations. The Ombudsman scheme is a boon and a very important channel for redressal of grievances by the general public against insurance companies and insurance services.

12.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub.All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co., Nagp
- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal , J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Pub., Jaipur

12.13. Check Your Progress:

A. Which of the following statements are true or false:

1. The word 'ombudsman' comes from Sweden.
2. Ombudsman acts in an impartial and independent way.

3. Ombudsman is drawn from Insurance Industry, Civil Services and Judicial Services.

4. The 12 offices of the Insurance Ombudsman are located in India.

5. Rule 18 is related to manner of complaint.

B. Fill in the Blanks:

1. The appointment of Parliamentary Ombudsman in Sweden in 1809 is generally regarded as the birth date of

2. TheCommittee also recommends setting up of the institution of Ombudsman.

3.provides that governing body shall appoint one or more persons as Ombudsman.

4. An Insurance Ombudsman is appointed for a term of three years.

5. Insurance Ombudsman has two types of functions to perform (1); and (2).....

12.14. Answer to Check Your Progress:

A.

1. True

2. True

3. True

4. True

5. False

B.

1. Modern Ombudsman

2. Malhotra
3. Rule 6
4. Three years
5. Conciliation and Award Making

12.15. Terminal Questions:

- Q.1. What is the procedure to appoint Insurance Ombudsman?
- Q.2. Discuss in detail the territorial jurisdiction and powers of Insurance Ombudsman.
- Q.3. What is the procedure of Redressal of Public Grievances?
- Q.4. What is Grievance Redressal Cell of the IRDA?
- Q. Explain the manner of complaint to be filed before the Insurance Ombudsman.

Unit-13

Social Security and Insurance

Objectives:

After going through this unit you should be able to understand:

- the meaning of Social Security,
- the importance of Social Security,
- the various government social security schemes,
- the legislative provisions for Social Security in India.

Structure:

- 13.1. Introduction
- 13.2. Social Security, Insurance and International Responses
- 13.3. Social Security, Insurance and Legislative Responses in India
- 13.4. Social Security, Insurance and Administrative Endeavors'
- 13.5. Various Social Security Schemes Sponsored by Central Government
- 13.6. Social Security Insurance Scheme in India Implemented Through LIC of India
- 13.7. Significance from Social Point of View
- 13.8. The Public Liability Insurance Act, 1991
- 13.9. Duty of owner to take out insurance policies
- 13.10. Award of Relief
- 13.11. Summary
- 13.12. Some Useful Books
- 13.13. Check Your Progress
- 13.14. Answer to Check Your Progress
- 13.15. Terminal Question

13.1. Introduction:

The word 'social security' was first used by Bismark in eighteen eighties in Germany, could get its official recognition and was authoritatively used in the U.S.A. in the 1935 for the first time. According to an American Committee of

Experts, social security is, "security for employment, security in the availability of employment, security of reasonable standard of working conditions, security of some income while unemployed, security of retirement income, of recreation of self improvement of medical and ill health or death." The first systematic attempt to define social security as "the security that society furnishes through appropriate organisations against certain risk to which its members are exposed." The Social Reform Act, 1933 of the Social Democratic Government in Denmark codified, simplified and extended previous social insurance and assistance legislation. The Social Security Act, 1935, passed by the Roosevelt Administration in the U.S.A. was the first official use of the term 'social security', though the provisions of the Act were very limited. The term 'social security' originated in the United States and spread throughout the world. The Labour Government's Social Security Act, 1938 in New Zealand provided the most comprehensive interpretation of social security at that time.

The ILO defines 'social insurance' as a scheme that provides benefits for persons of small earnings granted as of right in amounts which combine the contributive effort of the insured with subsidies from the employer and the State. The social Insurance protects persons of small earnings. Historically, it provided protection to industrial workers in the first instance. Social security insurance is 'social' because it involves the collective efforts of the beneficiaries, their employers, if any, and the State. It is purely insurance because the beneficiary has to pay contribution before he/her is entitled to receive benefits. Thus, the benefits are not paid gratis, they are systematically financed. Since the scheme is subsidized, a device is evolved to exclude the cases which do not deserve any subsidy from the state. Hence almost all social security schemes set a limit of income beyond which the protection is not available. In addition to this social security insurance is a compulsory measure. The person falling within the defined limit of the insured population cannot be refused to get insurance. This is done because if the scheme is made optional, the really poor would fall from the mesh as they will be the least willing to pay the contribution. Social insurance schemes often provide that those earning below a specified limit will be exempt from any contribution and the employer or the State will bear the total cost of the premium required to provide social security insurance cover.

Social security insurance has developed to provide economic security to the weaker sections of the society who are unable to pay the premium for adequate insurance. Pension plans, disability benefits, unemployment benefits, sickness insurance, and industrial security insurance are the various types of the social security insurance. Most of the nations of this world, in one or the other forms, claims as a welfare and socialistic states and have instituted certain measures for welfare and upliftment of the weaker sections of their respective societies- whether socially, financially or physically?

The Seventh Schedule of the Constitution of India has specifically provided entries in List-I (Entry-47) and List-III (Entry-23 and 24) which deal with social security cover to the people of the country. The Directive Principles of State Policy under the Constitution of India in its Article 38, Article 39(f), Article 41, Article 42, Article 43, and Article 47 directly imposes an obligation and corresponding duty on the State to provide the social security cover for the different vulnerable groups of the country within their resources. Even though, these are not enforceable through court of law in case the government is not fulfilling the desires of the people of the country under Article 32 and 226 of the constitution of India. But the Apex Court in India through wide interpretation said that the Directive Principles of State Policy have been held to supplement fundamental rights in achieving a welfare and socialistic state. Even the legislative entries may (within the limit of total federal scheme) be given a wide interpretation for effecting Directive Principles of State Policy. Constitutional provisions (apart from fundamental rights) may be construed in the light of the Directive Principles. The attempts of the government is appreciated by the Supreme Court of India, either it is through different social security schemes or important legislative measures for achieving the objectives of the welfare, socialistic and democratic state. The Industrial Disputes Act, 1947, Fatal Accident Act, 1855, Workmen Compensation Act, 1923, etc., are some of the efforts to provide the social security cover through social legislations. The Industrial Disputes Act, 1947 is one which is enacted as a 'social security measure' in order to ensure welfare of labour and it falls within one or other of entries 22, 23, and 24 in List-III of the Seventh Schedule of the Constitution of India.

Efforts have been also made at the International level for providing social security insurance to vulnerable sections of the country. ILO Convention No. 102 has

however not been ratified by India. The nine benefits are laid down in the ILO Convention No.102 of 1952 namely, sickness benefit, maternity benefit, employment injury benefit, old age benefit, invalidity benefit, survivors benefit, unemployment benefit and family benefit. However, India has ratified some Conventions of the ILO including Workmen's Compensation (Occupational Disease)- (No. 18 and revised Convention No. 42 of 1934); Equality of Treatment (Accident Compensation)- No. 19 of 1925; and Equality of Treatment (Social Security)- No. 1 and 8 of 1962. No doubt that the Government of India has accepted the international commitments that arises from the ratification of the International Covenant of Social, Economic and Cultural Rights of the United Nations. This Covenant, inter alia, recognizes the right of everyone to social security including social insurance.

13.2. Social Security, Insurance and International Responses:

The right to social security is recognized as a human right and establishes the right to social security assistance for those unable to work due to sickness, disability, maternity, employment injury, unemployment and old age. Social security systems provided for the states consist of social insurance programs, which provide earned benefits for workers and their families by employment contributions, and/or social assistance programs which provide non-contributory benefits designed to provide minimum levels of social security unable to access social insurance. The right to social security is interrelated and interdependent with other economic, social, and cultural rights, in particular the right to an adequate standard of living, including the right to food and the right to housing, the right to work, the right to protection of family.

Also social security gets recognition in several international instruments as a novel tool to provide assistance to weaker sections as well as vulnerable group of the society. Specifically Article 22 and 25 of the Universal Declaration of Human Rights, 1948, Article 9 and 10(2) of the International Covenant on Economic, Social and Cultural Rights, 1966, Article 23(1) of the International Covenant on Civil and Political Rights, 1966, Article 5(e)(iv) of the International Convention on

the Elimination of All Forms of Racial Discrimination, 1966, Article 101(c) of the Declaration on the Elimination of Discrimination Against Women, 1967, Article 11(1)(e) of Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 26(1) of the UN Convention on the Rights of the Child, 1989, General Comment No. 19 (2007) on the Right to Social Security, etc., are few important international instruments giving space and recognition to the social security as a measure to achieve the objectives of the welfare, socialistic and democratic state.

As far as the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which stands ratified by India is concerned, Article 28 contains provisions for adequate standard of living and social protection. Similarly Article 25(e) of the UNCRPD deals with healthcare and is significant because it contains provisions relating to non-discrimination in the area of life and health insurance. Persons with disabilities, though non-medically higher risk cases, are denied Insurance Policies on some pretext or the other and with a specific provision in the UNCRPD requiring Member States to prohibit discrimination in this regard, it will become necessary for the government to take steps in that direction.

13.3. Social Security, Insurance and Legislative Responses in India:

In the era of liberalization, globalization and privatization, the Indian economy is now convincingly mature conception. However within this conception, the liberalization of insurance sector is relatively notion. Regarding development of legislative framework in India up to the end of nineteenth century, the insurance was in its inception stage. Usually the Indian Companies Act, 1883 was applicable in business concern, banking and insurance companies but inadequate for the purpose. Therefore, two Acts were passed in 1912, namely, Provident Insurance Societies Act of 1912 and Indian Life Insurance Companies Act, 1912. These two enactments were governing only life insurance. There was no control on general insurance since such business was not so developed. These Acts were replaced with a very comprehensive Act, namely, Insurance Act, 1938. This Act was amended from time to time even at the time of enactment of a very important

legislation, Insurance Regulatory and Development Authority Act, 1999, comprehensively. The Indian Insurance Industry is now governed by the Insurance Act, 1938, LIC Act, 1956, The General Business Insurance Act, 1972 and IRDA Act, 1999. IRDA exercises the supervisory control over insurance sector and these powers flow from Insurance Act, 1938 as well as from IRDA Act, 1999.

IRDA Act, 1999 states that "Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of insurance business and reinsurance business." No doubt regulatory and supervisory powers of the authority are wide and pervasive and also regulate the mandatory compliance of the insurance companies regarding social security insurance.

A. Social Security, Insurance and IRDA Act, 1999: The IRDA Act stipulates that funds of policy-holders should be retained within the country besides essential exposure to rural and social sector, which will be predetermined by the authority. The Act, which already incorporated through amendment in the Insurance Act, 1938 that includes giving priority to health insurance, rural, infrastructure, and social insurance sector. Also penalty of Rs. 5 to 25 Lakhs on insurer that fails to fulfill social sector obligations including cancellation of registration of the insurance company. Now it is pretty clear from the discussion made so far that the social security has turn out to be one of the central goals of insurance business in the country. The section 32B and 32C are fixing the liability of the insurer towards rural, social sector, unorganised sector, and backward classes. The specific penalty for failure to comply with section 32B and 32C fixed under section 105B and 105C respectively. It is very stringent in nature, section 105B talks about penalty not exceeding 5 lakhs for each failure and shall be punishable with imprisonment may extend three years or with fine for each failure. Under section 105C if an insurer fails to comply of 32C, penalty not exceeding 25 lakhs for each failure and in the case of subsequent and continuing failure, the registration granted to such insurer under section 3 shall be cancelled.

For the proper and effective implementation and compliance of the above said provisions central government enacted the specific regulations. In exercise of the powers conferred by section 32C read with section 32B of the Insurance Act, 1938, the Insurance Regulatory and Development Authority in consultation with the

Insurance Advisory Committee, mark the Insurance Regulatory and Development Authority (Obligations of Insurers to Rural or Social Sector) Regulation, 2000. Under these regulations the 'Rural Sector', 'Social Sector', 'Unorganised Sector', and 'Economically Vulnerable or Backward Classes' defines in the interest of the welfare of the classes. Also imposes a mandatory obligation to fulfill the objectives of the amendments made in the Insurance Act and Regulations, 2000.

B. Social Security, Insurance and the Workmen's Compensation

Act, 1923: It is well settled that the Act is a piece of social security and welfare legislation. The intention of the legislature was to make the employer an insurer of the workman responsible against the loss caused by the injuries or death, which ought to have happened, while the workman was engaged in his work.

C. Social Security, Insurance and the Employee's Insurance Act,

1948: The introduction of a social security scheme of health insurance for industrial workers immediately after the independence shows the intention and commitment of the Central Government towards to provide the protection to this section of the society. The social security health insurance scheme envisaged is one of compulsory state insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories. Section 38 of the Act mandates that all the employees of the factories or establishments shall be insured. The initial and vital endeavour should be to identify the beneficiaries or the employees for insurance. The Central Government and state government made specific rules for the proper implementation and remedial measures to the insured persons under this Act namely- Employees State Insurance (Central Rules), 1950 and Employees Insurance Court formed under M.P. Employees Insurance Court Rules, 1953 under section 74 of the Act, 1950. Employees State Insurance Corporation is not a contractual insurer but a statutory one regarding liability to pay contribution is mandatory to provide complete social security cover under the Act.

Employee's State Insurance Scheme of India, is multidimensional social security system tailored to provide socio-economic protection to worker population and their dependents covered under the scheme. Beside full medical care for self and dependents, that is admissible from day one to insurable employment, the insured

persons are also entitled to a variety of cash benefits in times of physical distress due to sickness, temporary or permanent disablement, etc., resulting in loss of earning capacity, the confinement in respect of insured women, dependants of insured persons who die in industrial accidents or because of employment injury or occupational hazard are entitled to monthly pension called the dependent benefit. It is noteworthy that the Employees State Insurance Act, 1948, being welfare legislation, the Court's should give liberal interpretation to its provisions which are beneficial to the employees.

D. Social Security, Insurance and The Employee's Provident Fund and Miscellaneous Provisions Act, 1952: An Act to provide for the institution of provident funds, pension funds and deposit-linked insurance funds for employees in factories and other establishments. Section 6C is inserted through an Amendment Act, 1976 (w.e.f. 01-08-1976) and the Central Government frame a deposit-linked insurance scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which this Act applies. The employer shall be liable to deposit in proportionate of the wages of employees a specific sum in the Deposit-Linked Insurance Fund.

E. Social Security, Insurance and the Personal Injuries (Compensation Insurance) Act, 1963: This is an Act to impose on an employer a liability to pay compensation to the workmen sustaining personal injuries and to provide for employer liability to provide for the insurance. The provision of compulsory insurance is in section 9 of the Act of 1963.

F. Social Security, Insurance and the Payment of Gratuity Act, 1972: The provision of compulsory insurance through section 4A was inserted through an amendment in the year 1987. This section provides for the responsibility and liability of the employer for make payments towards the gratuity from the Life Insurance Corporation of India Act, 1956 or any other prescribed insurer.

G. Social Security, Insurance and Motor Vehicle Act, 1988. The third party liability insurance is 'mandatory' under section 146 of Motor Vehicle Act, 1988 and provides complete security to the 'third Party' in case of accident. There is a provision regarding immediate relief is under section 140 on the basis of

‘No Fault Liability’ and a specific scheme of compensation in case of death or bodily injury to the third person in case of accident. This is really a special piece of social legislation and which is aimed towards providing complete justice to the parties even in case of hit and run cases where the identity of the person is unknown.

H. Social Security, Insurance and the Public Liability Act, 1991:

This is an Act to provide public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance. The section 4 of this Act imposes a liability on the owner to take out compulsory insurance policies before handling hazardous substances and get it renewed within the period of its validity. Sub-section (2B), (2C) and (2D) of section 4 of the Act speaks of liability and duties of an insurer. Sub-section (3) of section 4 deals with exemption of any owner from taking out insurance in certain circumstances.

I. Social Security, Insurance and the Unorganised Worker’s Social Security Act, 2008: This is an Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith. It is estimated that the workers in the unorganised sector constitute more than ninety four percent of the total employment in the country. On the account of their unorganised nature, these workers do not get adequate social- security. Specifically under section 3 of this Act, the Central Government is authorized to frame welfare schemes and the schemes included in the Schedule-I of this Act shall be deemed to be the welfare schemes.

J. Social Security, Insurance and the Person with Disability Act, 2008: Chapter XIII of this Act is titled Social Security and covers section 66 to 68 that recognizes the rights of disabled persons to rehabilitation, insurance schemes, alternative security schemes and unemployment allowance. Section 67 of this Act imposes a liability on Central Government or State Government to frame an insurance scheme for the benefit of its employees with disability.

K. Social Security, Insurance and Civil Liability for Nuclear Damage Act, 2010: The new Act places responsibility for any nuclear accident with the operator and limits total liability to 450 million US \$ or such higher amount that the Central Government may specify by notification. Operator liability is capped at 1500 Cr. (about US \$ 330 million) or such higher amount that the

Central Government may notify, beyond which the Central Government is liable. The liability up to the specific limit can be arranged by creating a fund of Rs. 1500 Crore by the Nuclear Industry in India with the Central Government addressing anything over this level. A better alternative would be to make arrangements in the forms of the Insurance up to limits as provided by the law as is the global practice and on the line of the Public Liability Insurance Act, 1991 as discussed above.

L. Social Security and National Charter for Children: The commitment No. 4 of the National Charter for Children providing a social security to the children and shows the commitment of the democratic government in this regard.

13.4. Social Security, Insurance and Administrative Endeavors:

The Former Union Labour and Employment Minister Shri Mallikarjun Kharge has informed the Rajyasabha that recognizing the need to provide social security to unorganised workers, the Government has enacted the Unorganised Worker's Social Security, 2008. National Security Board was set up on dated 18-08-2009 and it has since held five meetings (up to 31st March, 2012) recommending extension of coverage of social security schemes Like- JanshreeBimaYojna, RashtriyaSwasthyaBimaYojna, Old Age Pension to certain category of unorganised workers. Similar Social Security Board shall be constituted at the State level also. As per available information, States of Karnataka, West Bengal, Chhattisgarh, A.P., and Assam have constituted State Social Security Board and framed rules under the Unorganised Worker's Social Security Act, 2008. State of Gujarat, Orissa, Kerala, and Tripura have framed rules only. State of Tamil Nadu has, however, informed that there is no requirement of constitution of State Social Security Board in the State as it is already implementing various welfare schemes for organized sectors.

There is a separate Ministry for Labour and Employment for the effective implementation of the various social security schemes and also a Social Security Division under this Ministry. The main functions of this social security division are as follows:

- (1) Matters concerning framing of social security policy especially for the organized sector of workers;
- (2) Administration of the Employees State Insurance Act, 1948;
- (3) Administration of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the three schemes framed there under namely: (i) The Employee's Provident Fund Scheme, 1952; (ii) The Employee's Pension Scheme, 1995; (iii) The Employees Deposit Linked Insurance Scheme, 1976;
- (4) Administration of the Workmen's Compensation Act, 1961;
- (5) Administration of the Maternity Benefit Act, 1961;
- (6) Administration of the Payment of Gratuity Act, 1972.

There is different Social Security Insurance Schemes/Plans financially supported by Central Government/ State Government (with special reference to M.P. Government) either launched by LIC/GIC are as follows:

13.5. VARIOUS SOCIAL SECURITY INSURANCE SCHEME (FINANCIALLY SUPPRTED) SPONSORED BY CENTRAL GOVERNMENT:

- A. The RashtriyaSwasthyaBimaYojna: This scheme was launched on 1.10.2007 to provide smart card cashless health insurance cover of Rs. 30,000/- to BPL (Below Poverty Line; a unit of five) in the organised sector. More than 2.79 Crore BPL families have been covered as on 29.02.2012.
- B. AamAdmiBimaYojna(AABY): The Government of India has launched this scheme to provide insurance against death and disability to landless rural households. More than 1.98 Crore lives have been covered under the Aam AdmiBimaYojna as on 29.02.2012.
- C. Indira Gandhi National Old Age Pension Scheme (IGNOAPS): This scheme launched by the Central Government for the person living below poverty line and above the age of 60 years is eligible for old age pension of Rs. 200/- per month. For the person above the age of 80 years the amount of pension has been raised to 500/- per month. More than 1.90 Crore beneficiaries have been covered under IGNOAPS as on 29.02.2012.

D. RashtriyaMahilaKalyanBimaYojna: This policy has been designed to provide relief to the family members of insured women in case of their death or disablement arising due to all kinds of accident and/or disablement arising out of problems incidental to women only.

E. Amartya ShikshaYojna Insurance Policy: This policy offered by the General Insurance Company secures the education of dependent children. If the insured parent/legal guardian shall sustain any bodily injury resulting solely and directly from accident, caused by external violent and visible means and such injury shall within twelve calendar months of its occurrence be the sole and direct cause of his/her death or permanent total disablement, the insurer shall indemnify the insured student, in respect of all covered expenses to be incurred from the date of occurrence of such accident till the expiry date of policy or completion of the duration covered.

F. JanshreeBimaYojna: The object of this scheme is to provide insurance protection to the rural and urban poor below the poverty line or marginally above it. 50% of the premium is subsidized from the Social Security Fund maintained by the LIC and the remaining 50% is contributed by members/nodal agency/state government. Persons aged between 18 and 59 years are covered for an amount of Rs. 30,000/- each under this scheme. In case of death or total disability (including loss of 2 eyes/2 limits of use) due to accident, a sum of Rs. 75,000/- and in case of partial disablement disability (loss of 1 eye/1 limit of 1 use) due to accident, a sum of Rs. 37,500/- is payable to the nominee/beneficiary.

G. Group Insurance Scheme for Economically Weaker Section: Under this scheme 50% of the premium is subsidized out of the social security fund of Rs. 100 Crores set-up as per the Budget provisions of 1988-89. The insurance cover is Rs. 5,000 payable on death of the member. In the case of accident death Rs. 25,000 is paid. Initially under the scheme, Rickshaw-puller, Weavers, Hamals etc. were covered.

13.6. Social Security Insurance Scheme in India Implemented Through LIC of India:

Social Security Group Insurance Scheme: A Social Security Fund (SSF) was set up in 1988-89 for providing social security through Group Insurance Scheme to the

weaker and vulnerable sections of the society. The SSF is administered by LIC for meeting insurance requirements of the segment. People belonging to 24 occupational groups/areas have been covered under the scheme.

Janashree Bima Yojana: The Janashree Bima Yojana was launched on 10 August 2000. The Scheme has replaced Social Security Group Insurance Scheme (SSGIS) and Rural Group Life Insurance Scheme (RGLIS). The Scheme provides for an insurance cover of Rs.20,000 on natural death. On death/total permanent disability due to accident, the benefit is Rs.50,000 increased to Rs.75,000 w.e.f. 15 August 2006. On partial permanent disability due to accident, the benefit is Rs.25,000 increased to Rs.37,500 w.e.f. 15 August 2006. The premium for the scheme is Rs.200 per member. 50 per cent premium under the scheme will be met out of Social Security Fund. The balance premium is to be borne by the member and/or Nodal Agency. As on 31 March 2006 about 39.87 lakh have been covered. The balance in Social Security Fund as on 31 March 2006 is Rs.808 crore.

Krishi Shramik Samajik Suraksha Yojana: The multi-benefit scheme for the agricultural workers, commenced on 1 July 2001, provides life insurance protection, periodical lump sum survival benefit and pension to those who were between the ages of 18-50 years. Minimum membership of the group at commencement should be 20. Gram Panchayat was to act as nodal agency and with the help of NGO/SHG or any other agency, would identify the agricultural workers. As on 31 March 2006, 29,074 agricultural workers have been covered. Sale of new policies discontinued from December 2003. No new lives are to be added even under existing schemes at the time of renewal.

Shiksha Sahayog Yojana: The scheme was launched on 31 December 2001, with the object to lessen the burden of parents in meeting the educational expenses of their children. It provides scholarships to students of parents living below or marginally above poverty line and who are covered under Janashree Bima Yojana and are studying in 9th to 12th standard (including ITI courses). A scholarship amount of Rs.300 per quarter per child is paid for a maximum period of four years and for maximum two children of a member covered under Janashree Bima

Yojana. No premium is charged for this benefit. As on 31st March 2006, scholarships were disbursed to 3, 20,253 beneficiaries.

13.7. Significance from Social Point of View:

Insurance is a social device which removes various social problems like-unemployment, crime, dissolution of family and many other social problems. J. Royce observes, "Insurance is a combination of private-public interest." It gives more attention towards social welfare, economy, offering and public interests. The social significance of insurance briefly described as follows:

1. **Economic Security:** Insurance provides economic security and better family life. It secures the family from sudden illness, death or accident of the bread earning member of the family. Insurance is the key for the well being and prosperity.

2. **Promotes Education:** Insurance facilitates and encourages for education in the society. Insurance policies support education to the children. It also extends scholarship for poor students in addition to extension of loan facility for education.

3. **Provides employment:** Insurance companies create additional employment opportunities to the people.

4. **Distribution of Risks:** Insurance distributes the risks of a person among a large number of people. George Rejda writes "Insurance distributes the burden of loss of a person among the shoulders of entire society."

5. **Awareness towards health:** Insurance creates in the society for maintenance of good health. Insurance companies have started health improvement throughout the world, by distributing useful material for health education. It also provide for free medical checkup at the proposed stage of the policy, which will help in identifying any disease in a person, and advice him to take medical care.

6. **Contribution towards the development of utility services:** Insurance contributes towards the development of public utility services like water

supply, electricity, housing, public works, etc. The LIC and four subsidiaries of GIC extent credit to the development of these utility services.

7. Improves standard of living of the people: Insurance is a way of earning and saving. Insurance companies provide employment to large number of the people in the country with good income by way of salaries and commission. On the other hand one can get himself relieved from economic worries by insuring against risks. All these increase the living standard of the people.

8. Provides Social Security: Insurance is an important device of social security. It contributes towards social welfare activities of the government, especially to schedule castes, schedule tribes, physically handicapped persons etc.

Insurance is a means of implementing social security measures to poor and backward sections of the society. The government of India has introduced through the LIC and GIC various schemes like- accident insurance plan, group insurance plans etc. for social security object.

13.8. The Public Liability Insurance Act, 1991:

This is a glaring example of Social Legislation and of Social Security. This is an Act to provide for public liability insurance for the purpose of providing immediate relief to the person affected by accident occurring while handling any hazardous substance and the matters connected herewith or incidental thereto.

Liability to give relief in certain cases on principle of no fault liability (Section 3): (1) where death or injury to any person (Other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage. (2) In any claim for relief under sub-section (1), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

13.9. Duty of owner to take out insurance policies:

(Section 4 of the Public Liability Insurance Act, 1991)-(1) Every owner shall take out, before he start handling any hazardous substances one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of Section 3,

Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(2) Every owner shall get the insurance policy, referred to in sub-section (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which handling is continued.

(2A) no insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crores rupees as may be prescribed.

(2B) the liability of the insurer under one insurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(2C) Every insurer shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed.

Application for claim for relief: (Section 6)- (1) An application for relief may be made-

- (a) By the person who has sustained the injury;
- (b) By the owner of the property to which the damage has been caused;
- (c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased;
- (d) By any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be;

13.10. Award of Relief:

(Section 7) (1) On receipt of an application under sub-section (1) of Section 6, the Collector shall, after giving notice of the application to the owner and after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an enquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount relief shall be paid.

Section 7(5):- The Collector shall have all the powers of the Civil Court for the purpose of taking evidence on oath and enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Civil Procedure, 1973.

Section 7(6):- Where the insurer or the owner against whom the award is made under sub-section (1) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

Section 7(7):- A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made dispose of such claim within three months of the receipt of the application for relief under sub-section (1) of section 6.

Section 7A:- Establishment of Environment Relief Fund: (1) The Central Government may, by notification, establish a fund to be known as the Environment Relief Fund. (2) The Relief Fund shall be utilized for paying, in accordance with the provisions of this Act and the scheme made under sub-section (3), relief under the award made by the Controller under Section 7.

Section 10: Power of entry and inspection:- Any person authorized by the Central Government in this behalf shall have a right to enter, at all

reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act is being or has been complied with and such owner is bound to render all assistance to such person.

Section 11: Power to search and seizure: (1) If a person, authorized by the Central Government in this behalf, has reason to believe that handling of any hazardous substances is taking place in any place, premises or vehicle, in contravention of sub-section (1) of Section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substances.

13.11. Summary:

The Central Government and State Government are different point of time launching the social welfare insurance schemes in the larger interest of the laborers, backward class, and different vulnerable groups. The specific areas are main focus of the international community. The legislative responses in India also talked about this. The Public Liability Insurance Act, 1991 is a glaring example of social piece of legislation.

13.12. Some Useful Books:

- Singh, Bridge Anand, New Insurance Law (2000) Union Book Pub. All.bad
- Ivamy, Case Book on Insurance Law (1984), Butterworths
- Ivamy, General Principles of Insurance Law (1983), Butterworths
- John Birds, Modern Insurance (2003), Universal Law Publishing Co. Pvt. Ltd.
- Murthy & Sharma, Modern Law of Insurance (Fourth Edition), Lexis Nexis, Butterworth Wadhwa, Nagpur
- Srinivasan, M.N., Principles of Insurance Law (2006), Wadhwa & Co. Nagp

- Mishra, M.N., Law of Insurance (2006), Central Law Agency, Allahabad
- Jaiswal, J.V.N., Law of Insurance (2008), Eastern Book Company, Lucknow
- Singh, Avtar, Law of Insurance (2008), Eastern Book Company, Lucknow
- Mathew, M.J., Insurance : Principles & Practice (2005), RBSA Pub, Jaipur

13.13. Check Your Progress:

A. Which of the following statements are true or false?

1. The word 'social security' was first used by Bismark.
2. The Social Security Act, 1935 passed by the Roosevelt Administration in the U.S.A.
3. The right to social security is recognized as human rights.
4. Employee's State Insurance Scheme of India, is multidimensional social security system tailored to promote socio-economic protection to worker population.
5. The Rashtriya Swasthya Bima Yojna is social welfare scheme.

B. Fill in the Blank:

1. The word 'social security' was authoritatively used in the USA in the Year.....
2. Entries in List-I (Entry-47) and List-III (Entry- 23 and 24) which deal withcover to the people of the country.
3. Theare fixing the liability of the insurer towards rural, social sector, unorganised sector and backward classes.

4. The provisions of compulsory insurance is in.....of the Social Security, Insurance and Personal Injuries (Compensation) Act, 1963.

5. The Public Liability Insurance Act is of the year.....

13.14. Answer to Check Your Progress:

A.

1. True
2. True
3. True
4. True
5. True

B.

1. 1935
2. Social Security
3. Section 32B and 32C
4. Section 9
5. 1991

13.15. Terminal Question:

Q.1. Discuss the social security, insurance and international responses.

Q.2. Write a note on social security, insurance and legislative responses in India.

Q.3. Write a note on social security, insurance and administrative endeavors.

Q.4. Explain social security insurance scheme.

Q.5. Write a note on Public Liability Insurance Act, 1991.