Life Insurance – Social Implications and Legal Aspects

Introduction –
Life insurance is a mechanism which ensures an individual to thrive on adverse consequences by compensating an individual with the loss financially. Each and every individual in the world is subject to unforeseen or untoward health hazards, diseases and accidents. At a crucial and critical juncture life insurance alone helps an individual not only to survive but also to recover the loss and continue life in a normal and ordinary manner, which would otherwise have become highly impossible.

1.1 Brief Historical Perspective -
Life insurance made its first appearance in England in 16\textsuperscript{th} century. The first authentic and recorded documentary evidence in England, being the policy on life of Mr. William Gybbons on 18\textsuperscript{th} June 1653. The practical concept of life insurance developed at ‘Exchange Alley.’ The first registered office in England was the Hand-in-Hand Society established in 1696. Also, ‘Amicable Society for a Perpetual Assurance’ started its functioning from the year 1706. Life insurance did not prosper in United States during 18\textsuperscript{th} century, especially because of serious fluctuations in death-rate. However, thereafter, active interest began to develop because of application of ‘Level Premium Plan.’

In India, Europeans started the first life insurance company in Bengal Presidency, viz. ‘Orient Life Assurance Company’ in the year 1818. The year 1870 was a year of landmark in the history of Indian insurance. It demarcated the earlier period of pioneering attempts at life insurance from the subsequent period of steady development with the establishment of Indian life office viz. Bombay Mutual Life Assurance Society in the year 1871. The immediate next office established was of Oriental Government Security Life Assurance Company Ltd. in the year 1874. Thereafter, several other offices of Insurance were developed in India.
1.1a. Purpose and Nature of Life Insurance –

1.1a. (i) Purpose of Life Insurance -
Life insurance is totally based on uncertainties. In case there are no uncertainties about an occurrence of a disaster, the concept would cease to exist. If an individual is able to predict the forthcoming dangers, one can definitely take an appropriate safeguarding action to face the crisis in a normal manner. However, this is an utopian concept because death, disaster and danger can never be predicted.

Human life is an important income generating asset. It is intangible (invisible) in practical nature, character and appearance. It can be lost through an unexpected death, accident or irrecoverable disease like cancer or AIDS. It can also turn non-functional or in-operative either partially or totally through certain disabilities, either temporary or permanent.

In the event of such unforeseen mishappenings insurance becomes highly desirable and essential to help the dependents to maintain their life in a regular and normal manner. Indeed, living for very long may be problematic than dying too young. In other words, even old age can be considered as a risk and insurance must offer adequate or reasonable care to cover or safeguard against all such eventual or possible risks.

1.1a. (ii) Nature of Business of Insurance -
The business of insurance, as it is tactfully advertised, intelligently marketed and practically undertaken is expected to integrate or synergize different persons having identical or common insurance interests (described as sharing of risks), to collect the contribution or the share (insurance premium) from all such persons and to pay the compensations (claims) to the sufferers among such persons.

In strict legal or technical terms the insurer is in a position of a trustee, as it is contemplated in the I.T.A., 1950, because the insurer is managing the common funds not only for but also on behalf of the community.

Thus, as a trustee (insurer), proper management of the business of insurance demands execution or exhibition of a great care so as to restrict or prevent the entries of people into a special kind of group of people whose

(i) nature of risks are not common or of the identical kind and
(ii) the payment of claims arising out of losses are not accidental.
A decision whether or not to allow an entry of a particular person into a special kind of
group of people is a process of underwriting of a risk. Furthermore, not only the
underwriting but also the settlement of claim, needs to be done with great care and caution.

1.1a. (iii) Primary and Secondary Functions of Insurance -
The functions of insurance can broadly be classified into two categories, namely, primary
and secondary.
Primary functions can further be classified into three different categories, namely, provision
of certainty, provision of protection and sharing of the risk.
Secondary functions can further be classified into four different categories, namely,
prevention of financial loss, provision of essential capital, improvisation of operational
efficiency and practical effectiveness and economic development.

1.1a. (iv) Functional and Contractual Definitions of Insurance -
Insurance can be defined as a co-operative device to spread the loss caused by a particular
risk over a number of persons, exposed to, who agree to insure themselves against the risk.
The principle to share the loss of each social member is on the basis of probability of loss to
the risk. The insurance suggests a standard and practical methodology to provide security
against losses to the insured. The larger the number of such persons, the easier the process
of distribution of loss among the persons. The loss is shared by them by the payment of
premium calculated against the probability of loss. On the contrary, anciently, the
contribution by the persons was made only at the time of loss.
Insurance has also been defined to be that in which a sum of money is paid as a premium in
consideration of the insurer’s incurring the risk of paying a large sum upon a given
contingency. In other words, insurance is a contract whereby certain sum (premium) is
charged in ‘Consideration’, within the meaning of S.2(d), I. C. A., 1872. Against
consideration, a large sum is guaranteed to be paid by the insurer who receives the amount
of premium. The payment would be made in a certain definite sum either the loss sustained
or the policy amount, upon happening of a contingency.
Furthermore, the term ‘Insurance’ can be defined from two different standpoints, namely,
Functional and Contractual.
(a) **Functional Definition of Insurance** –

The term ‘Insurance’ is defined after adopting functional approach in two different manners.

(i) It is a social device to accumulate the funds to meet the uncertain losses arising through a certain risk to a person insured against the risk.

(ii) It is a co-operative device of distributing losses falling on an individual or his family over a large number of persons, each bearing a nominal expenditure and feeling secure against heavy loss.

(b) **Contractual Definition of Insurance** –

The term ‘Insurance’ can be defined from contractual angle as consisting of one party called the insurer agreeing to pay to the other party called the insured or his beneficiary, a certain sum upon a given contingency called as the risk against which the insurance is sought.

After studying the definitions of the term ‘Insurance’, it would be interesting to study the definition of the term ‘Life Insurance.’

**Definition of Life Insurance** –

It is 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) or the happening of any contingently dependent on human life and any contract which is subject to the payment of premiums for a term dependent on human life and shall be deemed to include the following.

(i) The granting of disability or double or triple indemnity accident benefits, if so provided in the contract of insurance.

(ii) The granting of annuities on human life.

(iii) The granting of superannuation allowances and annuities payable out of any fund applicable, solely, to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons.


The amendment to the section clarifies the extended or broad scope of its applicability to probable and practical eventualities.
1.1a (v) Features of Life Insurance –
The main features of life insurance are: sharing and obtaining value of the risk, payment at contingency, large number of insured, charity (not gambling) and co-operative device.

1.1a (vi) Principles of Life Insurance –

**Fig. No. 1**
The concept of insurance rests upon the two fundamental principles, namely co-operation and probability.

*(a) Principle of co-operation -*

Insurance is, undoubtedly, a co-operative device. The concept of insurance can not evolve without co-operation from a group of persons. If an alone individual is providing for his own losses, on his own it can not termed as an insurance, because the loss is not shared by a group of persons, ready and willing to co-operate.

In ancient times, the persons of a group were willingly contributing to the loss as a member of a group. They used to share such a loss at the time of damage. They used to collect adequate funds from the society and used to pay to the dependents of the deceased. The Mutual co-operation used to prevail even up to the era of Christ in most of the countries. Thereafter, the co-operation took a different form and it was decided between the individuals and the society to pay a certain sum in advance, to be a member.

After accumulation of the funds, the society undertakes to guarantee the payment of certain amount at the time of loss to a member of the society. The accumulation of funds and charging of the share from a member in advance became the job of an institution. It became the duty and responsibility of the institution to obtain sufficient funds from the members of the society to pay them at the time of happening of the insured risk. Thus, the shares of loss were practically recognized as premium.
The entire phenomenon of payment of premium and sharing and distribution of loss solely rests on the principle of co-operation.

(b) Principle of probability –

The loss in the form of a premium can be distributed only on the basis of probability. The chances of loss are estimated in advance to affix the amount of premium. The degree of loss depends upon several factors. All such factors are analyzed in detail before determination of the amount of loss. The uncertainty of loss is converted into certainty after application principle of probability. This requires execution of crucial, critical and intellectual skills to strike out an optimum balance because the insurer should not feel lost; on the contrary, he should feel gain in the transaction.

1.1a. (vi) Practical applications of insurance principles –

The inertia of large number is applied in practice, while calculating the probability. Larger the number of the exposed to the risk naturally, better and more would really be the practical outputs of the probability. While applying the principle of probability, it is assumed that the past events would incur in the same inertia.

The amount of premium is finally and conclusively fixed mainly on the basis of the health condition of the insured at the time of availing life insurance policy as disclosed in the form of health declaration, future prospects and insurer’s experience.

No co-operation is possible without premium. The premium can not be calculated without application of the principle of probability. Thus, the two principles of co-operation and probability go together. They can be regarded as the ‘legs’ of life insurance.

1.2 Social Implications of Insurance Laws –

The speed of functioning of Indian courts is so slow that instead of getting justice, a poor litigant meets with injustice, on many occasions. On the other hand, on a number of occasions, when a litigant obtains so called justice, justice turns out to be injustice, because of the total defeat of the basic purpose for which the court case was initially filed. Therefore, it is said “What we get in the courts is not justice, but a judgment.”

Furthermore, there is an old maxim in law – ‘Justice delayed is justice denied.’ In this sense, in society there is no justice today, because in majority of the court cases, justice is delayed.
Justice is ideally intended and expected by a litigant preferably immediately after initiation of a court case. Strictly, technically speaking, this is just not possible in practice. No doubt, reasonable delay is ‘in bound’ or ‘built in’ in the legal process in itself. Moreover, when the delay extends over an unreasonable time limit, it becomes quite unbearable for a litigant. Therefore, so called justice, whenever obtained, turns out to be injustice.

On this legal background of social justice, a practical and a prudent life insurance beneficiary aggrieved by the decision of the top management of an insurance company intending to have relatively fast justice or quick relief may not prefer to file a court case. Thus, there may be a number of occasions on which the beneficiaries might not have derived satisfaction (forget delight) from the decisions of the top management of insurance companies, but, they might not have approached the courts to seek justice. Moreover, the vital statistics pertaining to a class of dissatisfied beneficiaries for enumerable reasons is very difficult to ascertain, analyze and assess. Many dissatisfied beneficiaries may hesitate to disclose undesirable or unwarranted facts and prefer to evade the disclosure of such incidents. These kinds of social realities can be realized only through conduct of an informal or unofficial interviews of aggrieved beneficiaries with a non-disguised questionnaire. Undoubtedly, such dissatisfied beneficiaries may divert their focus from one insurance company to another. Of course, this is one of the most serious and significant threats to the insurance company today, on the background of stiff competition. This threat is needed to be converted into an opportunity.

At the same time, there are a number of other factors equally responsible for delayed justice. For example, the rules and regulations of central government and several state governments governing different court formalities and cumbersome procedures which are individually and socially undesirable, the small number of Hon. Judges at almost all court levels, the operative attitude and the functional approach of the Hon. Judges and the administrative staff, the varying attitudes and manners of functioning of several practicing advocates, differentiating ways of perceptions of roles by various practicing advocates, the peculiar nature and profile of Indian litigants, to mention a few.²

The speed of administration of justice in different courts experienced or observed by an ordinary, innocent and ignorant (of cumbersome legal rules, regulations and procedures) litigant is so slow that on certain occasions, it appears very difficult for him to distinguish
or differentiate between the position of ‘Legal Progress’ and ‘No Legal Progress.’ Further, this factual and practical situation leads to individual frustration. This gets actively reflected in the society in the form of, though not open, informal or unofficial criticism, on the Indian judiciary. As a result, the social belief on justice starts diluting, slowly, still, steadily. Moreover, from the contemplation of the advocate community in general, and the Indian judiciary in particular, the existing social situation is totally terrible as well as undesirable. At the same time, while studying social implications of insurance laws, the other two vital social contributory aspects of insurance need not be neglected, viz, *Social security and Economic development.*

**Insurance as a social security tool -**

Social security is the tool, whereby the government provides certain measures for the citizens to enable them to lead a decent lifestyle. Most of the western countries provide for unemployment allowances, old age pension and subsistence allowance to the down-trodden. Thus, the state provides for the resources to the individuals in order to protect against the risks.

As it is provided in the U. N. Declaration of Human Rights, 1948, “Everyone has a right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood or other lack of livelihood in circumstances beyond his control.”

If, at all, unfortunately, a bread earner of any family expires, suddenly, for any reason whatsoever, the income of the family suffers to a certain extent. At such a stage, the economic condition of the family gets adversely affected, unless and until alternate and adequate arrangements are appropriately made, in order to restore the family situation. Here, comes an active role of life insurance, as a practically effective tool or measure of social security.

At a crucial and a critical state of economic affairs of the family, as described above, life insurance does provide an alternate arrangement to restore the family situation. On the contrary, if this type of alternate arrangement would not result, in practice, the social consequence would, really, be very severe in practical nature. Such a consequence would be that there would be an addition of one more family in the lower strata of the society. As
a matter of fact, the lower strata, undoubtedly, creates a cost on the society. It costs the nation as and by way of subsidies, doles, etc. The poor of the society equally cost as and by way of larger growth in population of the nation, poor education, and vagaries in the behavior of their children. The life insurance attempts to reduce such all kinds of social costs, therefore, the life insurance is, definitely, complimentary to the efforts of the state in its effective management.

In the capitalistic system of society, the responsibility of full security is, largely, left with the individuals, alone. However, under a socialistic system of society, the same would, definitely, be placed upon the state to find out the sufficient and necessary resources, in order to provide for social security. In fact, the society in itself does provide various instruments, those can certainly be utilized in securing this objective, ultimately, and the life insurance is just one of them. Moreover, in the capitalistic system of society, also, there is observed a tendency to provide social security by the state under several schemes, wherein, all the members need to contribute, for example, Social Security Scheme in U.K.

In India, social security is provided for in the Indian constitution itself; vide its Article No. 41. It needs the state, within the limits of its economic capacity and development, to make effective provisions for securing the right to work and education and to provide public assistance in case of unemployment, old age, sickness, disablement and in other cases of undeserved want. Although, the obligations of the state towards the poorer sections of the society are not fully met through the mechanism of life insurance, a fact needs to be admitted that at least some part of the same section is definitely and proudly met by the life insurance.

As per the directions of the central government, the L. I. C. had already created a social security fund. This fund is utilized for the purpose of provisions of the benefits of insurance to the economically weaker sections of the society, especially, in an unorganized sector.

In the last fifty five years or so, life insurance has, really, become one of the dominant tools to carry out Social Security, not only for the weaker sections of the Indian society in particular, but also, for the Indian public, at large. Moreover, in this context, it is important to note that social security is not the need of the people below poverty line only, but, at the same time, it is also the real need of the people above the poverty line.
The institute of insurance has, no doubt, highly proved to be not only reliable but also viable tool for carrying out the benefits of social security for the people, in general. In simple words, life insurance policy provides social security when it meets the actual needs of the people.

**Role of insurance in economic development of India**

In order to have an economic development of any country the investments are, undoubtedly, not only of utmost essence but also of great significance. These investments are made out of savings. Several institutions of life insurance are one of the major as well as one of the dominant instruments for mobilization of savings of people, particularly, belonging to either middle class, higher middle class or lower class. These savings are channeled into the investments for economic growth.³

The investments of the L. I. C. include different areas like securities of central and state government, electricity boards of different States, housing loans, water supply and sewerage systems, road transport, setting up of different industrial estates, term loans, shares, debentures, etc.

As it is clearly evident, all the areas of investments affect the lives of the people along with their economic well being, directly. The L. I. C. just like other insurance companies, does have huge funds, at its disposal, accumulated through all the small payments of life insurance premiums of several individual policy holders and therefore, it is one of the powerful or the dominant contributors towards the economic development of India. Moreover, one of the biggest strengths of L. I. C. lies in the fact that the huge amounts accumulated as and by way of premiums, are not only collected but, they are also pooled together. Each and every amount of a premium represents risk covered by a particular premium. As a result, these huge amounts represent pooling of risks. These funds are held in and as a trust for the benefit of the policy holders. The top managements of the life insurance companies are, therefore, required to arrive at all their decisions in the light of or for the benefit of the community, at large. Thus, generally, it is noticed that successful insurance companies do not invest in speculative ventures.

In order to be amenable to the statistical predictions, insurance risks should, strictly, be handled on a massive or a very large scale. In Statistics, there is a ‘Law of Large Numbers.’ In other words, the larger or the higher the numbers of risks included in the pool,
the better would be the chances that the assumptions regarding the probability of occurrence of the risk, (which is the basis or the criteria for calculation of the premium) would be realized, in practice.

1.3 Legal Aspects of Life Insurance Marketing -

1.3(i) Special features of life insurance contracts –

The life insurance contract proceeds with the hypothesis that the insured has no knowledge of any fact which may vitiate the contract. If the insured has the knowledge of any fact which may influence insurer’s decision whether or not to issue the policy, he must necessarily disclose such a fact in utmost good faith. Good faith must exist until the time the risk, if any, is accepted by the insurer. Any change in original conditions, until the issue of a life insurance policy must be disclosed to the insurer. For example, Deterioration of health condition, development of a new ailment in the form of B. P. or Diabetics, etc.

In the business of life insurance, the nature of the risk, essentially, involves human life. In reality, human life, in itself, is the subject matter of the life insurance. The insurer cannot come to know about the condition of the health of the insured, unless the same is communicated, correctly. Only, the insured knows it the best. Thus, the contract of life insurance peculiarly falls under the category of ‘uberrimaefide’ (perfect good faith). This is a Latin word whose meaning is ‘perfect good faith.’ (i.e. concealing nothing with which contract must be made). So, the insured must observe uberrimaefidei towards the insurer. Especially, in the contract of life insurance each party depends upon the other party for information or knowledge of different facts giving rise to an agreement.

Moreover, as per the legal maxim of ‘Caveat Emptor’ (buyer be aware) from the S. O. G. A., 1930 each and every party to a contract of life insurance should certainly depend upon his own intelligence and judgment for scrutinizing the proposal of life insurance before its actual finalization.

Any statement made by the insured as and by way of his representation does not possess any legal substance or significance. It is not only ideally but also actually expected from the insured that such a representation is verified beyond a shadow of reasonable doubt before finalization of life insurance policy. Such representations should not be fraudulent in the sense that they should not be made with a guilty or cunning intention. On the other
hand, if false representations ultimately turn out to be the basis for formation or establishment of a life insurance contract, the contract in itself becomes invalid, thus, unenforceable, in law.

*Kinds of facts* –

![Diagram](image)

**Kinds of facts** –

- **Material facts**
  - Those facts
    - (i) which become or constitute the basis or foundation for formation or establishment of a contract of life insurance or
    - (ii) which influence the decision of the insurer regarding sanctioning of the contract of life insurance, are material facts.
  
  Thus, material facts must necessarily be disclosed to the insurer.

- **Immaterial facts**
  - Those facts
    - (i) which do not become or constitute the basis or foundation for formation or establishment of the contract of life insurance or
    - (ii) which do not directly influence the decision of the insurer regarding sanctioning of the contract of life insurance, are immaterial facts.

Immaterial facts are ancillary or co-lateral or subsidiary to the main subject matter of the life insurance. Therefore, non-disclosure of these facts is not construed serious in law.

In respect of the contract of life insurance, in general, the material facts in respect of the insured are the age, the status of health as disclosed through health declaration i.e. H. D., level and certainty of income, etc.

These facts either increase or decrease the degree of risk associated with or involved in the contract of life insurance. Thus, they are regarded and recognized as material.
All the material facts must, therefore, be disclosed as they stand objectively, without any modification, twist, reservation, alteration or coloring.

1.3(ii) Disclosure and non disclosure of facts

It is the responsibility not only of the insurer but also of the insured to disclose all the material facts. In fact, the insured knows all the facts, material as well as immaterial, about him like the history of his diseases or other family members for whom the insurance is initiated. Such facts can not be known to the insurer unless and until the insurer thoroughly and thoughtfully investigates into all these kinds of facts, quite intelligently and logically. Thus, from the legal contemplation for non disclosure of all the facts of such a nature, the insured can be held, primarily, responsible.

At the same time, the insurer knows all the facts, whether material or immaterial about the life insurance policy being administered to a specific insured, especially, with regard to the suitability of the life insurance policy for the insured after taking into consideration his position in life and the legal provisions, other rules and regulations required to be complied with, particularly in the light of sanctioning of a life insurance policy or settlement of the claim on reaching the maturity of the life insurance policy or nomination, etc.

Such facts can not be known to the insured unless and until he scrutinizes all the insurance documents, quite meticulously. Thus, in respect of disclosure of matters of such a nature, the insurer can be held responsible.

However, there are certain exceptions in respect of such a disclosure. The following facts would not vitiate (destroy) a contract of life insurance, even if they are not disclosed by the insured.

(a) Facts which work to reduce or lessen the risk involved.
(b) Publicly known or non-private facts.
(c) Facts which are quite apparent from the information already disclosed.
(d) Facts which the insurer has waived from supplying.
(e) Facts for which the insurer does not need disclosure.
(f) Facts which are governed by the conditions of the insurance policy.

A contract of life insurance rests on the presumption that the legal duty of disclosure of all the material facts has already been duly and truly discharged by the insured. It follows that the burden of proving that the insured has, actually, failed to perform the same duty lies on
the insured. If the insured intends to evade the life insurance policy on the ground of either non-disclosure of a material fact or fraud or misrepresentation or any other, the same must necessarily be proved beyond a shadow of reasonable doubt by the insured.

It was held by the Hon. Supreme Court that the L. I. C. could not avoid the life insurance policy without production of evidence in support of their plea of suppression of material facts. In another case the Hon. Supreme Court held that the burden of proving a falseness of a statement made by the insured is on the L. I. C. and it must place on record the material on the basis of which it chooses to repudiate the claim.

Wherever, the insurance company decides to evade a life insurance policy on the basis of non-disclosure of a material fact, it necessarily has to prove four vital factors beyond doubt, viz., the fact alleged to have been concealed did exist, the fact in question or in dispute was material in legal nature, the fact, in question or in dispute was not disclosed by the insured and the fact was well within the knowledge, either actual or presumptive, of the insured, at the time of entering the contract of life insurance.

Further, wherever the life insurance policy is sought to be evaded on the ground of either fraud or misrepresentation, the insured has necessarily to prove the following factors.

(a) The insured made an incorrect statement.
(b) The statement, so made, did relate to a material fact.
(c) In respect of fraud,
   (i) the insured very well knew, at the time of entering the contract of life insurance that the statement, so made, was false or
   (ii) the insured did not believe the statement, so made, to be true at the time of entering the contract of life insurance or
   (iii) the insured made the statement, quite recklessly, that too, in utter disregard for truth.
(d) In case wherever misrepresentation is alleged, the insured ought to have the knowledge of truth.

At the same time, in a claim filed against the insurer before the redressal agencies, the aggrieved insured as well as the beneficiary of the insured, as the case or the requirement may be, has necessarily to prove that he hired the insurance services of the insurance
company for consideration which was paid or promised to be paid or partly paid and partly promised to be paid\(^6\), there was a deficiency in the insurance service provided to him and the insured has suffered loss or injury due to the negligence on the part of an insurer. Only on proving all the above mentioned ingredients, the redressal agencies admit a legal claim made by the aggrieved insured.

Inevitably, the burden of proof of disclosure of all the material facts associated with the contract of life insurance lies more heavily on the insured than on an insurer, because the insurer alone would usually be well aware of most of the information about the risk of life. The questions of facts, regarding materiality or immateriality, to be disclosed to the insurer by the insured are to be judged not by the ordinary standards of the insured but by those of a prudent and an experienced underwriter.

In one of the cases, the deceased, knowing very well that he had suffered from a heart disease had stated in the life insurance proposal that he did not suffer from any ailment. It was held that that was a statement on a material matter and that the insured had fraudulently suppressed the fact which was material to be disclosed in the life insurance proposal. Also, he knew very well the statement made to be false, when it was made. Therefore, the insurer i.e. the L. I. C. was entitled to avoid the claim accruing from the life insurance policy, on the grounds available to it.\(^7\) The similar facts were noticed in another case.\(^8\) Like any other contracts of insurance, a contract of life insurance is a contract of *ubbrima fide*. Therefore, full disclosure must be made to the insurer of each and every material circumstance, known to the insured. This would influence fully considered, well balanced and sound decision of a prudent and a practical insurer in fixing the amount of insurance premium or determining whether to run the risk by sanctioning the policy or rejecting the life insurance policy.

Furthermore, in the event of failure to disclose material circumstance, if any, the insurer can, very well, avoid the life insurance policy. A number of legal cases have been registered in different Hon. courts wherein the question of law involved pertains to the legal point of disclosure or non disclosure of a material fact. Such cases can certainly be classified into different categories, viz.,

Genuine cases and Non-genuine cases.
Let us discuss each of these categories, one by one.

(a) Genuine cases -

In some cases, it is observed that an insured has not disclosed a material fact out of innocence and ignorance of law, devoid of or without cunning or guilty intention. This may happen because he was highly confused, at the time of availing of an insurance policy, as to what is a material fact, therefore, did not disclose the same. Also, he failed to realize legally serious or severe consequences of its non disclosure, out of innocence and ignorance of law.

(b) Non genuine cases –

In some cases, it is observed that an insured has actually disclosed a material fact. However, just to evade an insurance claim arising out of an insurance policy, especially, in case of repudiation, the insurer has deliberately created a false story regarding ‘non-disclosure of a material fact.’

Further, it is observed that the insurer has unnecessarily propagandized this issue and has ultimately unnecessarily complicated the case, consequently, this has aggravated the insured’s situation and has posed a serious problem before the insured.

1.3(iii) Procedural formalities associated with initiation of policies -

Before the contract of life insurance is actually entered into, a proponent is needed to fill up a proposal form, to reply the questions contained in the ‘Proposal Statement’ and to present him for a search and a thorough medical examination, wherever, the policies or the health condition demand.

The medical examination is expected to indicate the existing state of health of the proponent as it stands on the date of the medical examination and it is also expected to reveal the existing undesirable health-feature, if any.
However, while conducting such a medical examination, a lot rests on the statements or the disclosure of the material facts made by the proponent in the proposal form and also on the different replies given by the proponent to the questions asked by the medical officer during the course of the medical examination.

The insured must necessarily disclose, quite honestly, all the details as regards the history of his her family or personal history as regards diseases, if any, to the medical officer. On the basis of the information, thus, provided and the material facts, thus, disclosed, by the proponent of the life insurance policy, the medical officer concludes medical examination and submits a report, called ‘Medical Report’, to the insurance company. It is the prime duty and responsibility of the medical officer to confirm that the risk involved in sanctioning of a life insurance policy is graded quite appropriately. If the risk involved in sanctioning of a life insurance policy is either degraded or upgraded in the medical report, it directly and undoubtedly amounts to misrepresentation of a material fact on the part of a medical officer.

Besides, age, gender and occupation, the risk of death in case of a particular proponent of a life insurance policy, also, depends upon some other vital factors like proponents consumption habits of tobacco, alcohol, gutka, etc., other bad habits, if any, overall physical condition i. e. health record and health hazards, if any, history and frequency of different diseases, if any, overall family longevity, etc.

It is highly essential to know the correct and fullest factual information on various vital factors concerning the life of the proponent of the life insurance policy. Once the risk on issue of a life insurance policy is fairly and accurately assessed, charging of a suitable insurance premium becomes easy for the insured.

1.3(iv) **Legal nature and status of the insurance contract** –

Insurance is a legal attempt to socialize and regulate the moral responsibility.

As an interesting observation, the contract of insurance was dismissed as a special kind of wagering and gambling, when it first appeared as a strange intruder, in the sphere of Jurisprudence i. e. Legal Theory. In the year 1765, it was described as a ‘contract on speculation’, by Lord Mansfield.\(^9\) In other words, strictly and technically, in the legal contemplation, the contract of insurance meant nothing but, ultimately, a wagering agreement. (A wager is an agreement between two parties by which one promises to pay
money or money’s worth on the happening of some uncertain event in consideration of the other party’s promise to pay if the event does not happen.)

Undoubtedly, although the contract of insurance bears resemblance, though superficial, to a wagering agreement legally, it is different from a wagering agreement. With the social evolution, the times changed a lot, also, the attitude of the judiciary that the insurance was a ‘Contract on Speculation’, changed. Finally, the law recognized the insurance as a system of sharing of risk, too great, to be borne by an individual alone.

At present, it is an admitted fact that although the contract of insurance does depend on an uncertain event, it is not at all, a wagering agreement. But, it is an ‘Aleatory Contract.’ (An Aleatory Contract is a contract that depends on a contingent event. A contingent event is an event that may or may not happen.)

The legal status as described above is applicable to all the kinds of the contracts of insurance; the contract of life insurance is just one of them. A contract of insurance is a species of the general contract. It is governed by the same general principles of law as are applicable to other all kinds of contracts.

In India, the contracts of life insurance are mainly and fundamentally governed, by the provisions of I. C. A., 1872, I. A., 1938 and the L. I. C. A., 1956, besides others. The nationalization of business of life insurance on 19th January 1956 was a significant step in the direction of mobilizing of the public savings. Also, it was a very vital link in the mechanism of deepening and widening of all the probable channels of public savings, those were molded towards the growth of India. Furthermore, the L. I. C. came into existence on 1st September 1956.  

1.3(v) Legal impact of suicide on life insurance contract –

Today, all the life insurance policies contain a ‘Suicide Clause.’ According to this clause if the assured commits suicide within one year of the commencement of risk under the policy of life insurance, no liability shall attach to the insurer. The onus of proving a suicide is upon the insurer.

Suicide in itself is not treated as a crime, in India, but, an attempt at suicide is.

As it was laid down in 1938, in India, a life policy cannot be avoided on the ground of suicide unless there is a specific clause to that effect in the policy.
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