CHAPTER VI

LEGAL ASPECTS OF LIFE INSURANCE

INSURANCE OMBUDSMAN

The Malhotra Committee recommended setting up of the institution of Ombudsmen to reduce litigation and to protect a consumer’s rights and interest in the backdrop of privatization of the insurance sector. “Ombudsman word is a Swedish word means the right of individuals against public authority.

The Central Government frames the Redressal of Public Grievances Rules, 1998 by notification in exercise of the powers conferred by Section 114(1) of the Insurance Act, 1938. The object of these rules are to resolve all complaints relating to settlement of claim on the part of insurance companies in efficient, impartial manner or cost effective,¹ these rules shall applicable to the all the insurance companies dealing with life insurance and the Central Government if satisfies that an life insurance company has already a grievance redressal machinery which fulfils the requirement of the rules may exempt an insurance company from the provision of these rules.²

These rules provided that there should be governing body of insurance council and appoint one or more persons as Ombudsman who have experience or exposed to the insurance industry, civil service, administrative service in addition to those from the judicial service,³ appointed for three year and eligible for reappointment or hold the office as Ombudsman attained the age of sixty five years ⁴or and emoluments are equivalent to the High Court Judge.

The Ombudsman jurisdiction is on both life and general insurance claims, and office shall be located at such place as may be specified by the Insurance Council and the governing body shall specify his territorial jurisdiction and may hold his office in any area for expeditious disposal of the cases.⁵

An Ombudsman scheme has been setup in the several cities as centers in India. The cities having the scheme and their jurisdiction.⁶

¹ Rule 3 of Redressal of Public Grievances Rules,1998
² Rule 2 of Redressal of Public Grievances Rules,1998
³ Rule 6 of Redressal of Public Grievances Rules,1998
⁴ Rule 7 of Redressal of Public Grievances Rules,1998
⁵ Rule 10 of Redressal of Public Grievances Rules,1998
⁶ https://www.irdai.gov.in
Hyderabad— State of Andhra Pradesh, Telangana, Union Territory of Yanam-a part of the Union Territory of Pondicherry.
Jaipur— State of Rajasthan.
Guwahati--- States of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Nagaland and Tripura.

Ernakulam--- Kerala, Lakshadweep, Mahe - a part of Pondicherry
Delhi – State of Delhi
Chennai--- State of Tamil Nadu and Union Territories Pondicherry Town and Karaikal( which are part of Union Territory of Pondicherry)
Bhubaneswar--- State of Orrisa
Chandigarh--- State of Punjab, Harayana, Himachal Pradesh, Jammu and Kashmir
Bengaluru— State of Karnataka
Bhopal --- State of Madhya Pradesh and Chattisgarh
Ahmedabad— State of Gujarat and Union Territories of Dadra and Nagar Haveli and Daman and Diu
Kolkata— State of West Bengal, Bihar, Sikkim and Union Territories of Andaman and Nicobar Islands
Mumbai— State of Goa, Mumbai Metropolitan Region excluding Navi Mumbai and Thane
Pune— State of Maharashtra, Area of Navi Mumbai and Thane exclude Mumbai Metropolitan Region
Lucknow— District of Uttar Pradesh: Lalitpur, Jhansi, Mahoba, Hamirpur, Banda, Chitrakoot, Allahbad, Mirzapur, Sonbhabdra, Fatehpur, Pratapgrah, Jaunpur, Varansi,Gazipur,Jalaun, Kanpur ,Lucknow,Unnao, Sitapur, Lakhimpur, Bahraich, Barabanki, Raebareli, Sravasti, Gonda, Faizabad, Amethi, Kaushambi, Balrampur,Basti, Ambedkarnagar, Sulanpur,Maharajganj, Santkabirnagar, Azamgarh, Kaushinagar, Gorkhpur, Deoria, Mau, Chandauli, Ballia, Sidharathnagar
Noida— State of Uttaranchal and the following districts of Uttar Pradesh: Agra, Aligarh, Bagpat, Bareilly, Budaun, Bulandshehar, Etah, Kanooj, Mainpuri, Mathura, Meerut, Moradabad, Muzaffarnagar, Oraiyya, Pilibhit, Etawah,
An Ombudsman shall be appointed by the governing body from a panel prepared by the committee consisting of Chairman of Insurance Regulatory Authority as Chairman, two representative of insurance Council including one each of the Life Insurance Business and from General Insurance Business as member and one representative of the Central Government as member.

An Ombudsman may be removed from service for gross misconduct committed by him during his term of office and governing body may appoint such person as it thinks fit to conduct enquiry in relation to misconduct of the Ombudsman. All enquiries on misconduct will be sent to Insurance Regulatory Authority which may take a decision as to the proposed action to be taken against the Ombudsman on recommendation of the Insurance Regulatory Authority if the governing body is of opinion that the Ombudsman is guilty of misconduct, it may terminate his services.

The staff provided to Ombudsman shall have such secretarial staff as may be provided to him by the Insurance Council after having consultation with the Ombudsman and may engage the services of professional expert to assist him in discharging functions.

The salary, allowances, and perquisites payable to Ombudsman and the salary allowances and other benefits payable to staff of the secretariat and all expenses incurred for the purposes of these rules shall be borne by the Insurance Council.

The Ombudsman prepares the budget indicating the requirement of funds before the beginning of every financial year and sent to the governing body. The governing body will finalize the budget in consultation with the Ombudsman and shall allocate the funds to the office of Ombudsman and total expenses on Ombudsman and staff shall be incurred by the insurance companies who are members of the Insurance Council in such proportion as may be decided by the governing body and till a decision is taken by the governing body the entire expenditure shall be shared equally between the insurance companies in the life insurance business and general insurance business in equal proportion and
share of expenditure which is to be incurred by each insurance company shall be in the ratio of premium income for the previous year of such company.\(^7\)

**Complaints to the Insurance Ombudsman**

The complaint shall be in writing or signed by the complainant or through his legal heirs first to insurer and if the insurer rejected the claim of the complainant or not received any reply written one month after receipt of the complainant by the insurer then make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located and it clearly stated the name and address of the complainant, the name of branch or office of the insurer against which the complaint is made, the facts giving rise to the complainant supported by the documents if any relief claimed by the complainant the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman and complaint should not be on the same subject matter for which any proceedings are pending before any court, arbitrator or consumer forum.

The Ombudsman receive and consider complaints in respect of Non-insurance of any insurable document to customers after receipt of premium, delay in settlement of claims, any dispute on the legal construction of policies in so far as disputes relate to claims, any dispute regarding the premium paid or payable in terms of the policies and partial or total premium repudiation of any claims by an insurer.\(^8\)

**Recommendations made by the Ombudsman by mutual consent**

When a complaint is settled through mediation of the Ombudsman undertaken by him in pursuance of request made in writing by complainant and insurer through mutual agreement, the Ombudsman make a recommendation and copies of recommendation sent to the complainant and the insurance company concerned within one month of date of receipt of the complaint, if the

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\(^7\) Rule 11 of Redressal of Public Grievances Rules, 1998

\(^8\) Rule 12 of Redressal of Public Grievances Rules, 1998
complainant and the insurer company accepts the recommendation send a communication in writing within fifteen days of the date of receipt of recommendation and the complainant confirm his acceptance to the Ombudsman and state clearly that the settlement reached is acceptable by the complainant in totality in terms of recommendation in full and final settlement of complaint and the Ombudsman send to the insurance company a copy of the recommendation along with the acceptance letter received from the complainant. The insurer thereupon complies with the terms of the recommendation immediately not later than 15 days of the receipt of such recommendation and the insurer inform the Ombudsman of its compliance.

**Effect of Award**

The Ombudsman pass an award where the complaint is not settled mutual agreement in the facts and circumstances of a claim and an award is in writing and mention the amount awarded to the claimant. It is passed within three months from the date of receipt of the complaint and copies of the award sent to both the parties. Ombudsman not award any compensation in excess of which is necessary to cover the loss suffered by the complainant as direct consequences of the insured peril, or for an amount not exceeding rupees twenty Lakh including ex gratia and other expenses whichever is lower.

The award only binds the insurer if it is accepted by the claimant and the complainant inform the insurer within 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 and acceptance letter from the complainant the insurer comply with the award within fifteen days and intimate the compliance to the Ombudsman.

**Annual Report to be submitted by the Ombudsman**

The Ombudsman submits a report every year including general review of the activities of the office during preceding financial year to the Central Government and make an annual review of the quality of services rendered by the insurer and recommendation to improve services.

An Advisory Committee consisting of five eminent persons notified by the Government to assist Insurance Regulatory and Development Authority of India

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9 Rule 15 Redressal of Public Grievances Rules, 1998
10 Rule 16, 17, 18 Redressal of Public Grievances Rules, 1998
to review the performance of Ombudsman. The authority and the governing body recommended to the Government appropriate proposals for effecting improvements in the functioning of Ombudsman.

The Insurance Council suggest to the Ombudsman recommendations which enhance the utility of the Annual report and for long term improvement of insurance sector suggestion will be incorporated by the Ombudsman in his report.¹¹

Insurance Ombudsman in 2015-16 all over India 17 Lokpal centre total 26177 complaints 17257 complaints relating to life insurer that is 66 percentage.

2015-16 Lokpal sort out 30266 complaints in complaint among lokpal 49.56 percent complaint not accepted and declared not suitable for discussion, 29.31 percent complaints give recommendation/adjudication and 9.54 percent complaints withdraw by the complainant, 11.59 percent complaint dismissed.¹²

¹¹ Rule 20,19,21 Redressal of Public Grievances Rule,1998
¹² IRDA Annual report 2015-16
Table 6.1 The Information of Complaint in the year 2015-16 to Insurance Ombudsman

<table>
<thead>
<tr>
<th>Life Insurer</th>
<th>Complaints remaining on 1.4.2015</th>
<th>In 2015-16 received complaint</th>
<th>Total</th>
<th>Withdrawn complaint</th>
<th>Recommendation/adjudication</th>
<th>Dismissed</th>
<th>Not accepted</th>
<th>Complaints sorted on 2015-16</th>
<th>Complaint on 31.03.16</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4397</td>
<td>17257</td>
<td>21654</td>
<td>1956</td>
<td>5431</td>
<td>1924</td>
<td>10334</td>
<td>19645</td>
<td>2009</td>
</tr>
</tbody>
</table>
Graph 6.1 the position of complaints to Insurance Ombudsman in 2015-16 in percentage

<table>
<thead>
<tr>
<th></th>
<th>0.00%</th>
<th>10.00%</th>
<th>20.00%</th>
<th>30.00%</th>
<th>40.00%</th>
<th>50.00%</th>
<th>60.00%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dismissed</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>not-accepted</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>withdraw</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Settlement of Life Insurance Disputes
The Consumer of Life insurance have several options to settle disputes with the insurer through filing Petition in Supreme Court, High Court by filing Writ Petition and Writ Appeal, Contempt petition, PIL or the filing the complaint in Consumer Forum in District and appeal to the State Commission and National Commission. For death claim in road accident filing case in Motor Accident Claim Tribunal and for speedy relief Lok Adalat to settle the claim and dispute of the Consumer.

Adjudicating Authorities of Insurance Claims
Adjudicate means ‘to try and determine judicially of at a Court’ and is done on the basis of rules and regulation laid down in enactments while dealing with the disputes, the Courts have to follow the procedure laid down in Procedural Codes and to act according to the provisions of the Acts. After hearing the witnesses, and completion of the arguments, the Judge delivers his judgment in Court hall.

Adjudication through Courts
Cognizance of offences under the Insurance Act, 1938
No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act and take cognizance of any offence punishable under section (4) of Section 34B or sub-section (1A) 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 Authority.\textsuperscript{13}

**Appeals**

An appeal shall lie to the Court having jurisdiction from any of the order of cancelling the registration of an insurer, directing the insurer to change his name, cancelling the license issued to an agent, refusing to register an amendment of rules, winding up or insolvency of provident society. The Court having jurisdiction for the purpose as Principal Court of Civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate and an appeal shall lie from any order made to the authority authorized to hear appeal from the decisions of the Court making the same and the decision on such appeal shall be final and no appeal entertained before the expiration of four months from the date on which the order appealed against was communicated to the appellant.\textsuperscript{14}

**Power of Court to order restoration of property of insurer or compensation in certain cases**

If on the application of the Authority or an Administrator appointed or an insurer or any policy holder or any member of an insurance company or the liquidator of an insurance company in the event of the insurance company being in liquidation the Court is satisfied that any insurer including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing agent, manager secretary, liquidator or any officer, employee or agent of the insurer has misapplied or retained or become liable or become accountable for any money or property of the insurer or has been guilty of any misfeasance or breach of trust in relation to the insurer or that any person, whether he is or has been in any way connected with the affairs of the insurer or not is in wrongful possession of any money or property of the insurer or having any such money or

\textsuperscript{13} Section 109 Insurance Act 1938

\textsuperscript{14} Section 110 Insurance Act 1938
property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer or that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished. The Court examine and thinks fit or to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable.\textsuperscript{15}

**Notice to and hearing of Authority**

When application is made to the Court for the making of any order to the authority has itself made the application or has been made party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Authority and shall give it an opportunity of being heard.

The order for the attachment in execution of a decree of any deposit and for the return of any such deposit. Any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon and for winding up of an insurance company, confirming a scheme for the partial winding up of an insurance company, reducing the amount of the insurance contract.\textsuperscript{16}

**Power of Court to grant relief**

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 that he has acted honestly and reasonably and that having regard to all the circumstances of the case the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.\textsuperscript{17}

**Adjudication by Lok Adalat**

When a claim was settled before a Lok Adalat the decision had become final. Accident Claim Tribunal has to power to review an award passed by a Lok Adalat. If there is any grievance, the party should approach the High Court under Article 227 of the Constitution

\textsuperscript{15} Section 106 Insurance Act 1938
\textsuperscript{16} Section 106A Insurance Act 1938
\textsuperscript{17} Section 108 Insurance Act 1938
Pending cases with Motor Accident Claims Tribunal (MACT) where the liability under the policy is not in doubt are placed before the Lok Adalat or Lok Nyayalaya for a voluntary and amicable settlement between the parties.

**Table 6.2 the information of cases instituted in the year 2015-16**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Particulars of the case instituted</th>
<th>Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Supreme Court</td>
<td>0</td>
</tr>
<tr>
<td>2.</td>
<td>High Court W.P</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>High Court W.A, LPA</td>
<td>0</td>
</tr>
<tr>
<td>4.</td>
<td>Review or restoration petition in High Court</td>
<td>0</td>
</tr>
<tr>
<td>5.</td>
<td>Contempt Petition</td>
<td>0</td>
</tr>
<tr>
<td>6.</td>
<td>Consumer related DCF/SCDRC</td>
<td>0</td>
</tr>
<tr>
<td>7.</td>
<td>Civil or Lok Adalat</td>
<td>0</td>
</tr>
<tr>
<td>8.</td>
<td>MACT cases</td>
<td>0</td>
</tr>
<tr>
<td>9.</td>
<td>PIL</td>
<td>0</td>
</tr>
<tr>
<td>10.</td>
<td>Criminal Petition</td>
<td>0</td>
</tr>
</tbody>
</table>

**TAX BENEFIT FROM LIFE INSURANCE**

Income-tax is required to be deducted under Section 192 of the Income-tax Act, 1961, from income chargeable under the head of “Salaries”

**Estimation of income under the head “Salaries”**

Any salary due from an employer or a former employer to an assesses in the previous year whether paid or not, salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him and any arrears of salary paid or allowed to him in

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18 IRDA Annual Report 2015-16
the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due. It includes wages, fees, commissions, perquisites, profits in lieu of, or in addition to salary, advance of salary, annuity or pension, gratuity, payments in respect of encashment of leave.

Perquisite includes the value of any other fringe benefit of amenity and fringe benefits are to be calculated in the manner prescribed in the Income-tax Rules.

**Surcharge of Income-tax:**

The amount of income tax so computed shall be reduced by the amount of rebate of income calculated under Chapter VIIIA and the income-tax reduced shall be increased at 10 percent of such income-tax where the total income exceeds fifty lakh and fifteen percent where income exceeds one crore in the assessment year 2017-18.

Income not included in the head of “Salaries” (Exemption)

The value of any travel concession or assistance received by or due to the employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India, on retirement from service, or after termination of service to any place in India is exempt under clause (5) of Section 10, subject, however, to the conditions prescribed in Rule of the Income-tax Rules 1962.

Family in relation to individual means the spouse and children of the individual and the parents, brothers and sisters of the individual or any of them wholly or mainly dependent on the individual.

Death-cum-retirement gratuity or any other gratuity which is exempt to the extent specified from inclusion in computing the total income under Clause (10) of Section 10 and Gratuity payments made to the dependents of deceased employee under Group Gratuity scheme is exempted under Sections 10(10) and 10(10D) of the Income-tax Act 1961. Payment of pension is exempt under sub-clause (i) of clause (10A) of Section 10 and payment received by an employee as cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement on superannuation or otherwise is exempt.
under sub-clause (i) of clause (10AA) of Section 10 subject to a maximum of ten months leave and sum received under a life insurance policy and the sum allotted by way of bonus on such policy other than any sum received under sub-section (3) of Section 80DDA. Payment received from a provident fund.

**Deductions under Chapter VI-A of the Act:**

As per Section 80C deduction of actual investment of premium paid for Life Insurance, where an assesses being an individual has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any amount out of his income chargeable to tax to effect to keep in for a contract for any annuity plan for the Life Insurance Corporation or other insurer for receiving pension from the fund referred to in clause (23AAB) of Section 10, deduction for life insurance premium is allowed for premium paid not exceeding the 20 percent of actual sum assured and maximum limit of Rs. One Lakh. Life Insurance premium should be for life assured of self, spouse, children of self, individual or HUF assesses get the benefit of deduction. Under Section 80CCC deduction in respect of contribution to pension fund allowed and taxable amount deposited or payment made by LIC or any other insurer in the approved annuity plan for receiving pension. There is no deduction for expenses if deduction is already claim in 80C and maximum amount of deduction is allowed under section 80CCC is actual sum contributed and maximum of Rs. One lakh of individual assessee.

**Tax rebate:**

An assessee, being an individual will be entitled to tax rebate Under Chapter VIII of the act. Payment of insurance premium to effect or to keep in force an insurance on the life of the individual, the wife or husband or any child of the individual and any payment made to effect or to keep in force a contract for a deferred annuity on the life of the individual, the wife, the husband or any child of the individual provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity and any contribution made by an individual to any provident fund to which the provident fund Act, 1925 applies to any provident fund set up by the Central Government, and notified by it in this behalf in the Official Gazette where such contribution is to be an account standing in the name...
of an individual or a minor or of whom he is a guardian and by an employee to a recognized provident fund and approval of superannuation fund.

Any sum paid as contribution in the case of an individual for himself, spouse or any child in the Unit-Linked Plan, 1971 of Unit Trust of India and for participation in any Unit-Linked Insurance Plan of the LIC Mutual Fund notified by the Central Government under clause (23D) of Section 10. And subscription made to effect or keep in force a contract for such annuity plan of the Life Insurance Corporation as the Central Government may be notification in the Official Gazette.

**Sum received from Life Insurance**

The amount received for Life Insurance Corporation or other Life insurer at the maturity of insurance policy is fully exempt and bonus received is also fully tax-free. But any sum received under Keyman Insurance Policy will not be exempt\(^{19}\) (Section 10(10-D)).

These policy proceeds will be taxable in the hands of the insured in the following situations in case of a life insurance policy after 1.4.2003 but on or before 31.03.2001 if the premium payable in any year exceeds twenty percent of the sum actual assured then the policy proceeds would be taxable in the hands of the insured. Section 80C(3A) actual sum assured means the sum assured which is least in all the policy years and does not include any bonus amount which is to received over and above assured amount. The actual sum assured not include any premiums which are to be returned to the policyholder for policies issued and limit of 20 percent changed to 10 percent.

If the assured suffers from severe disease and disability specified by the Income Tax Act and rules and policy was issued on 1.4.2013 the limit of 10 percent will be increase to 15 percent and the disability is specified in Section 80U like autism, mental retardation and disease specified in Section 80 DDB.

The payable premium in any year exceeds the prescribed percentage of actual sum assured then the whole proceeds from the policy would get taxed in the year of receipt but in case of death of the insured where his nominees receive the policy proceeds the amount be tax free even if premium paid in any year crossed the prescribed percentage of sum assured.

\(^{19}\)w.e.f 1.10.1996
Keyman insurance policy are not tax exempted and its proceeds as per Section 10(10D) of the Income Tax Act. Endowment life insurance policies with maturity benefits and the term insurance the following changes in the rules of Insurance Regulatory and Development Authority of India only term insurance treated as Keyman insurance. The term of policy continues till the retirement age or the contract period of the key employee. Riders and loan are not permitted; policies nomination is in favour of the company.

According to Section 194DA of Income Tax Act any sum received by an insured Indian resident from an insurer under a life insurance policy shall be subject to TDS @ two percent if the assured sum is not exempted under Section 10(10D) means that policy proceeds exempted will be given to the insured without TDS. And if the amount not exceeds Rs one lakh then also no TDS is to be deducted by the insurer when making the payment of the insured.

**Requirement of PAN for Life Insurance Products**

It was mandated that life insurers shall collect PAN from all persons purchasing life insurance policies with annualized premium exceeding Rs One Lakh per policy. The TDS would be twenty percent instead of two percent if PAN is not submitted by the insured to the insurer in the case of payment of maturity of policies where TDS is applicable.

**Applicability of Indian Contract Act, 1872 to the Contract of Insurance**

A contract either to indemnify a person against the loss, which may arise on the happening of an event or to pay a certain sum of money on the happening of a specified event for an agreed consideration. All agreements are contract if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and which are not hereby expressly declared to be void.

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other or to such act or abstinence, he is said to make a proposal.\(^{20}\)

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.\(^{21}\)

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\(^{20}\)Section 2(α) of the Indian Contract 1872
When applying for the life insurance the proposal form of a particular life insurance company by the insured and has to send the form to the insurer company with premium check and this is offer by the insured and agrees to insure is to be acceptance.

In LIC Vs Annamma, it has been held that acceptance is complete only when communicated to the offeror and mere silence after receipt and retention of premium cannot be construed as acceptance.

In LIC Vs Raja Vasireddy, it has observed, mere receipt and retention of premia until after the death of appellant or mere preparation of the policy document is not acceptances and therefore do not give rise to contract the general rule is that the contract of life insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer.

In LIC of India Vs Raja Vasireddy Komalavalli Kamba and others it has been held that a contract concludes only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making offer. Similarly the mere receipt and retention of premium until after the death of the applicant or mere preparation of the policy document is not acceptance and does not give rise to contract acceptance must be signified by same act agreed on by the parties or from which the law raises a presumption of acceptance.

In LIC of India and another Vs Smt Mumtaz Begum it has been held that even assuming that the fact remains that the proposal had not been accepted by LIC prior to the date of death of the proposer not had the policy been issued. In such circumstances there was no contract of insurance which had come into operation and no liability could be fixed on the Insurance Company for the payment of the amount mentioned in the policy proposal form as payable in the event of the death.

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21 Section 2(b) of the Indian Contract 1872
22 [(1999) 3 Ker LT 142]
23 [(1984) 2 SCC 719]
24 AIR 1984 SC 1014
25 1992(2) CPR 715 (NC)
In **Esa Tony Phillip Vs LIC**,²⁶ it has been observed that neither acceptance of proposal was communicated, nor policy document issued, mere encashment of the cheque for payment of first premium was not enough to bring about a contract, insurer not liable to honour claim.

In **Consumer Protection Association Vs Chairman, LIC of India**²⁷ and others it has been held that when the full amount of premium payable on the policy had not been paid by the proposer and the proposal had not been accepted and there had been no final acceptance of the proposal by LIC and no policy had been issued, it cannot be said that a contract of insurance had been concluded as between the proposer and the LIC prior to the date of his demise. In the circumstances, the finding recorded by the State Commission that the claim made by the widow of the deceased for payment of the amount of insurance policy for which the insurance policy was intended to be taken by the deceased could not be ordered in favour was perfectly correct because there was no liability on the part of the insurer to pay any amount to her inasmuch as not contract of insurance had been concluded in respect of life of the deceased.

In **S.R Kharidia Vs Max New York Life Insurance Co. Ltd**²⁸ it has been observed that the mere fact of submission of the proposal form along with first premium did not conclude the contract between parties. The insurance company has to take steps to underwrite the risk and communicate. The policy document may be issued by the insurer thereafter.

In **Vijay Laxmi Dhir and others Vs Life Insurance Corporation of India**²⁹ the Court held that during the time policy is issued the cover note operates and the relations of the parties are governed by its terms and conditions of the policy bargained for and to be issued. In that view of the matter the ratio laid down in the said judgement would not applicable to the facts of the present case.

**Competence of parties to make contract**

All agreement are contract if it is made by competent parties. Every person is competent to contract who is of the age of majority being 18 years according to

²⁶ [AIR 2009 (NOC) 785 (NCC)]
²⁷ 111 (1996) CPJ 178 (NC)
²⁸ [AIR 2009 Guj. 57(DB)]
²⁹ Petition No 318 of 2001 decided on 27.02.2004 by NCDRC
the law and person of sound mind and not disqualified from contracting to any law.

A minor is not competent to contract and contract by minor is void except contracts for necessaries and minor cannot sign a contract. A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it or forming a rational judgment as to its effect upon his interests. Contract made by incompetent party or parties will be void. In Zafar Ahsan Vs Zubaida Khatun, it has been observed that a minor is allowed to enforce a contract which is of some benefit to him and under which he is required to bear no obligation.

Free consent
Consent is said to be free when it is not caused by Coercion, Undue Influence, Fraud, Misrepresentation and Mistake. In the absence of ‘free consent’ there can be no valid contract. Consent is free when it works without obstacles to impede its exercise and when there is no free consent except fraud the contract become voidable at the option of the party whose consent so caused and in case of fraud the contract would be void. In life insurance contracts, where the consent of one party or the other has been induced by coercion, undue influence, misrepresentation or fraud or where both parties were consenting under a mistake about an essential fact, the resulting contract would be voidable at the option of the insurer under Section 45 of the Insurance Act 1938 within limits provided in this section.

In Mitholal Nayak Vs LIC it has been that the principle in case that when the contract is bad on the ground of fraud, the party who has been guilty of fraud cannot ask for the refund of the money paid under the contract. The policy taken by the deceased in vitiated by fraud committed by him upon LIC. It was ruled by the Supreme Court.

In Kantaben Vs LIC of India and another And In LIC and another Vs Kantaben it has been held that we agree with the High Court that where the

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30 Section 11 of Indian Contract Act 1872
31 [(1929) 27 All.L.J. 1114]
32 Section 15, 16,17,18 of Indian Contract Act 1872
33 AIR 1962 SC 814
34 1996 (1) CPR 140(NC)
35 (1996) CPJ 115 (NC)
contract is bad on the ground of fraud, the party who has been guilty of fraud or a person who claims under him cannot ask for the refund of the money paid. It is a well established principle that the courts will not entertain an action for money had and received, where, in order to succeed, the plaintiff has to prove his own fraud. We are further in agreement with the High Court that in cases in which there is a stipulation that by reason of breach of warranty by one of the parties to the contract, the other party shall be discharged from the performance of his part of the contract neither Sec. 65 nor Sec. 64 of the Indian Contract Act has any application.

The complainant is thus not entitled to the refund of the premium paid under the policy taken by deceased.

In P. Sarojan v LIC\(^{36}\), it has been observed that where false answers as to the state of health were given in a proposal for life insurance the policy was to be voidable and it was not material that the medical officer of the Corporation had certified the life assured as good.

In LIC of India Vs Smt. Lily Ranti Roy\(^{37}\) it has been that in our opinion it is a case of willful and fraudulent suppression of facts to the knowledge of the deceased insured and the claim was rightly repudiated by LIC.

Apart from it the decision of repudiation taken by LIC is in good faith based on the material collected pursuant to the enquiries made. Hence, there is no deficiency in service on the part of LIC.

**Lawful consideration**

When at the desire of the promisor, the promise or any other person has done or abstained from doing, or does or abstains from doing, or promises to do to or abstain from doing, something, such act or abstinence or promise is called a consideration\(^{38}\) for the promise and consideration is the price of a promise, a return or quid pro quo for a promise made.

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\(^{36}\) [AIR 1986 Ker.201]

\(^{37}\) 1(1997) CPJ 46(NC) & 1997(1) CPR 40(NC)

\(^{38}\) Section 2(d) of the Indian Contract Act, 1872
Consideration is essential for formation of contract and take the form of a money payment, a delivery of goods, a promise of money payment and consideration should be legal, real, not illusory and of some value.

The consideration for and the object of the agreement must be lawful. In life insurance contract premium being the valuable consideration and the amount of premium is important to begin the contract and without the payment of premium the life insurance contract cannot start. Consideration in life insurance contract is premium or a future premium that has to be paid to the insurer and consideration for insurer refers to money paid out of the insured when he files and insurance claim.

**Legal Object**

The object should be lawful and it is not forbidden by law and is of such a nature that if permitted it would defeat the provisions of any law; or is fraudulent or involves or implies injury to the person or property of another or the court regards it as immoral, or opposed to public policy. An insured person committed suicide to enable his representatives to the get the insurance money, but they were not allowed to recover. It was an attempt to confer a benefit through his own crime.

**Principle of Utmost Good Faith (Uberrima Fides)**

Utmost Good Faith a legal doctrine which governs life insurance contracts that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal.

The principle of *Uberrima fides* with the legal doctrine ‘*caveat emptor*’ (let the buyer beware)

Insurance contract is assumed that each party to the contract can examine the item or service which is the subject matter of the contract and each party can verify the correctness of the statements of the other party.

Good faith expected from both parties the contracting parties are place under a special duty towards each other not merely to refrain from active misrepresentation but to make full disclosure of all material facts within their

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39 Section 23 of the Indian Contract Act, 1872
knowledge and it is the duty of the insurer to inform insured all the terms of the contract and conditions of the policy that is going to be issued to the insured and must strictly confirm to the statements in the prospectus and the assured person facts relating to health, habits, personal history, family history etc. which form the basis of life insurance contract are known only to the proper. The insured cannot know them if the insured does not disclose them.

**Material fact**

It is recognized duty of the insured to disclose all material facts which enable the insurer to take his underwriting decision. Material fact is one which affects the judgment capacity of a person and different consequence would have occurred had it not been disclosed. If the knowledge of it would influenced a prudent insurer, either to refuse the risk altogether, or to accept it only at a higher premium.

The duty to making disclosure is not confined to such facts as are within the actual knowledge of the assured. It extends to all material facts which he ought in the ordinary course of business to have known and he cannot escape the consequence of not disclosing them on the ground that he did not know them.

Every circumstances that would have a bearing on the judgment of a prudent insurer in fixing the premium or determining the acceptability of the proposal for insurance is a material fact regarding age, height, weight, build, nature of occupation, smoking or drinking habits, medical history, surgeries must be disclosed.

In *The Marketing Manager, LIC of India Vs Smt. S. Vijaya*\(^40\) it has been held that it is evident that in the personal health statement submitted by the insured just prior to the revival of policy, he had suppressed that material facts concerning his health. As such the repudiation of the policy by LIC was fully warranted and there has been no deficiency in the service because of such repudiation.

\(^{40}\) 1995 (1) CPR 332 (NC)
In the case of **Ajay Prakash Mittal Vs LIC of India**\(^4\) The case set up by the complainant was that Bhagwan Das Ahuja who was an employee of LIC had not explained the contents of the proposal form to the deceased. The State Commission had not accepted this explanation for the reason that it was for the deceased to understand what she was signing in the proposal form and it was borne out that the deceased had given wrong answer about her being not pregnant and about of the date of her last menstruation. The National Commission held that we see no reason to differ with the finding of the State Commission on this aspect. Reliance was placed by the Corporation on the Manual of instructions given to their agent wherein it is provided that the proposal for assurance on the life of lady after the childbirth would be considered only six months after delivery. If the deceased had disclosed correctly regarding her pregnancy when she signed the proposal form, LIC could waive off this conditions of six months or abide by the instructions in the Manual not to insure the pregnant lady until six months had expired after deliver. According to us, if the deceased had not suppressed the material facts it would have influenced LIC whether to insure or not to insure the deceased. It may be pertinent to mention that the deceased had died within the period of two years from the date of taking of life insurance policy. We are of the firm opinion that LIC was able to establish that the deceased suppressed the facts which it was material to disclose.

**Scope of Duty of disclosure by the parties**

The rule of good faith imposes the duty to make disclosure of all material facts about which he knows are ought to know and requires to reveal all relevant facts not only from the insured but also from the insurer. It applies only to negotiations preceding the formation of the contract and is deemed to have been cast on the insured when the insurer specifically asks a question.

**Facts required to be disclosed**

A fact which is earlier immaterial but becomes material late one must be disclosed if it has been expressly mentioned in the terms and conditions of the

\(^4\) 1997(2) CPR 233 (NC)
policy and risk must be disclosed in all circumstances. Special terms and conditions under the policies and any special motive to take the insurance.

In **Bhawani bai Vs LIC of India**[^12], it has been held that the insurer cannot avoid or repudiate an insurance policy on the ground of non-disclosure of the lapsed policies by the assured which had no bearing on the risk taken by the insurer.

In **LIC Vs Shakuntalabai**, the insured had failed to disclose that he suffered from indigestion for a few days and took chooran from an ayurvedic doctor. He died within that year due to jaundice. The insurer repudiated the claim on this account. The Court did not approve of the repudiation as the insurer did not establish by clear and cogent evidence that the question was properly explained to the insured and that he was told that illness include such casual disturbances to health and medicines included tablets that could be purchased at the nearest coffee stores.

**Effect of non-disclosure**

In the proposal of life insurance, the insured makes a declaration to the effect that all the statements in the proposal form are true in every respect and if any untrue statement be contained therein, the insurer would be entitled to treat the contract as null and void and forfeit all the moneys paid therefore. The effect of this declaration is to turn the representations in the proposal into warranties, which must be complied into. The insurer’s right to cancel the contract is limited by the provisions of Section 45 of the Insurance Act, 1938 and stipulates that a policy cannot be called in question after two years, on the ground of inaccurate or false statement, unless it is proved to be material and fraudulent. The principle of utmost good faith is more favourable to the insurer as it is the assured who has to generally make all the disclosures.

Technological advancements have made it possible for both parties to see to it that their interest is taken care of, but, there several other grey areas to this doctrine as well. There is still no clear cut distinction between as to what is material or immaterial and the same is largely dependent on the whims of the insurers and the terms of the contract.

It is still very easy for an insurer to repudiate the contract on the slightest point of non-disclosure by treating them as warranties, thereby putting the assured in

[^12]: [AIR 1984 MP 126(130)]
an even more difficult position and another problem is with regards to as to what duration does the disclosure needs to made.