“A critical study of Life Insurances with their Legal Aspects”

SUMMARY SUBMITTED TO THE JIWAJI UNIVERSITY GWALIOR IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF

DOCTOR OF PHILOSOPHY

IN

LAW

2017

Signature of the Supervisor

Dr. Anjuli Sharma

Assistant Professor
M.L.B. Govt. College of Excellence
Gwalior (M.P.)

Submitted by

Amit Gopinathan

RESEARCH CENTRE
INSTITUTE OF LAW, JIWAJI UNIVERSITY, GWALIOR (M.P.)
SUMMARY

“A critical study of Life Insurances with their Legal Aspects”

Life insurance is a contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the happening of a particular event contingent upon the duration of life in exchange of the payment of consideration. The person on whose life payment is guaranteed is called insured or assured and the amount given is called the policy amount. The person who guarantees the payment is called insurer the event on which payment is to be given may be death or life. Premium is the consideration paid to the life insurance. Policy is the document evidencing the contract. Life insurance is undertaking by a company society or the state to provide safeguard against loss, provision against sickness, death etc. in return for regular payment.

Life insurance is an instrument of distributing the loss of few among many. Life insurance is a device for the transfer to an insurer of certain risks of life loss that would otherwise come by the insured.

Life insurance is a contract by which one party for a compensation called the premium assumed particular risk of the other party and promises to pay him or his nominee a certain or ascertainable sum of money on a specified contingency.

A life insurance is a contract defined to be that in which a sum of money is to be paid by one party to the another party on the happening of an event depending upon the human life in consideration of immediate payment of a smaller sum or other equivalent periodical payment by the other.

Life insurance imports a mutual agreement whereby the insurer in consideration of the payment by the assured of a named sum annually or at certain times, stipulates to pay a large sum at the death of the assured. The insurer takes into consideration among other things the age and
health of parents and relatives of the applicant for insurable together with
the applicants own age course of life habits and present physical condition
and the premium exacted from the insured is determined by the probable
duration of his life calculated upon the basis of past experience in the
business of insurance.

IRDA- the Insurance Regulatory and Development Authority is
autonomous and supreme body that governs and supervises the Insurance
industry in India. After the formal declaration of Insurance Laws
(amendment) ordinance 2014 by the president of India Shri Pranab
Mukherjee it was constituted by parliament of India act called Insurance
Regulatory and Development Authority of India (IRDA of India) on
December 26 2014.
IRDA Act, 1999 was passed as per the major recommendation of the
Malhotra Committee report (7 January 1994) headed by retired Governor
of Reserve Bank of India Shri R.N Malhotra. The report recommended the
establishment of an independent regulatory for insurance sector in India.
It was incorporated as statutory body in April, 2000 with its headquarters
at New Delhi.
Insurance is a contract by which one party in consideration of a premium,
engaged to pay agreed sum on a certain event on indemnity another
against a contingent loss and is the action of insuring or securing the value
of property in the event of its being lost or of securing the payment of a
specified sum in the event of a person’s death. In Assurance contract
making secure or insure, the act of assuring a declaration tending to
inspire full confidence. There is tendency to use assurance for contracts of
life insurance companies and Insurance for risks upon property.
Life insurance differs from other insurance in life insurance the sum
assured becomes payable in full without requirement of proof of loss and
not a contract of indemnity, the event insured against namely death is
certain event and it bound to happen sooner or later uncertainty lies only in the time when it occurs, the insurable interest need exist only at the time of contract and it is not necessary that the interest should continue to subsist at the time when the policy falls due, insurable interest is incapable of being valued in terms of money and so no question of avoiding the policy on the ground of over-valuation however gross it may be arises, life insurance contract is for the whole life or generally for sufficiently long time and is continuous contract with provision that if the premium is not paid annually or at stated intervals the contract should lapse.

The holder of an insurance policy is a policy holder and a person who for the time being is the legal holder of the policy for securing the contract with the Life Insurance Company and company grant annuities upon human life. Policy includes the instrument evidencing the contract to pay such an annuity and policy-holder includes annuitant.

Premium is increase value and a Bonus of Life Policy. It is reward and the consideration for a contract of life insurance. Periodical payment on a policy of insurance of life and price paid adequate of risk and contract of insurance.

The premium is considered as the consideration for which the insurer undertakes to discharge the liability arising under the contract. The price for which the insurer undertakes his liabilities under the contract. The insurer bargains for its payment either in lump sum or in installments. The adequacy of premium as that of consideration is purely a concern of the parties and once it is agreed upon it is sufficient for the purpose of the law. The premium is calculated according to business question the adequacy of the premium because the agreement is conclusive.

Days of Grace are a provision to extend time for payment for the premium. The insurer normally serves notice to the insured to pay premium on or before the date or within the days of grace. The grace period is generally
30 days from the due date. In case of monthly premium is generally 15 days. The importance of the days of grace is that the payment of the premium within the days of grace will be deemed to be a payment on the due date.

The assured may apply for the renewal of the policy on payment of a penalty/fine and satisfying other conditions laid down for the purpose.

When the policy lapses for non-payment of premium even during the grace period, it can be revived during the life time of the life assured but within a period of five years from the due date of the first unpaid premium and before the date of maturity.

Hires or avails of any services for a consideration which has been paid or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration, paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

Service means service of any description which is made available to potential users and includes the provision of facilities, in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment amusement, or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

When the event insured against happens, the assured becomes entitled to enforce the policy and the insurer becomes liable to pay the amount secured in the policy in accordance with its terms. In Endowment Life Insurance Policy the insurer will pay the sum assured with bonuses to the
person to whom it is expressed to be payable in the schedule upon proof to
the satisfaction of the insurer.

The happening of event on which the sum assured is to become payable in
terms of the schedule, the title of the person or person claiming payment
of the correctness of the age of the life assured stated in the proposal if not
previously admitted. In life insurance the insurer is bound to make the
payment to the rightful claimant on the maturity of the policy or the death
of the assured. The persons who are entitled to claim and receive
payments in life policy give the age proof. The rights of the parties are
defined in the policy.

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, 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.

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.

A objectives of performance law related to life insurance to cover a given period of time to judge the gap between the actual and the desired performance, to help the legal aspect of life insurance for the development and growth of life insurance business in India and for the welfare of consumer of the nation and to spread awareness about the life insurance in India.

Life Insurance is a business which provides profits to insurer companies. The business of life insurance assumed significant size and importance as large amounts of capital were available with them for investment in developing industries. The Government found it handy to utilize the funds available with Life Insurance Company's for its developmental plans and also to ensure the investing public, a better security. The life insurance business was first nationalized in 1956 by passing the Life Insurance Corporation Act 1956. Central Government provided voluntary postal life insurance. The State Governments of different states have provided life insurance to their employees. The State Control over life insurance business is intended to protect social wealth, economic growth of country and reduction in inflation. Private life insurance entities are allowed on the recommendation of R.N. Malhotra committee on 7 January 1994. After privatization at the end of twentieth Century, both public and private sector entities play their roles
simultaneously in life insurance sector to control and regulate life insurance companies the Insurance Regulatory and Development Authority (IRDA) Act, 1994 was enacted to provide for the establishment of an authority to protect the interests of holders of life insurance policies, to regulate, promote and ensure orderly growth of life insurance industry. The life insurance sector is now open for private companies and control over them has become all the more necessity. The Indian life insurance market is protected from invasion by foreign capital by prohibiting the life insurance of a certificate of registration to foreign insurance companies. A foreign company however is permitted to play in the Indian life insurance market only through an Indian life insurance company. In future due to globalization and the establishment of World Trade Organization, the Government opens the life insurance sector for foreign companies under the WTO agreements. The foreign investor/insurer are taking interest to invest in Indian life insurance companies and desire to work with Indian companies as subordinate. Liberalization in life insurance sector in India gives the consumer choices and ends the monopoly of public life insurance sector and creating the healthy competition among the insurance private player and public player. Foreign direct investment plays a significant role in the growth of life insurance field as the market of life insurance is wide. The IRDAI not only restrict the foreign investors to do anything wrong against the Indian life insurance consumer as well as to enjoy the investment in India from 26 percent to 49 percent.

`After the privatization of life insurance sector many private players are entered into market in India and from them some the companies are interested in making huge profits instead of helping the general public with life insurance and private players hire unskilled people and provide poor infrastructural facilities. Now a day’s e- insurance system started in life insurance sector which is also disadvantageous for the consumer as the policies are purchase through the web sites of the insurance
companies so there is chance of fraud, forgery or misrepresentation increases and companies can misguide the consumer very easily and forged person can easily disturbed the consumer by making fake sites or hacking consumers detail.

**Suggestions**

1. Life insurance policies hidden clauses must be understand: The Government and non-government organization (NGO) should come forward to guide the people about the hidden clause of life insurance policies which if not understand can waste the hard earned money of the people and the clause, term, condition and privilege must be mentioned in bold letters so that the policy holder can understand it easily and it must be in bilingual language and consist the regional language of the State.

2. Charter formulated for policy holders: The Government should make laws for fixing time schedules for the payment of the amount of settlement of claim in the event of death or disability and even in general cases of maturity of the policies.

3. Strategies for Compensation: Life insurance being long term levelised compensation structure resonates more with the overall architecture and can support persistency in a better way. Both compensation structures have their profit and loss for insurers depending upon their current priorities and business life stage. From an earlier focus of insurers on levelised compensation structure of late the focus of insurers has been on heaped compensation structure.

4. Contact ability of policy holder is to increase: Life insurance companies efforts in the policy holders data cleansing and up-gradation and this ensures that sufficient and updated information is available in regard of policy holder and updated contact details ensure that communication reaches to the intended policy holders which helps insurer to achieve various goals including consistency improvement.
5. Customer education or awareness and connectivity: If a life insurance companies in service industry only take liability and responsibility of the customer and available for the customer which gives the growth of the customer. If customer’s needs, priorities and experience are not captured and acted upon engagement marketing encourages policy holder’s involvement in shaping the marketing strategy of a company. Insurer companies should organized awareness program to give knowledge about the policies and updating the consumers from market present scenario and which policy is beneficial for the present time and how much return and profit will get from the policies to the consumers and effect nous of life insurance for the insured person and dependants of their family.

6. Expeditious disposal of cases: There are many cases related to the life insurance pending in the nation which includes settlement of claims after the death of the insured and the dependents are very upset and needy of the insured amount and insurer not settle the amount of claim with taking wrong excuse at that time dependent have only option of legal disposal and requires speedy disposal for that the number of consumers forums at the district level should be increased and proper staff strength be provided to facilitate fast disposal of the cases.

7. Rigorous imprisonment for intermediaries for faulting: The life insurance sector at present time adopted the information technology as e-insurance system which increase the chances of fault, default, fraud and forgery instances by the intermediaries and insurance agent so that there should be severe punishment to the faulting agents or intermediaries of insurance companies or selling defective policies, misrepresenting of facts, fraud or fake advertisement of policies and forgery by the agent or intermediaries.

8. Emphasis should be shifted: The accentuation should not be only for the recovery of money from defaulting borrowers but to risks to the capital markets which is helpful for raising of capital therefrom.
9. To control the policies lapsation: The proactive and reactive measure can control on the lapsation of policies. The reactive measures is helpful for the reinstate of the lapsed policies while the proactive measures is helpful in the reduction of lapsation of policies.

10. Sales team should be professionalized: The sales team of life insurance should be well trained, passionate and professional which bring the right selling to the customer and increase the life duration of policies.

11. Persistency in appreciating and understanding: Life insurance sector developed and its surface is the direct channels of distribution but from the last decade after post liberalization in life insurance sector evolved the alternative channels of distribution. Presently most of the insurance policies are purchased or rather sold through non-direct channel where the policy holders connected with the distributors so the insurer needs to ensure that the distribution and servicing work force understand the persistency and the ways in which it can be improved. Insurer’s necessity to refer the updates on due dates and lapsed policies to the distributor time to time so that they can impact the continuity of the policies.

12. Ductility in the features of life insurance products: The features of polices and product charge structure conjunction effects not only in the sale of the product of life insurance policies and the continuity of a policy.

13. Modern techniques of service option provide to consumer: Every consumer is not the same and varying according to their needs and preferences. Dealing this difference become more significant and complex when managing the existing consumers. Payment of premium and treatment of customer needs to be corroborated with various levels of communication like website, contact center, SMS, e-mail, branch advisor etc. so that the consumer can choose their preferred mode of communication and language also plays an important for consumer experience and effect in the consistency of life insurance sector.
14. **Retrieval and Grace period**: The policy holder must intimate with notice of the lapse of policies with fifteen days from the expiry of grace period if premium the not paid within thirty days receipt of the notice the consumer still not paid the premium amount the policy would irretrievably lapse and if there is bona fide reason of the consumer the policy holder is not able to reinstate his policy like temporary financial constraint, long duration out of station travel and non-receipt of communication from insurer.

15. **Grievance redressal management for policy holders**: The consumer satisfaction depends on the overall health of any business and it applies more so in long tail business like life insurance where the insurer standard measures in sales of products, service and product option but costumer is satisfied or not have come to knowledge when they come up with their grievances there for grievance management is essential to set up in each life insurer office so that the insurer can get easy knowledge of satisfaction about consumer and the product policies existing in the market and it helps in the improvement of strategy of consumer satisfaction device of the insurer company.

16. **The consistency of policies depends on the license of linking agent**: The agents license renewals laid on the directions by the regulator and the same is linked to defined minimum persistency levels along with the criteria of compensation linkages to consistency that drive agent to focus on persistency and the same norms also for other distribution channels to encourage and enforce persistency.

17. **The strict monitoring over the regular sales process and the field force by the insurer**: The insurer should regularly to take care and control over field team of policy seller and the field force should be educated of the exact target segment a product is designed for and should be instructed to sell only to them and control over the sale process even if the result in loss in quantity but quality will be ensured and hence valuation will more closely follow product design assumptions.
18. The surrender charge structure required to redesign: The surrender charge structure should be designed in that way that it provides a big reason for policy holders not to lapse as there is very narrow leeway in designing the surrender charge structure and it has to comply with regulator norms.

19. Avert the external factor: Avoid the factor like tax benefits for selling the insurance policies and it is easier to move than often insurance contracts are sold as tax benefit instruments instead of insurance products and proper education of sales force can only reduce and completely remove this effect.

20. The requirement of Unique ID for agents: The lapsation is causing due to unexpected factor of prevailing commission structure and to resolve this problem levelize the structure or provide more incentives for consistency and it is not involve as additional expenditure on the design of existing products or for new products and it analysis that a thinner spread of commission make the product as non-remunerative and any systematic hazard affecting the lapse ratio of an economy and as whole can never be easily modeled and the past data as only a rough indicator over the long term. The suggestion for lapsation irrelevant by developing term insurance mandatorily as employees provident fund and it is low cost of insurance whose face value is tied to the basic pay of an employee as it is mandatory and coverage of lapsation will be out of question and such mandatory scheme will also help the families of employees at unfortunate death of the insured.

21. Life insurance is to be free from GST: As due to the applicability of GST in life insurance sector the premium rate increase fifteen percent to eighteen percent which effects adversely on the growth of life insurance business so it is very much important the GST imposed on policies of life insurance must be removed.
22. Training on Life Securitizations from the companies of overseas: The benefit of training in life securitization by the other countries beneficial for India life insurance sector and protected cell structures could be ape in order to facilitate utilization securitization by life insurance companies and present Securitization act should also incorporate changes to broaden focus and enable it for the use of securitization of various assets of different classes.

23. Financial institution must be redefined and include life insurance entities: The definition of financial institution in the securitization act must be amended and it include the life insurance companies also.

24. The predication of particular factors through analytics: Life cycle of Indian person should be drawn out with over time of money needs points mapped and the restriction factor of renewal of policy like education expenses, marriage expenses, retirement should be added and this factors gives the better prediction related to ‘in-danger-of lapse policies and which results to focus on the renewal of the life insurance policies.