



The Applicability Of The Insurance Act 1938, In India: A Critical Analysis Of Judicial Interpretation

ROYAN JAIN

STUDENT

AMITY LAW SCHOOL, NOIDA

HISTORY AND CONCEPTS

Historical development of Insurance Laws in India

The historical development of insurance laws in India is a testament to the evolution of the insurance sector in the country, from its early beginnings to the present day. Here's an overview of the key milestones in the historical development of insurance laws in India:

Pre-Independence Era: Before India gained independence in 1947, insurance in the country was primarily governed by British colonial regulations. The first legislation related to insurance was the British Insurance Act of 1870, which provided some basic regulations for insurance companies operating in India.

Insurance Act, 1938: This was the first comprehensive legislation enacted by the Indian government to regulate the insurance industry. The Insurance Act of 1938 established the legal framework for the supervision and regulation of insurance companies in India. It set out requirements for the registration and operation of insurance companies and outlined rules for conducting insurance business in the country.¹

Life Insurance Corporation (LIC) Act, 1956: Following independence, the Indian government nationalized the life insurance sector with the enactment of the Life Insurance Corporation (LIC) Act in 1956. This legislation

¹ MadhuTyagi, *Insurance Law and Practice*, (Atlantic Publications, 2010)

created the Life Insurance Corporation of India (LIC), which became the sole provider of life insurance services in the country.

General Insurance Business (Nationalization) Act, 1972: Building on the nationalization of the life insurance sector, the Indian government also nationalized the general insurance business in 1972. The General Insurance Business (Nationalization) Act led to the formation of the General Insurance Corporation (GIC) of India and its subsidiaries, which became the primary providers of general insurance services.

Insurance Regulatory and Development Authority Act, 1999: With the aim of liberalizing and modernizing the insurance sector, the Indian government enacted the IRDA Act in 1999. This legislation established the Insurance Regulatory and Development Authority (IRDA) as an autonomous regulatory body responsible for overseeing and regulating the insurance industry in India.

Insurance Laws (Amendment) Act, 2015: In 2015, the Indian government introduced significant reforms to the insurance sector with the enactment of the Insurance Laws (Amendment) Act. Among other provisions, this legislation increased the foreign direct investment (FDI) limit in insurance companies from 26% to 49%, aiming to attract more foreign investment and promote growth and innovation in the sector.

Goods and Services Tax (GST): Although not specific to insurance, the implementation of the Goods and Services Tax (GST) in India in 2017 had implications for the insurance industry. Insurance premiums and services became subject to GST, impacting the taxation framework for insurers and policyholders.

These are some of the key legislative developments that have shaped the historical evolution of insurance laws in India, from the colonial era to the present day. The regulatory landscape continues to evolve, with ongoing efforts to enhance consumer protection, promote market stability, and foster innovation in the insurance sector.

Types of Insurance in India

The Insurance Act, 1938, provides a legal framework for various types of insurance that can be offered by insurers in India. These types of insurance can broadly be categorized into two main categories: life insurance and general insurance. Here's a breakdown of the types of insurance under the Insurance Act, 1938:

1. Life Insurance

Life insurance provides financial protection to individuals and their families against the risk of death, disability, or other contingencies. Under the Insurance Act, 1938, life insurance includes various types of policies such as²:

Term Life Insurance: Provides coverage for a specific period (term) and pays out a death benefit if the insured passes away during the term of the policy.

² Avtar Singh, "Law of Insurance" 128-136 (Lucknow, Eastern Book Company, (2009))

Whole Life Insurance: Offers coverage for the entire lifetime of the insured and typically includes a savings or investment component along with the death benefit.

Endowment Policies: Combines life insurance coverage with savings or investment features, providing a lump sum payout either upon the death of the insured or at the end of a specified term, whichever occurs first.

Money Back Policies: Offers periodic payouts (survival benefits) during the policy term in addition to the death benefit payable to the nominee upon the death of the insured.

Unit-Linked Insurance Plans (ULIPs): Insurance products that combine life coverage with investment options, allowing policyholders to invest in various funds and potentially earn returns based on market performance.

2. General Insurance

General insurance provides coverage for a wide range of non-life risks, including property, liability, health, travel, and personal accidents. Some of the key types of general insurance policies under the Insurance Act, 1938, include³:

a) Health Insurance

Covers medical expenses incurred due to illness, injury, hospitalization, or other health-related issues. In India, health insurance policies cater to various needs and requirements of individuals and families. Here are some common types of health insurance policies available in India:

Individual Health Insurance: This type of policy provides coverage to an individual against medical expenses incurred due to illness, injury, hospitalization, and other health-related issues. The sum insured is specific to each individual.

Family Floater Health Insurance: Family floater plans cover the entire family under a single policy, with a common sum insured that can be utilized by any family member. It offers cost-effectiveness and convenience compared to individual policies.

Senior Citizen Health Insurance: These policies are designed specifically for individuals above a certain age (usually 60 or 65 years) and provide coverage for age-related health issues, chronic illnesses, and other medical expenses. Premiums may be higher due to increased health risks associated with older age.

Critical Illness Insurance: Critical illness policies provide a lump sum payout upon diagnosis of specified critical illnesses such as cancer, heart attack, stroke, kidney failure, and organ transplants. The payout helps cover treatment costs and other financial obligations during recovery.

³ Kannan, N., "A Study on the Growth of Indian Insurance Sector". *IJ M* 18-31 (2018)

Maternity Health Insurance: Maternity policies cover medical expenses related to childbirth, including pre-natal and post-natal care, delivery expenses, and newborn care. These policies may have waiting periods and specific coverage limits for maternity-related expenses.

Group Health Insurance: Group health insurance plans are offered by employers or organizations to provide coverage to their employees or members. These policies cover a group of individuals under a single master policy, often with lower premiums and broader coverage.

Hospital Cash Insurance: Hospital cash policies provide a fixed daily allowance to the insured for each day of hospitalization, regardless of the actual medical expenses incurred. This allowance helps cover incidental expenses during hospital stays, such as transportation and meals.

Top-up and Super Top-up Health Insurance: Top-up plans offer additional coverage above a predefined threshold (deductible) after exhausting the base sum insured. Super top-up plans aggregate medical expenses across multiple hospitalizations within a policy year, providing coverage once the total expenses exceed the deductible.

Disease-Specific Insurance: Some insurers offer policies tailored to cover specific diseases or medical conditions, such as diabetes insurance, cancer insurance, or cardiac care insurance. These policies provide specialized coverage and benefits related to the specified disease.

Personal Accident Insurance: While not strictly health insurance, personal accident policies provide coverage against accidental death, disability, or dismemberment resulting from accidents. They offer financial protection to policyholders and their families in case of accidental injuries.⁴

b) Motor Insurance

Provides coverage for vehicles against damages, theft, third-party liabilities, and personal accidents involving the insured vehicle. Types of Motor Insurance Policies:

Third-Party Liability Insurance: This is mandatory by law for all vehicles in India under the Motor Vehicles Act, 1988. It covers the legal liabilities of the insured towards third parties for bodily injury, death, or property damage caused by the insured vehicle.

Comprehensive Insurance: This is an optional policy that provides coverage not only for third-party liabilities but also for damages to the insured vehicle due to accidents, theft, fire, vandalism, natural disasters, and other perils. It offers broader protection to the insured and is recommended for comprehensive coverage.

⁴ Ray & Thakur, India's insurance sector: challenges and opportunities, SSRN, 2020

Key Features and Benefits:

Coverage for Own Damage: Comprehensive policies cover damages to the insured vehicle, including repair costs or replacement value in case of total loss.

Personal Accident Cover: Motor insurance policies often include personal accident cover for the owner-driver, providing compensation in the event of death or disability resulting from a road accident.

No Claim Bonus (NCB): Insurers offer discounts on renewal premiums for every claim-free year, known as NCB. It incentivizes policyholders to drive safely and maintain a claim-free record.

Add-On Covers: Insurers offer various add-on covers such as zero depreciation cover, engine protection cover, roadside assistance, consumable expenses cover, and return to invoice cover for enhanced protection at an additional premium.

Insurance Regulatory and Development Authority of India (IRDAI):

The Insurance Regulatory and Development Authority of India (IRDAI) regulates the motor insurance sector in India. It sets guidelines for insurers regarding product offerings, pricing, underwriting norms, claims settlement procedures, and consumer protection measures.

IRDAI also mandates the issuance of a Motor Insurance Policy Document (Form 51) to every vehicle owner, which serves as proof of insurance coverage.

Motor Insurance Policies for Different Vehicles:

Motor insurance policies are available for various types of vehicles, including private cars, two-wheelers (motorcycles and scooters), commercial vehicles (taxis, trucks, buses), and specialized vehicles (tractors, trailers).

The premium for motor insurance policies depends on factors such as the type of vehicle, engine capacity, age of the vehicle, geographical location, and the insured declared value (IDV) of the vehicle.

c) Marine Insurance

Marine insurance in India is a type of insurance policy that provides coverage for ships, vessels, cargo, and other marine-related risks. Here are some key aspects of marine insurance in India⁵:

⁵ Hargovind Dayal, *The Fundamentals of Insurance*, 138-142 (Notion Press, 2017)

Types of Marine Insurance Policies:

Hull Insurance: This type of policy provides coverage for the hull and machinery of the ship or vessel against physical damage or loss due to perils such as collision, grounding, fire, explosion, sinking, and piracy.

Cargo Insurance: Cargo insurance covers the goods or merchandise being transported by sea, air, or land against risks such as loss or damage due to accidents, theft, natural disasters, fire, and other perils during transit.

Freight Insurance: Freight insurance covers the loss of freight revenue in case the cargo is damaged or lost during transit, resulting in financial losses to the shipper or carrier.

Liability Insurance: Marine liability insurance provides coverage for third-party liabilities arising from maritime accidents, including bodily injury, death, property damage, pollution, wreck removal, and collision liabilities.⁶

Key Features and Benefits:

Comprehensive Coverage: Marine insurance policies offer comprehensive coverage for various marine-related risks, ensuring financial protection for shipowners, cargo owners, and other stakeholders involved in maritime activities.

Global Coverage: Marine insurance policies provide coverage for marine risks worldwide, allowing ships and cargo to be protected during international voyages and trade activities.

General Average: In the event of a maritime emergency where sacrifices are made to save the ship and cargo, marine insurance policies cover the expenses incurred under the principle of general average, ensuring equitable distribution of losses among all stakeholders.

War and Strikes Risks: Insurers offer optional extensions for coverage against war risks, piracy, and strikes, providing additional protection for ships and cargo operating in high-risk areas or during times of geopolitical instability.⁷

d) Home Insurance

Protects homeowners against losses or damages to their property and belongings due to perils such as fire, burglary, natural disasters, or other specified risks.

⁶ MadhuTyagi, *Insurance Law and Practice*, (Atlantic Publications, 2010)

⁷ Kannan, N., "A Study on the Growth of Indian Insurance Sector". *IJM* 18-31 (2018)

Travel Insurance

Offers coverage for unforeseen events during domestic or international travel, including trip cancellations, medical emergencies, lost baggage, and travel-related liabilities.

Commercial Insurance: Includes various types of insurance policies tailored for businesses, such as property insurance, liability insurance, marine insurance, and professional indemnity insurance.⁸

PRINCIPLES OF INSURANCE

The concept of insurance is risk distribution among a group of people. Hence, cooperation becomes the basic principle of insurance⁹.

- Principle of Utmost Good Faith

The fundamental principle is that both the parties in an insurance contract should act in good faith towards each other, i.e. they must provide clear and concise information related to the terms and conditions of the contract.

The Insured should provide all the information related to the subject matter, and the insurer must give precise details regarding the contract.

Example – Jacob took a health insurance policy. At the time of taking insurance, he was a smoker and failed to disclose this fact. Later, he got cancer. In such a situation, the Insurance company will not be liable to bear the financial burden as Jacob concealed important facts.

- Principle of insurable interest

The principle of insurable interest states that the person should have interest in something whose damage, loss or theft can cause them financial loss. In other words, the item to be insured should have some financial profit from its existence.

- Principle of contribution

As per this principle, if you took insurance for the same item from two insurance companies, then both companies will share the loss to compensate you in a specific proportion based on the agreement. Moreover, if one company has granted you the full compensation, then the company will have the right to address the other company for

⁸ Ibid

⁹ Iyer V Sesha - Insurance - Origin & Development, Insurance Chronicle, February, 2014.

their proportionate contribution. For example, if you have insurance for your car from two different companies and the car meets an accident, both companies will share the loss proportionately incurred by the car.

- Principle of subrogation

According to the principle of subrogation, the right of the property substitutes from the policyholder to the insurer after compensation. The insurer does this to take action against the third party that caused the loss. Let's understand the concept using an example. If your insured car meets an accident due to reckless driving of a third party, then the company will compensate you and take the ownership for taking legal actions against that third party. Moreover, if they end up getting more money than the compensation amount, the company will give you the extra money.

- Principle of indemnity

The principle of Indemnity is one of the most important principles of any insurance policy. According to this principle, the policyholder is guaranteed indemnity to compensate for their loss after subtracting the deductibles. The compensation will depend upon the amount mentioned in the contract. Moreover, each company has set some policy limits and will not compensate above it. The compensation amount will depend upon the loss and claim by the policyholder.

However, the company will not pay compensation if the incident didn't happen during the allotted time or under the specific conditions of the agreement. This is because these policies only provide protection against unexpected financial losses and do not help you to make a profit from the incurred loss.

Indemnity: Indemnity is a promise to help a party reach the same stage financially that they were in before the occurrence of a covered peril. Thus, this principle guarantees that the insured will be covered for any losses suffered in an accident. The insurance company performs thorough checks to calculate the losses suffered. The insured cannot make any profit from the insurance and is paid the exact amount lost due to the accident. This principle is not applicable in life insurance and critical health policies but, is strictly enforced for property insurance.¹⁰

For example - for homeowners' insurance, the principle of indemnity will apply if a house initially valued at ₹30,00,000 is damaged in a covered event, such as a fire that causes ₹10,00,000 in damage. The insured would receive ₹10,00,000 to repair the property to its pre-loss condition, rather than the full worth of the property, or the insurance company will reconstruct the damaged areas of the house using its contracts.

¹⁰ Tripathy N.P. & Pal, Prabir, Insurance: Theory and Practice, Prentice Hall of India, 2021

- Proximate Cause (causa proxima): Causa proxima stands for the nearest cause. This principle comes into the picture when an accident is caused due to more than one factor. While calculating the coverage for the losses suffered, the insurance company will consider the proximate cause, meaning the cause that is the nearest and main factor in the loss to the property. The insurer pays the compensation only if this proximate cause is covered in the contract, else no payment is made. This principle is not brought into effect in the case of life insurance.

Example - Suppose your policy covers water damage but excludes flood damage. If a rainstorm leads to water entering your basement, the proximate cause is the storm. Thus, the damage will be covered. However, if a nearby river overflows due to heavy rainfall, causing flooding, the proximate cause becomes the flood, and your insurance may not cover the damage due to the specific exclusion for floods.

Functions of IRDA

As mentioned earlier, the primary function of IRDA is to protect the interest of the policyholders and ensure the sector offers stability, transparency, and efficiency to its policyholders. To achieve these goals, the insurance regulatory authority of India undertakes the following essential functions¹¹:

Ensures policyholder protection: It sets norms and rules to protect the interest of the policyholders. The Policyholder's Protection & Grievance Redressal Department of the regulatory body investigates complaints and grievances from policyholders and takes them up with the respective insurer for redressal.

Creates consumer awareness: IRDA conducts various campaigns, publishes educational material and takes several initiatives to create consumer awareness about insurance products.

Imposes regulations and conducts supervision: IRDA sets up, enforces, and supervises guidelines and regulations to govern the insurance sector and all its participants, like the insurance companies, intermediaries, and other parties.

Monitors financial stability: The regulator of the insurance sector in India monitors the financial stability and solvency of the insurance providers and ensures policyholder claims are met.

New product approval: The insurance providers must get their new product or policy approved by the IRDA to launch.

¹¹ <https://www.tataaia.com/blogs/life-insurance/what-is-irdai.html>

Takes an active role in market development: The body encourages innovation and technological development to promote and expand the insurance sector in the country.

Cooperates with international regulators: To ensure the Indian insurance market is at par with global standards, the regulatory body collaborates with its global counterparts to exchange best practices, knowledge, cross-border challenges, and other aspects.

Important Role of IRDA in the Insurance Sector in India:

IRDA or Insurance Regulatory and Development Authority of India is the apex body that supervises and regulates the insurance sector in India. The primary purpose of IRDA is to safeguard the interest of the policyholders and ensure the growth of insurance in the country. When it comes to regulating the insurance industry, IRDA not only looks over the life insurance, but also general insurance companies operating within the country.¹²

The insurance industry in India dates back to the early 1800s and has grown over the years with better transparency and focus on protecting the interest of the policyholder. The IRDA plays an integral role in emphasizing the importance of policyholders and their interest while framing rules and regulations. Here are the important roles of the IRDA:

To protect the policyholder's interests.

To help speed up the growth of the insurance industry in an orderly fashion, for the benefit of the common man.

To provide long-term funds to speed up the nation's economy.

To promote, set, enforce and monitor high standards of integrity, fair dealing, financial soundness and competence of the insurance providers.

To ensure genuine claims are settled faster and efficiently.

To prevent malpractices and fraud, the IRDA has set up a grievance redress forum to ensure the policyholder is protected.

To promote transparency, fairness and systematic conduct of insurance in the financial markets.

To build a dependable management system to make sure high standards of financial stability are followed by insurers.

¹² <https://www.bajajallianz.com/blog/knowledgebytes/what-is-irda.html>

To take adequate action where such high standards are not maintained.

To ensure the optimum amount of self-regulation of the industry.¹³

¹³ Tripathy N.P. & Pal, Prabir, Insurance: Theory and Practice, Prentice Hall of India, 2021