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EVOLUTION OF INSURANCE SECTOR IN INDIA OVER THE VARIOUS PAST YEARS

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ABSTRACT
The modern world revolved around risk. Provision of adequate security to the life of the people and the property is the fundamental duty of the civilized society. The civilized society manages the risk through insurance. Insurance helps the loss of the bread winner and allows the family to lead a life without much economic strain. Hence the law of insurance has been the subject of considerable public importance. Insurance is also a contract between two parties and as such is a part of private law which is created according to mutual convenience of the contracting parties. To that extent it serves a social purpose and promotes public interest. Insurance industry is shrouded in mystery, a myth was created that it stands for the best interests of the customer. The consumer of life insurance is ignorant about the concept and the intricacies of the insurance contract.
KEY WORDS : Commodity, Insurance Etc

INTRODUCTION
Despite the natural weakness of the human frame and the obvious insecurity and brevity of life, providence has furnished him with a variety of intellectual devices which will compensate for those imperfections. The proverbial uncertainty of life and the shortness of life have compelled mankind to find a remedy in the form of life insurance which will result in a safe termination to an uncertain event. The vital principle of insurance is future security. As a factor in human progress insurance ranks foremost as a means of providing the required security against the inherent uncertainties of human life. The historical documents of insurance are evidence of its gradual development from primitive origins to a high degree of modern perfection in matters of detail. Every other social or economic institution is more or less related to its development. Today the insurance industry is in dire need of reform. The industry has done all it can do to maximize its profits and rid itself of claims. The obligation is to earn an attractive return for the stakeholder i.e. Government in case of public sector and shareholders in case of private sector. The recent Life Insurance Corporation (amendment) Act, 2011 shows how this is happening The LIC (amendment) bill 2011 has been passed by the Loksabha on the 12 December 2011 and gazette on 13th January 2012 as the LIC Amendment Act, 2011. As a result of this for the new policies issued by LIC on or after 2012, the surplus distribution will be in 90:10 ratios whereas all policies issued up to 31/3/2012 the surplus allocation will be at the ratio of 95:5. This shows that the bonus payable to the new policyholders will be less

THE ORIGIN AND EARLY HISTORY OF INSURANCE
Insurance has evolved from the concept of bottomory which came from the Babylonia. From Babylonia it was spread by the Phoenicians to the Mediterranean. It is a certainty that the Phoenicians acquired from the Babylonians a knowledge of the contract of bottomory as practiced by them and submitted to the Greeks3.

ROLE OF ROMANS
Romans have frequent interaction with the Greeks from the 5th century onwards and through this interaction they came to know about the contract of bottomory and their knowledge was similar to that of the Greeks. In AD in time of great famine in Rome the emperor Claudius offered to pay a fixed bounty on all corn imported and further agreed to be responsible for losses arising from storms. This transaction clearly contains the essence of contract. Romans were fully aware of the advantages to be derived from mutual accumulation of funds for the purpose of providing funeral benefits. A

price or premium must have been paid or was payable by the person who was going to benefit by the action of the other party to the agreement and the benefit did not mature until the moment of his death. The statement as to the forms of sound and unsound contracts depending for the determination on the death of a person is found in the RESPONSO of the juris consults and in the constitutions or laws of ALARIC of Justinian and of Basil. By 225 AD Ulpian developed the table of annuity well known as Ulpian's table. In a letter addressed to the late Sheppard Humans, a well-known actuary of his time. Justice J. P. Bradley, of the United States Supreme Court, and at one time the actuary of the Mutual Benefit Life Insurance Company, contributed a brief historical account of a Roman Life Table derived from the Justinian Pandects, attributed to Ulpian, a great lawyer of the period and himself one of the most eminent commentators on the Justinian Code. It is not known upon what basis this table was constructed, but it conforms in a general way to the observed law of human decrement with increasing age.

The chart shows the Ulpian Life Table, as expressed in Years Purchase as given in an article by Hendriks, contributed to the Journal of the Institute of Actuaries in 1851. These ancient sea laws established the principle of care and protection of seamen in sickness and distress. The Laws of Operon, which is a small island off the coast of France, were first published in 1542, but they apparently date back to the early part of the 13th century. The Sea Laws of Wispy, which is an ancient town on the Island of Gotland, in the Baltic Sea, date back approximately to the year 1288. Some writers- hold that they were more ancient than the Laws of Operon. The first definite reference to insurance appears in Article LXVI in the Laws of Wispy, which reads that "If the merchant obliges the master to insure the ship, the merchant shall be obliged to insure the master's life against the hazards of the sea." "Here," in the words of Parsons, in his treatise on Maritime Law, "is a distinct recognition of the contract of insurance; and in terms which imply that it was familiarly known to mercantile persons." Article VII of the Laws of Operon provided that "If it happens that sickness seizes on any one of the mariners, while in the service of the ship, the master ought to set him ashore, to provide lodging and candlelight for him, and also to spare him one of the ship-boys, or hire a woman to attend him, and likewise to afford him such diet as is usual in the ship; that is to say, so much as he had on shipboard in his health, and nothing more, unless it pleases the master to allow it him; and if he will have better diet, the master shall not be bound to provide it for him, unless it be at the mariner's own cost and charges;" etc. The same provision occurs in other sea laws, including the Laws of Wispy, the Hanseatic Laws, the Sea Laws of the Low Countries, etc. It was thus that the compulsory sickness provision for seamen became the universal rule of maritime nations, and acting upon this principle, the United States Congress in 1798 established the United States Marine Hospital Service on the basis of compulsory deductions from seamen's wages.4

DEVELOPMENT IN EUROPE

The written maritime laws of Northern Europe can be divided into two groups the customary sea laws and the maritime regulations or the town laws. The Rolls of Operon belongs to the first group. From Florence and Lombard in Italy through Italian navigators and merchants the practice of insurance was carried to England, the Low Countries and North Germany. The continuing expansion of commerce in Europe as typified by the Hanseatic League is one example of the philosophy of economic science and how free trade is operation in a frame work of international law principle. The earliest existing insurance contract in England bears the date 1547 and this policy is known as the Broke Sea Insurance dated seep 1547. It is written in Italian in a single piece of paper.

THE BEGINNING OF INSURANCE STATUTES AND LEGISLATION

Initially gambling and wagering were prevalent in the field of insurance and wager was justifiable in a court. There were many English cases illustrating the law on wagering contracts. But Scottish courts took a different stand and held that pensions ludicrous and held that such contracts are void by the law of Scot land.

MARINE INSURANCE ACT 1745 & 1906

Marine insurance is probably as old as international trade. The first statutory intervention in substantive marine law was the Marine Insurance Act 1745 which put an end to wagering disguised by marine policies, where by persons without interest in a vessel or its cargo would insure using a marine policy form. The 1745 Act required those procuring marine policies to be interested in the subject matter. It is often said that marine insurance is the mother of modern insurance. As a general rule it was not necessary to show interest at the time of the contract was made. It was never decided whether if a policy was effected by the assured without any hope or expectation of acquiring interest in the subject matter, such policy would be void as one made by way of gaming or wagering There was probably nothing in the Act of 1745 which made such policy illegal or void. The Act of 1745 did not apply to foreign vessels. The marine insurance act 1745 did not define the insurable interest. Although contracts of marine insurance have always been construed as contracts of strict indemnity the statute did not require the contract to be confined to strict indemnity. The Marine Insurance Act 1906 repealed the 1745 Act in to. As per this act every contract of marine insurance by way of wagering or gaming is void section 4.1 and any contract made without interest was deemed to be wagering contract section 4.2.

LIFE ASSURANCE ACT 1774

Life assurance Act 1774 provided that no insurance should be effected on lives or other events where in the person for whose benefit or whose account such policy was to be made had no interest or by way of gaming or wagering. In 1994 it was held that act does not apply to indemnity insurances but only to insurance which provide for the payment of a specified sum upon the happening of an insured event. The Life Assurance Act 1774 was intended to prohibit wagering under the cloak of a mercantile document which purported to be a contract of insurance. The act of 1745 prohibited policies made with interest or no interest or without further proof of interest and it was construed as requiring the contract to be a contract to pay or interest subsisting at the date of loss and no other interest was required. In this case the decision in GODSALL V BOLDERA was over ruled where it was held that a life policy in ordinary form effected by a creditor on the life of his debtor was a contract of indemnity5.

INSURANCE AND ITS ROLE AND DEVELOPMENT IN INDIA

From time immemorial the concept of insurance was prevalent in India and Indian merchants practiced a system of marine insurance. Further the joint family system was a method of social insurance of every member of the family on his life. The law relating to insurance was gradually developed. Insurance law in India had its origins in the United Kingdom with the establishment of a British firm, the Oriental Life Insurance company in 1818 in Calcutta by Anita Bhavas to cater to the needs of the English people. Initially the insurance companies were focused more on English people and Indians were charged extra premium. The nationalist movement in India gave a fillip to the industry. The first statutory measure to regulate the life insurance business was in 1912 with the passing of the Life Assurance Companies Act 1912 which was based on the English Act of 1909. In 1938 the Insurance Act of 1938 was enacted. The Act of 1938 along with various amendments over the years continue till date to be the definitive piece of legislation on insurance and controls both life and general insurance business. Section 211 of Insurance Act 1938 deals with life insurance and states. life insurance means the business of effecting contracts of insurance upon human life including any contract whereby the payment of money is assured on death except death by accident only and the happening of any contingency dependent on human life which is subject to payment of premium for a term dependent on human life and shall be deemed to include6;

1. The granting of disability and double or triple indemnity accident benefits
2. Granting of annuities upon human life
3. Granting of super annulation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade employment.

ROLE OF REGULATOR OF INSURANCE IRDA IN INDIA'S LEGAL FRAME WORK

Even before India embarked on the journey towards liberalising government control over the economy government felt the need for speedier justice in certain matters and application of more specialized skill in decision matters When India shifted towards liberal market from mixed economy autonomous regulators became a necessity in order to foster confidence in private players and also for the requirement of including specialists in the governance structure of the country. Hence Securities Exchange Board was established in 1992 followed by IRDA in 1993. In the new liberal economic structure the state has stepped down from its commanding heights to a regulatory role. For a stable political and legal environment it is necessary that this regulatory regime should have coherence. Today Indian insurance sector is a typical case of oligopolistic market and oligopolistic markets have been one of the most difficult problems for competition authorities and courts around the world ever since the inception of antitrust laws The Competition Act 2002 became operative in 2009 in India and has been described by many as the ushering in the second wave of economic reforms. The basic prohibitions of competition law are against anti- competitive agreements and abuse of power. The meaning given to a term in law can be very different from what a layman understands that term to be. Consumers of insurance products face the problem of abusive dominant position because of the exclusionary practices prevalent in the industry7.

ADMINISTRATIVE AND JUDICIAL REGULATION OF INSURANCE CONTRACTING

Insurance law developed two devices to adjust to the differences between pure contract conception of insurance and the relationship of the market place. Here one device operates ex ante and the other operates ex post. First state administrative regulation requires pre-market approval of insurance policies. In India IRDA insists that before products are launched it has to be approved by the regulator. The consumer protection is designed to neutralize insurer asymmetric expertise and to counter balance the structural obstacles to the ordinary individuals understanding of the terms of their insurance policies. Ideally the regulation for example IRDA stand in the shoes of potential policy holder's dis approving policy terms that would be unacceptable to purchaser. Even premium rates also require regulatory approval. But in practice the authority to regulate policy forms and premium rate is only lightly exercised. But in reality there are variations in policy language from standard form industry wide policy that are dis advantageous to policyholders. The second advice that adjusts the contract conception to the realities of the market is judicial regulation of the terms of the insurance policies by means of interpretation. The maxim contraproferentem directs that ambiguities in a contract be construed against the drafter. The maxim is very frequently used in insurance contract where the drafter is always the insurer.

The courts often use contraproferentem as a method of trumping rather than interpreting policy language. Finally a number of insurance policy provisions address complex problems in such simple language that they are incomplete. The most important features of the judicial regulation of insurance and the feature that it makes it more like regulation is that the judicial decisions in which this occurs have uniform broad application. To be ambiguous a policy provision must be susceptible to more than one reasonable interpretation. An objective standard is thus part of the test for ambiguity. And it is the ambiguity of standard form policy language that is usually at issue when a court holds that a policy provision is ambiguous and interprets it in favor of coverage the holding applies to everyone whose policy contain that provision . By virtue of stare decisis the holding declares the meaning of that standard form provisions become applicable to all who are covered by the same standard form policy rules apply across the board to all policyholders whose policies contain the same incomplete language.

INSURANCE AS A COMMODITY

Life policies are more like commodities and are purchased subject to a set of mandatory rules regarding the seller obligations just like sale of goods is subject to an implied warranty of merchantability and just like product manufacturers are liable for tort injuries resulting from product defects the proponents of the product conceptions of insurance argue that insurers should be liable if

the insurance policies they sell are defective. Eugene R Anderson while discussing why courts should enforce policyholders objectively states that insurance policies are defective products in light of the discrepancy between insurer advertising and the scope of coverage actually provided. The process of entering into a standard form is just like buying a promise. The product conception is an effort both to describe the actual character of insurance and to expressly identify its normative implications for insurance law. Under a product background consideration governing the legal acceptability of the provisions of the policy are moved into the foreground. For the proponents of the product conception policy provisions should not be binding unless they satisfy a standard governing their suitability. Under contract conception coverage the disputes center on the meaning of applicable policy provisions. whereas under the product conception disputes would center on the validity of the provision even though product conception is a more accurate description of the nature and functions of insurance policies than the contract conception, the notion of defectiveness in a product or in an insurance policy provision is difficult to define and even more difficult to apply. The concept does not easily lend itself to adjudication8.

CONCLUSION

The insurance sector enjoys a positive reputation in the public eye, since it significantly contributes to wealth creation. The insurance sector brings a number of positive contributions to society by its very existence and most companies demonstrate their concern with responsibility issue. Through its efforts to reduce and prevent risk it represents a decisive factor of individual and collective welfare. The insurance industry has largely contributed to the edification of our complex and sophisticated economy. Without insurance contracts transactions would be more difficult and costly. As far as ordinary life is concerned individuals would be much more cautious in all that they do probably even cancel some of their risky activities. Therefore it can be said that insurance sector is indispensable to the functioning of a modern society as is the legal system that protects individuals and companies against wrong doing and crime. The progress of the society largely depends upon proper application of the relevant law to the benefit of the society. The mere existence or creation of a new law or act by the legislature cannot solve the problems unless it is correctly interpreted and the benefit envisaged by the relevant law goes to the society as a whole. This is highly relevant in the case of insurance law which has emerged over the years. As far as the contract of insurance which is based on the principle of utmost good faith requires that administration of the insurance contract should be performed not only with clean hands and un biased and should not be influenced by extraneous considerations.
Otherwise the majority of the people will lose their trust in the concept of insurance. From time immemorial when the disputes were brought before the jury they were forced to find out solutions acceptable to the society as a whole .and thus the edifice of insurance jurisprudence was evolved. The judicial decisions were based on reasons. In India after independence the courts started interpreting decisions based on the ideals enshrined in the constitution especially focusing on the fundamental rights and the directive principles. Life insurance policies are framed on actuarial considerations and worked out as per the needs of the policy to suit the interests of the prospective customers who want to purchase a policy. The actuarial principles are the calculations made by the actuaries taking into account the health conditions and physical build of the people to be insured , personal , family history and occupation and based on this the premium is calculated by using the actuarial method. These conditions help the insurer to forecast mortality among insured lives within a relatively narrow margin of error. Today Indian market is filled with various types of insurance policies like endowment policy, whole life policy, annuity policy and unit linked policy.

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