



## CONSUMER PROTECTION IN THE INDIAN INSURANCE INDUSTRY

By Aishwarya Trivedi and Ashwani Kumar Singh

From Gujarat National Law University

### 1.HISTORY OF INSURANCE LAWS IN INDIA

#### 1.1 ANCIENT TIME PERIOD

Kautilya's Arthashastra, Yajnavalkya's Dharmashastra, and Manu's Smriti are some of the earliest ancient texts indicating the presence of insurance practices. There was a system of acknowledging certain hazards and protecting against them as the need be. There is also evidence of societies structured with a contingency fund inviting contributions from all its members, with an aim to help out those members on whom tragedy befalls.

#### 1.2 BRITISH-INDIA PERIOD

The Oriental Life Insurance Company, established in 1818, in Calcutta was the first insurance company to begin operations in India. Thereafter, the Bombay Life Assurance Company, Madras Equitable Life Insurance Society, Oriental Life Assurance company, were set up in 1823, 1829, and 1874, respectively. These British Insurance Companies catered primarily to the English who had settled in India as well as other foreigners; Indians who wished to purchase these policies were mandated to pay an extra

premium of 20% in comparison to the others.<sup>1</sup> The first Indian Life Insurance Company was established in the year of 1870, the Bombay Mutual Life Assurance Society, which provided insurance to natives without any discrimination. The Swadeshi Movement had a major impact, and led to the formation of multiple Indian Insurance companies, such as: The United India (Madras) National Indian Insurance Company (Calcutta), National Insurance Company (Calcutta), Co-operative Assurance Company (Lahore), Hindustan Co-operative Insurance Co.(Calcutta)etc..

Following the footsteps of the English Act of 1909, the Indian Life Assurance Companies Act, 1912 was passed, it was the first statutory effort to regulate the Life Insurance Sector in India. Other kinds of insurance, such as, marine, fire, etc., were left out of the ambit of this act, as at the time it was not deemed necessary to regulate them. A major flaw in this legislation was that it overregulated Indian insurance companies as opposed to their foreign counterparts.<sup>2</sup>

Non-Life Insurance in India was promoted for the first time by British nationals in Calcutta in 1850 under the aegis of Triton Insurance Company Limited, which was the first general insurance company. The first Indian general insurance company was the Indian Mercantile Insurance Company Limited established in 1907 in Bombay.

In 1928, a consolidated law regulating both Life and Non-Life Insurance companies was enacted, and an attempt was made to bring an

<sup>1</sup> Chaudhary, N., 2018. Life Insurance Industry in India: Evolution, Reforms and Present Scenario. *Journal of Advances and Scholarly Researches in Allied Education*, 15(4), pp.159-164.

<sup>2</sup> Mohamed, D. and Murthy, R., 2011. Life Assurance Industry in India: A Study on Marketing Strategies of Indian Insurance Companies. *Indian Journal of Applied Research*, 2(2), pp.24-26.



end to the discriminatory mechanism which was promulgated by the previous law. However, it was not enough to deal with the growth of the industry and raised the need for a new law. The same was contemplated by a committee constituted under the chairmanship S C Sen, Solicitor of Calcutta, in 1937. Ultimately, a comprehensive law came into being in 1938, the Insurance Act, which is still in force, and has served the purpose of regulating life and non-life insurance sectors. The law has undergone various amendments over the course of time to accommodate the needs of the industry.<sup>3</sup>

### 1.3 POST-INDEPENDENCE PERIOD

Post our independence, Indian companies fortified their market share in the insurance sector of our nation. However, a primary issue that still remained at the forefront was the concentration of insurance amongst the urban, affluent class of the nation.<sup>4</sup> The requisite penetration to insurance services was largely absent, and this was a cause of great concern. Several other issues such as, the mismanagement of private insurance companies leading to their closure, inefficiency, and the overall impact of the same on the economy were also prevalent.

### 1.4 NATIONALISATION

On the 19<sup>th</sup> of January, 1956, the nationalization of 245 Indian and foreign insurance service providers took place, and the Government of India took over their

management. This was effectuated via an ordinance, 'the Life Insurance (Emergency Provisions),' which later became an Act. The Life Insurance Company was created as a statutory company under the LIC Act of 1956, and all the Life Insurance business was consolidated and transferred to it.

The Government highlighted several reasons for this move, such as, proper allocation of resources for national development programs and welfare schemes, as well as, increasing the efficiency and improving the market penetration, especially to the unserved and underserved sections of the society. General Insurance was not nationalized at this time for it did not so directly affect each and every individual in the economy.

The then Finance Minister, CD Deshmukh, stated that, "Insurance is essential social service which welfare state must make available and should assume responsibility to provide it to people if it is not reaching because of any reason. There was failure of run of insurance co's to the demands which has led govt. to nationalize it. Thus, nationalization is justifiable. Profit motive is eliminated, efficiency of service is enhanced and the reach will be enhanced to neglected rural areas."<sup>5</sup>

After 20 years of nationalization of the Life Insurance business, General Insurance followed suit in 1972. This was done in two stages, where an ordinance, which later became an act, The General Insurance

<sup>3</sup> Rathore, T., 2019. "Brief History of Insurance With Special Reference to India". *SAARJ Journal on Banking & Insurance Research*, 8(4), p.29.

<sup>4</sup> Rathore, T., 2019. "Brief History of Insurance With Special Reference to India". *SAARJ Journal on Banking & Insurance Research*, 8(4), p.29.

<sup>5</sup> Ashraf, S. and Faiz, A., 2014. Privatisation and Growth of Insurance Industry in India. *PRAGATI : Journal of Indian Economy*, 1(2).



(Emergency Provisions) was enacted, and the government took the undertaking of all General Insurance Companies, it made provisions for compensation and decided for controlling management of all insurers. By virtue of S.9 of the General Insurance Business Nationalization Act, 1972, General Insurance Company was established. GIC performed supervisory function over 4 subsidiaries which managed the entire non-life insurance sector in the nation: National Insurance Company Limited, Oriental Insurance Company Limited, United India Assurance Company Limited, New India Assurance Company Limited. GIC was later made a reinsurer co which provided risk-coverage to insurance companies.

### 1.5 LIBERALISATION

The economic crisis of 1991 prompted reforms in various sectors of the economy, right from Foreign Exchange, to Banking. Nationalization had resulted in a new set of problems for the insurance industry, such as the inefficiency of the government machinery, lax attitude towards consumers, monopolization by the government, mismanagement, etc. The RN Malhotra Committee<sup>6</sup> was set up to examine the strength and weakness of the insurance industry and provide for suggestions to provide high quality service to the people and mobilize financial resources for development.

### 1.6 POST LIBERALISATION

#### 1.6.a ENTRY OF PRIVATE ENTITIES

<sup>6</sup> Ashraf, S. and Faiz, A., 2014. Privatisation and Growth of Insurance Industry in India. *PRAGATI : Journal of Indian Economy*, 1(2).

The RN Malhotra Committee recommended for a series of reforms in order to keep up with the changing tune of economic environment. Of them, there were two primary suggestions:

- a. To set up an independent regulator for the sector
- b. To allow the entry of private players.

This resulted in the creation of Insurance Regulatory and Development Authority of India by virtue of the Insurance Regulatory and Development Act of 1999. It functioned per two basic objectives: to establish an authority to protect the interests of policy holders, and to regulate, promote, and ensure growth of insurance industry and amend the related acts. The acts referred here were the Insurance Act, 1938, LIC Act, 1956, and the General Insurance Business (nationalization) Act, 1972. This was to effectuate the entry of private players into the sector. Schedule I provides for the amendments to the 1938 Act. Schedule II r/w S 30A, LIC and Schedule III r/w 24A in GI Business act provide for the abolishment of the monopoly of LIC and GIC.<sup>7</sup> This opened up the insurance industry to be tapped by the private entities.

#### 1.6.b REVIEW OF 1938 ACT

In wake of the reforms in the insurance sector it was realized that the Insurance Act, 1938 was insufficient to deal with the changing tides and openness of the insurance industry, this prompted IRDA to recommend an excessive review of the act and other related

<sup>7</sup> Chaudhary, N., 2018. Life Insurance Industry in India: Evolution, Reforms and Present Scenario. *Journal of Advances and Scholarly Researches in Allied Education*, 15(4), pp.159-164.



enactments to harmonize the laws in line with the economic environment of the nation.

## **2. REGULATORY AUTHORITIES**

### **2.1 INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY**

The IRD Act provided for the creation for the statutory regulator of the insurance industry, the Insurance Regulatory and Development Authority. The regulatory body is headed by a chairperson and consists of five whole time members and four part time members. The authority functions with an aim to regulate and endorse the development of the insurance and re-insurance industry in India. From time to time, the authority issues notifications to further this objective and adequately regulate the industry.

### **2.2 TARIFF ADVISORY COMMITTEE**

The Tariff Advisory Committee is a body corporate with the role of monitoring and governing the rates, advantages, terms and conditions which are presented by insurers in the general insurance industry. The committee can request information and records from insurers as and when required. Any insurer if fails to act according to the instructions of the committee, then it is considered to be a breach of the Insurance Act.

### **2.3 INSURANCE ASSOCIATION OF INDIA, COUNCILS AND COMMITTEES**

All insurers and provident fund societies which are operational in the jurisdiction of India are members of the Insurance Association of India. The Association is

further divided into two wings: Life Insurance and General Insurance. This Association is responsible for conducting the examinations for individuals to be certified as Insurance Agents. The council affixes the perimeters of allowed expenses above the limits defined in the Insurance Act for managing the insurance business.

### **2.4 OMBUDSMAN**

The appointment of an Ombudsman is a mechanism for dispute and grievance redressal in the insurance industry. Any aggrieved individual must make a representation to the insurance agency and being unsatisfied with their response or the lack thereof, may approach the ombudsman of their jurisdiction with a complaint within a year. The ombudsman assumes the role of mediators and imparts advice to the parties for a solution to the problem placed before him/her. The complaint could be settled by an agreement or the Ombudsman may pass an award for compensation. This can happen only if the same complaint has not been pending before any other court, forum, or arbitrator.

## **3. CONSUMER PROTECTION**

### **3.1 AN INTRODUCTION**

There is a growing movement for consumer protection and promotion of rights, the world over. This is in light of emerging globalization and the international character assumed by businesses. Old adages like 'caveat emptor: buyer beware', and 'customer is king' are half-truths in the present circumstances. There is mounting customer dissatisfaction as an array of unfair practices are employed by sellers to exploit



the buyers in the money-driven markets. This puts the onus on the government to counter such activities that act against the interest of the people at large. This takes the form of: administrative framework, policy measures and a stringent legal structure.

Every year 15<sup>th</sup> March is observed as the World Consumer Rights Day to commemorate the day in 1962 when the consumer bill of rights was approved by the US Congress on being called upon by their President John F Kennedy.<sup>8</sup> This was a milestone in the history of consumer protection and served as an inspiration to the framers of consumer rights charters across the world. The rights enshrined under this charter were the:

- (i) right to choice
- (ii) right to information
- (iii) Right to safety and
- (iv) Right to be heard.

Over time, with the development of technology and advancement in the markets, further rights such as Right to Consumer Education, Right to Healthy Environment, and Right to basic necessities were added. In India, we celebrate 24th December every year as the National Consumer Rights Day.

In April 1985, the General Assembly of the United Nations accepted a framework of guidelines pertaining to consumer protection. To promote the same, the Secretary General of the United Nations was endorsed to encourage member nations to embrace these guidelines through policy decisions or laws.

<sup>8</sup> Consumersinternational.org. 2020. *Consumer Rights - Consumers International*. [online] Available at: <<https://www.consumersinternational.org/who-we-are/consumer-rights/>>

These guidelines form a broad policy framework delineating the seven areas which governments need to emphasise upon in reaching the ends of consumer protection<sup>9</sup>:

- i. Physical safety;
- ii. Protection and Promotion of the consumer economic interest;
- iii. Standards for the safety and quality of consumer goods and services;
- iv. Distribution facilities for consumer goods and services;
- v. Measures enabling consumers to obtain redress;
- vi. Measures relating to specific areas (food, water and pharmaceuticals) and
- vii Consumer education and information programme.

These guidelines represent the internationally accepted set of goals and objectives that nations must focus on in their endeavour formulate policies and strengthen legislations, in order to ensure consumer protection.

### 3.2 IN INDIA

During this time period, in India, there was a rapidly surmounting variety of goods and services suddenly available on account of the advances in the mode of production and distribution coupled with sophisticated marketing and selling practices. This also triggered an increase in the employment of exploitative tactics to deceive consumers. Up until this point there was no legal framework against such antics, but consumers simply

<sup>9</sup> Unctad.org. 2020. *UNCTAD | United Nations Guidelines On Consumer Protection*. [online] Available at: <<https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>>



avoided a brand or seller who was embroiled in the same. A major reformative step in the right direction was the enactment of the Consumer Protection Act, 1986.<sup>10</sup>

The Objectives of Consumer Protection Act, 1986 in India were to inhibit practices which were anti-competitive in nature and adversely affected the interests of the consumers. It provides for the setting up of consumer councils and other authorities for the settlement of disputes. This is a unique piece of social welfare legislation which is aimed at providing efficient protections against unfair dealings. The provisions of this act are not punitive or preventive, but compensatory in nature. In the International Conference on Consumer Protection held in Malaysia in 1997, the Indian Consumer Protection Act was described as one “which has set in motion a revolution in the field of consumer rights, the parallel of which has not been seen anywhere else in the world”.

#### **4. NEED FOR CONSUMER PROTECTION LAWS IN INSURANCE INDUSTRY**

We go back a few years ago and find the Insurance market in India was not that developed as it is now. And even now, it is not at the stage where it should be. A large portion of the market has been tapped by the State-owned companies. To give an example, the Life Insurance Corporation ( “LIC” ) owns 72% of market share of Life Insurances as of Oct 14, 2019.<sup>11</sup> There was a time when LIC was all over the market because there

private players were not allowed to enter the market. Now, even though private players are present and functional, LIC still has a major portion of the market under its hand. In case of life insurance, Indian Customer see them as a tax saving device and when the private sector entered Indian markets with their new innovative schemes, customers turned towards them. That led to major growth in Insurance sector. Apparently, India has the highest number of functional life insurance policies in the world and LIC has around 8-10% of total GDP in terms of investible funds.

However, most of the Indians still do not take insurance, be it either life or medical or marine or any other general insurances. Most of them do not even have pension or any kind of retirement benefits. In other words, there is a scope for expansion of insurance market. At this point, along-side this expansion, what is needed is a consumer-friendly insurance sector for a better economy which would in terms provide long term funds for infrastructure development. This would also strengthen the risk of taking ability. What comes out of these observations is that when both LIC and General Insurers’ (Public Sector) Association of India cover a major portion of Life Insurance and General Insurance, respectively; and when the market potential is very high, consumer protection becomes the urgent need by default.

“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an

<sup>10</sup> Verma, D., 2002. Developments in Consumer Protection in India. *Journal of Consumer Policy*, 25(1), pp.117-123.

<sup>11</sup> Ashwin Manikandan, *LIC Dominance of India’s Life Insurance market near three fourth*, The

Economic Times (October 14, 2019 8:59 PM), <https://economictimes.indiatimes.com/industry/banking/finance/insure/lic-dominance-of-indias-life-insurance-market-nears-three-fourth-mark/articleshow/71584954.cms?from=mdr>.



interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so.”

~ Mahatma Gandhi.

Gandhi believed in the idea that ‘Consumer is the king’ and many business tycoons including but not limited to late Jamnalal Bajaj, late JRD Tatae, Ratan Tata have developed an ethical code of conduct for business practice and have helped bridge the gap between consumers and business.

### **5. MECHANISM OF PROTECTION OF POLICY HOLDER**

An insured has an option to approach the appropriate consumer forum against insured under the Consumer Protection Act 2019 ( “CPA” ). For the CPA to apply, a person must be a consumer. Clause (7) of section (2) of the CPA defines the term consumer and it includes a person who avails a service for a consideration which have been paid or partly paid or partly promised, or any system of deferred payment and beneficiary of such service (with certain exception).<sup>12</sup> To understand what kind of service would fall under the scope of the CPA, a reference must be made to clause (42) of section (2) of the CPA which clearly mentions that providing ‘insurance’ is a service as far as the Consumer Protection Act is considered.<sup>13</sup> Thus, an insured has full right to take his grievance to the appropriate forum under the said Act.

Clause (6) of section (2) of the CPA defines ‘complaint’. It lists down certain allegations

in respect of which a consumer can file a complaint under the CPA. For the purpose of insurance industry, four broad categories of allegations could be formed:

- Unfair contract or unfair trade practices or restrictive trade practices
- Deficiency in services
- Excess price as per existing rate or as provided on the package
- Product liability action

It is common trend for the companies to not tell the demerits of insurance policies while they are trying to sell such policies in the market. Their agents are trained in such a way that they are their level best to avoid such circumstance where they are forced to reveal negative aspects of the policies which have the potential to change the intention of the person whom they are trying to convince to take the policy. Moreover, it has also been observed that insurance companies would put many additional charges which are brought into light only when the policy has been signed and insured has no other option but to pay. Displaying false picture to gain the confidence of their consumer is the go-to tactic for insurance companies. In all such cases, the insured can go to the appropriate forum and register a complaint.

### ***Manner of filing a Complaint & Proceedings thereof***

Complaint may be made any person who falls within the definition of ‘consumer’ as defined in clause (7) of section (2) of the CPA. First complaint must be made to District Consumer Disputes Redressal Commission ( “District Commission” ) unless the value of service paid as

<sup>12</sup> Consumer Protection Act, 2019, § 2, cl. 7, No. 35, Acts of Parliament, 1949 (India).

<sup>13</sup> Consumer Protection Act, 2019, § 2, cl. 42, No. 35, Acts of Parliament, 1949 (India).



consideration exceeds 1 crore.<sup>14</sup> In that case, it would be directly made before the State Commission unless it is more 10 crore.<sup>15</sup> The, the National Commission would hear it. If the District Commission finds that there is scope of settlement between the parties, then it may direct the parties to proceed with mediation. If mediation fails, the proceeding would continue. If any of the parties is not satisfied with decision of the District Commission, they make an appeal to State Commission and then to National Commission.<sup>16</sup> They can even go the Supreme Court against the order of National Commission but that option is rarely used when the proceeding has been initiated from the District Commission.

## **6. INSURANCE OMBUDSMAN RULES 2017**

The first step towards the establishment of the office of Insurance Ombudsman was taken back in November 1998 when the 'Redressal of Public Grievances Rules, 1998' was came into picture. The primary function of these rule is to ensure that all complaints received in relation to insurance companies are resolves in most efficient and impartial manner with least investment i.e., resolving complaints with extreme efficiency at a minimum cost. The office of the Insurance Ombudsman like a third party mediator who has been charged with the duty to resolve complaints (of the insurance policy holders) which has been referred in a manner as prescribed in the Redressal of Public Grievances Rules.

Insurance Ombudsman acts as a neutral person acting on the primary objection/mission of the Insurance Regulatory and Development Authority of India ("IRDAI") which is as follows

- To protect the interest of and secure fair treatment to policyholders;
- To bring about speedy and orderly growth of the insurance industry (including annuity and superannuation payments), for the benefit of the common man, and to provide long term funds for accelerating growth of the economy;
- To ensure speedy settlement of genuine claims, to prevent insurance frauds and other malpractices and put in place effective grievance redressal machinery;
- To take action where such standards are inadequate or ineffectively enforced.

However, the Central Government, exercising its power under Section 24 of the Insurance Regulatory and Development Authority Act, passed the Insurance Ombudsman Rules 2017 (the "2017 Rules") which came into effect on 25<sup>th</sup> April 2017. This new rule replaced the old rule i.e., Redressal of Public Grievances Rules, 1998.

### **6.1 EXECUTIVE COUNCIL OF THE INSURER**

Under Rule 5 of the 2017 Rules, there shall be an 'Executive Council of Insurer' which will consist of nine members<sup>17</sup> – two to represent life insurers to be nominated by the Life Insurance Council; two to represent General insurers, other than stand-alone

<sup>14</sup> Consumer Protection Act, 2019, § 34, cl. 1, No. 35, Acts of Parliament, 1949 (India).

<sup>15</sup> Consumer Protection Act, 2019, § 47, cl. 1, No. 35, Acts of Parliament, 1949 (India).

<sup>16</sup> Consumer Protection Act, 2019, § 58, cl. 1, No. 35, Acts of Parliament, 1949 (India).

<sup>17</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 5.



health insurers, to be nominated by the General Insurance Council; two to represent stand-alone health insurers to be nominated by the General Insurance Council; one to represent the IRDAI; one to represent Central Government, Ministry of Finance from the Department of Financial Services not below the rank of Director and then, the Chairperson of LIC or the Chairperson of the General Insurers' (Public Sector) Association of India ("GIPSA").

The Executive Council of Insurer is the administrative body empowered to issue guidelines for day to day administration, administrative infrastructure or any other matter relating to the functioning of the Insurance Ombudsman System.<sup>18</sup> Apparently, the chairperson of the Council is either the Chairperson of the LIC or Chairperson of the GIPSA on rotational basis.<sup>19</sup> However, this rule may not be consumer friendly because LIC and GIPSA are two companies having major control over Life Insurance market and General Insurance market respectively, and allowing chairperson of these companies to chair the Council would be detrimental to the interest of the consumer. Not to forget that protection of the Interest of the consumer is the primary objective/mission of the IRDAI as well as of the Insurance Ombudsman.

## 6.2 INSURANCE OMBUDSMAN

The number of the Insurance Ombudsman shall be determined by the Council as per territorial requirement. Sub-rule (2) of Rule (7) of the 2017 Rules states that an Insurance Ombudsman must be a person who has experience in either of the following field:

- Insurance Industry
- Civil Services
- Administrative Services
- Judicial Services

### 6.2.a Appointment of Insurance Ombudsman

An Insurance Ombudsman shall be selected a four-member selection committee chaired by the Chairperson of the IRDAI. Other three members would be – a representative of LIC (from the Executive Council), a representative of GIPSA (from the Executive Council) and one person to represent the Government of India from Department of Financial Services, Ministry of Finance. The selection criteria shall be finalized by the Council after approval from the Ministry of Finance, Government of India. Before appointment, the committee will get vigilance clearance from the immediate employer (of the concerned individual who has applied for the position of Insurance Ombudsman).

### 6.2.b Removal of Insurance Ombudsman

The 2017 Rules provide only one ground for removal of an Insurance Ombudsman i.e., gross misconduct. Charges, if any, against an Insurance Ombudsman will drawn by the Council and an inquiry will be conducted by the Council or any person nominated by the Council. Once the report of the inquiry is ready, the concerned Insurance Ombudsman shall be allowed to make his submissions. Thereafter, the inquiry report and the submission will be forwarded to the IRDAI who will then take a call on the removal if that Insurance Ombudsman.

<sup>18</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 6(1).

<sup>19</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 5(3).



Even the IRDAI can initiate a suo moto inquiry against an Insurance Ombudsman and then ask the Council to carry on the procedure. The same procedure, as stated above, shall be followed.

### 6.2.c Powers of Insurance Ombudsman

An Insurance Ombudsman performs two types of function – first, to act as an counsellor and mediator and second, award making. He can receive disputes relating to different matters concerning an insurance policy e.g., partial or total rejection of any claim by an insurer, dispute concerning premium payment, misrepresentation in terms and condition of an insurance policy and any such matter as prescribed under sub-rule (1) of rule (13) of 2017 Rules.

### 6.2.d How to approach an Insurance Ombudsman?

Any person having a complaint against an insurer by himself or his legal heirs or his nominee or assignee may approach an Insurance Ombudsman. The branch or office of the insurer or residential address/place of residence of the complainant must be located within the territorial jurisdiction of the Insurance Ombudsman.<sup>20</sup> The complaint must made in writing and should be duly signed by the aggrieved person or the person through him, he is making the claim. The complaint must have the following- name and full address of the complainant, name of the branch/office of the insurer, facts, other supporting documents and extent to which loss has been caused.<sup>21</sup> If any proceeding is

pending before any court or consumer forum or arbitrator or has been disposed any of the them, then no complaint will be maintainable before the Insurance Ombudsman on that subject matter.

### 6.2.e Recommendation

Rule 16 of the 2017 Rules states that if a grievance is resolved through mediation process, then the Insurance Ombudsman will make a recommendation and send a copy to the complainant and the insurer. The complainant will then 15 days to reply after the receipt of the recommendation and if he agrees with it in totality, he must state clearly that the recommendation is final settlement. Upon receiving the acceptance of the complainant, the Insurance Ombudsman will let the insurer know about the finality of the settlement. The insurer will then have 15 days to comply with such recommendation after 15 days of its receipts

### 6.2.f Award

Where the method of mediation as mentioned in Rule 16 fails, the Insurance Ombudsman will pass an award based on the pleadings of the both parties and the evidence present on record. Such awards must be in writing and the ombudsman must state reason for the same. In case an award is passed in favour of the complainant, compensation granted must be exceed the loss suffered by the complaint or thirty lakhs.<sup>22</sup> The Insurance Ombudsman must pass an award within three months after receiving all relevant details from the complainant. Once an award is passed, the

<sup>20</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 14(1).

<sup>21</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 14(2).

<sup>22</sup> Insurance Ombudsman Rules 2017, G.S.R. 413(E), Rule 17(3).



insurer shall comply within 1 month and must report about the compliance to the Insurance Ombudsman.

### **7. CHALLENGES**

There many hurdles in ensuring that interest of consumer (insured) is protected and along with it, other objectives of the IRDAI are also met. Consumer information disadvantage (lack of symmetrical information) might lead to a situation where an insured misrepresents a product or/and manipulates the product quality. This symmetry could also be caused due lack of confidence shown by consumer i.e., if they believe that insurers are not capable to provide to a product which would meet their expectations.

The biggest hurdle is consumer illiteracy. A very less percentage of consumer actually know about the Insurance Ombudsman system which the best possible to resolve any dispute which may arise from an insurance policy. Those with sound knowledge and understanding of worldly affair are also unaware of this scheme. Especially in India, people do not know how to shop for an effective insurance policy, in fact, most of the citizens do not intend to take any kind of insurance, not even Life or medical insurances. Usually, they tend to follow the information provided by insurance agents who go door to door to convincing them to buy their insurance policy. At that time, there is no competition, it is just a matter of 'first reach, first get'.

One institutional challenge would be to ensure impartiality and that this Insurance Ombudsman system is not influenced by LIC or GIPSA because the chairperson of these corporation happen to the chairperson of the

Executive Council of Insurers which is the administration body in-charge for the smooth functioning of system. In fact, the selection committee which appoints Insurance Ombudsmen also comprises of one member each from LIC and GIPSA.

### **8. SUGGESTIONS/WAY FORWARD**

It should be noted that Insurance Ombudsman scheme doing fine and could be the corner stone in protection of interest of policyholders. But like already discussed, the major challenge is that there is no awareness among policyholders about this scheme. Thus, to start with, the Government or the IRDAI must take up the responsibility to spread awareness throughout the country and for that, they can organize awareness camps at panchayat or municipality level so that it reaches a great number of people.

Moreover, certain amendments have to brought to make the ombudsman scheme more efficient, one suggestion could to limit the number of cases one Ombudsman may hear and appoint more ombudsman. It was observed how lack symmetrical information could lead to misrepresentation of policy products. For this, restriction could be imposed on the conduct of insurers in insurance market, as in a more detailed code of conduct which have to abide by. Such regulations should be chosen which provides most protection at a minimum market distortion. If regulatory restrictions are costly and imperfect at the same time, it should considered whether such regulations have the potential to provide excess benefit as against it cost.

It is further submitted that Insurance industry (in India) has come a long way from



---

nationalization of industry to liberalization, though a major market share is yet under the control of companies like LIC. For a better growth from here, competition among companies without dilution of the interest of policyholder will be the key. Law & regulations like IRDA Act and Insurance Ombudsman will have a major role in it.

\*\*\*\*\*

