REGULATORY MECHANISMS OF INSURANCE AND THEIR ROLE IN REGULATING INSURANCE BUSINESS IN INDIA WITH PARTICULAR REFERENCE TO IRDA ACT., 1999

Written by ***Adil Hamid Lone***

LLM scholar at Pondicherry University (Central University)

A. Introduction

The quick pace of industrialization of the modern age has rendered to different types of risk and uncertainties of life. Thus while uncertainties of death, unemployment, sickness are constantly staring at the face of a man, his property is exposed to the risks arising from fire, water, accident, sea perils, floods etc., (However with the growth of the industrialized society and consequently a rapid increase in number of situations in which the human life and property get exposed to risk, an effective solution of reducing the burden of these losses has been devised by shifting these risks to agencies or persons willing or qualified to share themes. This is known as insurance. It protects man from uncertainty of risks in his personal and business life. Insurance provides financial protection against a loss arising out of happening of an uncertain event. A person can avail this protection by paying premium to an insurance company. - Like all other financial institutions, insurance is an activity that needs o be regulated as health of the insurance sector reflects a country's economy. The basic rationale to regulate this sector is to maintain, the confidence of the finical system and to provide appropriate degree of consumer protection. A proper regulatory mechanism is therefore necessary for success and growth of insurance industry as it inspires the confidence of all state holders.

The announcement of the new industrial policy in 1991 led to the transition of the insurance sector from a strictly regularized one to a liberalized one. The deregulated regime provided for entry of private players, the need for a regulatory authority became paramount. Then in order to prevent misuse by insurers of policy holders and share holders fund and to ensure accountability it was imperative to have in place an effective regulatory regime.

To-day, the primary regulator of insurance in India is the Insurance Regulatory and Development Authority (IRDA) which was established in 1999 under the legislations called the Insurance regulatory and Development Authority Act, 1999. Thus this paper analyses the various regulatory mechanisms of insurance and their role and function in regulating the insurance business in India with particular reference to the IRDA Act., 1999.

B. HISTORY OF INSURANCE IN INDIA:-

In India, insurance has a long history. It funds mention in the writings of Manu Yagnavalkya (Dharmasastra) and Kautilya (Arthasastra). The word Yogakshemam has been used in the world's most, ancient Hindu Scripture "Rig-Veda". The word 'Yogakshemam' means insurance. In ancient world, insurance was in the form of trade loans or carriers contract. Insurance in India has evolved over time heavily drawing from other countries, England in particular. The Indian life Assurance Companies Act, 1912 was the first statutory measure to regulate life business. In 1938, with a view to protect the interest of insurance public, the earlier legislation was consolidated and amended by the Insurance Act., 1938 with comprehensive previsions for effective control over the activities of insurers.

However, there were a large number of insurance companies and the level of competitions was high. There were also allegations of unfair trade practices. Therefore Government of India decided to nationalize insurance business. An ordinance was issued on 19 January 1956 nationalizing the Life Insurance sector and life Insurance Corporation came in to existence in the same year. The LIC had a monopoly until the late 90s, when the Insurance sector was reopened to the private sectors. In 1957, the General Insurance Council, a wing of the Insurance Association of India was formed and it framed a code of conduct and sound business practices. In 1972 with the passing of the General insurance Business (Nationalizations) Act, general insurance business was nationalized with effect from 1st January 1973. 107 insurers were amalgamated and grouped into four companies, namely The National Insurance Company Ltd., The New India Assurance Company Ltd., The Oriental Insurance co. Ltd., and The United India Insurance co, Ltd.,

In 1993, the Government set up a committee under the chairmanship of RN Malhotra, former Governor of RBI, to propose recommendation for reforms in the insurance sector. The committee submitted its report in 1994 where in, among other thing, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies should be allowed to enter by floating. Indian companies, preferably a joint venture with Indian partners, on the basis of recommendations of the Malhotra committee report, in 1999. The Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The key objectives of IRDA include promotion of competition so as to entrance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market. Foreign companies were allowed ownership of up to 26%. The Authority has the power to frame regulations under sec114A of the Insurance Act, 1938 and has from the year 2000 onwards framed various regulations ranging from registration to protection of policy holders interest. Today there are 28 general insurance companies and 24 life insurance companies operating in the country.

C. Regulatory Framework of Insurances- Important enactments before coming up of IRDA Act.

Regulations define the requirements of an insurer, provide consumer protection through the supervision of insurers to safeguard their solvency and thus shield the customer from buying insurance is desired to take care of three major concerns, viz.

(I) Protection of interests of consumers.

(II) Ensure the financial soundness of the insurance industry.

(III) Pave the way to help a healthy growth of the insurance market, where both the government and private parties play simultaneously.

The regulation of insurance is not restricted only to specific insurance laws; rather insurance is governed by a number of other laws.

1. **Consumer Protection Act,1986**

   In India, in the history of socio-economic legislation, the Consumer Protection Act, 1986 is recognized as a milestone and is mainly intended to ameliorate the position of the Indian Consumer. The consumers of insurance who are dissatisfied with the services of the service providers can approach the redresses system to settle their claims and grievances with service providers. The main feature of the Act is that it entails minimum technical and legislate procedure and provides easy access to redressed system. **Reliefs:-**

The following reliefs are available to the insured under Act.

(I) To return to the Complainant the charges paid by him.

(II) To pay compensation to the consumer for any loss or injuring suffered by the consumer due to negligence of the opposite party,

(III) To remove the deficiencies in the services.

(IV) To discontinue the unfair trade practice.

(V) To provide for adequate costs to the parties.

(2) The Insurance Act, 1938:-

. The government appointed one special officer, Shri Sushil Chandra Sen., a well- Known solicitor in 1935 for investigating special and required reform of legislation. His report was considered by the Advisory Committee appointed by Government of India. The committee made several changes and the bill was finally introduced in the legislative assembly in 1937. After much debate and several changes, it emerged as the Insurance Act, 1938. It is the first comprehensive piece of insurance legislation in the country governing both life and non – life branches of insurances. It is very wide and well balanced Act. On one hand provided for prevention of mushroom companies, protection of assets, strict, control over insurance business, enforcement of sound working principles and prevention of misrepresentation of funds. Where on other hand it dealt with licensing of agents, their commission and remuneration. It specifically stresses on the protection of policy holder's interest and client servicing. Later in the year1999 the Insurance Regulatory and Development Authority Act, 1999 replaced this Act

3. Life Insurance Corporation Act, 1956

The object of the Life Insurance Corporation act, 1956 was to provide for the nationalization of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for regulation and control of the business of the corporation. LIC is one organization that has played a great role in national reconstruction and economic planning. Prior to1999, the life Insurance corporation was having exclusive right to deal in life insurance business.

After the enactment of IRDA, ACT, 1999, the other private players are allowed to deal in life insurance business.

4. General Insurance Business (Nationalization) Act, 1972.

In 60's and 70's, the law relating to other forms of insurance also underwent reforms. The General Insurance business was also nationalize in 1972 by setting a government corporation called the Genera Insurance Corporation with fours subsidiary companies for carrying on the General Insurance Business. GIC also played an important role in regulating Insurance business by aiding and advising the acquiring companies in the matter of settling up standards of conduct and rendering effective service to their policy holder.

D. The Insurance Regulatory and Development Authority Act, 1999

Section 2 of the Insurance Act, 1938 has authorized the central Government of India to appoint the controller of Insurance to regulate the Insurance Business of India. It had supervisory and regulatory powers. However after the nationalization of the life Insurance industry in1956 and the General Insurance Industry in 1972, the role of controller of Insurance had diminished in significance. In 1991, the Government of India begins the economic reforms programmed and finical sector reforms. The Government of India in April 1993 set up a high powered committee head by Shri R.N.Malhotra (Retired Governor, Reserve Bank of India) known as the Malhotra committee, to examine the structure of the insurance industry and to recommend the changes to make it more efficient and competitive. The committee submitted its report on 7th January 1994 and expressed the view that the insurance regulatory apparatus should be activated even in the existing set up of nationalized Insurance sector. It recommended for the establishment of a strong and effective Insurance Regulatory Authority in the form of statutory autonomous board.

The recommendations of the committee were discussed at different forms. It was widely supported that an autonomous Insurance Regulatory Authority be set up. In view of this, the Insurance Regulatory and Development Authority Act, 1999 (IRDA), was passed which replaced the controller of insurance and provided for the constitution of a new Regulatory Authority in place of the controller. In the year 2000, Insurance Regulatory and Development Authority was formed as an autonomous regulatory body. Since 2000, IRDA has been serving as an independent regulatory authority for the insurance industry and to install confidence among the policy holders in the financial viability of the insurance companies

1. Objectives of the IRDA Act

The Act was enacted to attain the following objectives as stated in its preamble:-

(I) Establishing an authority to protect the interests of the holders of insurance policies;

(II) To regulate, promote and ensure orderly growth of the insurance industry and matters incidental there to.

(III) To amend the Insurance Act, 1938, the Life Insurance Act, 1956 and the General Insurance Business (Nationalization) Act, 1972.

2. Duties, powers and Functions of IRDA

The powers and functions of IRDA are stated under sec 14 of IRDA Act, 1999. The only duty of the Authority is to regulate, promote and ensure orderly growth of the insurance and the reinsurance business. They Include

* Issuing, renewal, withdrawal, suspension or cancellation of registrations.

* Protection of the interest of the policy holders in matters concerning assigning of policy, nomination by policy holders, Insurable interest, settlement of Insurance claim and other terms of contract s of Insurance.

- specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents
- specifying the code of conduct for surveyors and loss assessors;
- promoting efficiency in the conduct of insurance business;
- promoting and regulating professional organizations connected with the insurance and re-insurance business;
- levying fees and other charges for carrying out the purposes of this Act;
- calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business;

- control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);
- specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- regulating investment of funds by insurance companies;
- regulating maintenance of margin of solvency;
- adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- supervising the functioning of the Tariff Advisory Committee;
- specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations ;
- Specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector.

E. Insurance Ombudsman

All grievances, relating to general and life insurance business, as complained by the policy holders would be the subject matter of ombudsman. It is necessary to register the complaint with insurer first and if it is not resolved, approach other for such as ombudsman. The ombudsman shall dispose of the complaint fast and equitably.

F. Latest changes in Regulation-insurance Industry

The latest key changes in the insurance regulatory framework in India are as follows:

- Registration with IRDAI is compulsory for cross-border reinsurers from April 2012.
- Banks were permitted to become licensed insurance brokers in 2013 through the introduction of broker's licenses for banks.
- IRDA (Linked Insurance Products) Regulations 2013 came into effect on February 13, 2013.
- IRDA (Non-Linked Insurance Products) Regulations 2013 came into effect on February 16, 2013.

- New regulation for personal accident and health insurance came into effect from February 16, 2013.

- IRDA (Life Insurance-Reinsurance) Regulations 2013 made it mandatory for life insurers to reinsure with domestic reinsurer GIC Re.

- Insurance repository system was launched on September 16, 2013.

- IRDA (Web Aggregators) Regulations 2013, effective from January 10, 2014, stipulates rules to regulate sales of life products by voice and SMS telemarketing.

- The insurance regulator's name changed from IRDA to IRDAI on December 30, 2014.

- **G. Conclusion**

IRDA plays a vital role in shaping the growth of the insurance industry as a whole. There were many changes which were brought in the insurance industry by IRDA which immensely helped the customers in choosing the right policies as well as helped the insurance companies in delivering the right policies to its customers as well as the insurance company. IRDA made a huge impact of its presence in the insurance industry since it started regulating the insurance industry firmly and stiffly as well as imposed many new regulations on the insurance companies to protect the policy holders interests and help the insurance companies grow and have a healthy competition among each other so that no insurance companies are declared bankrupt. . IRDA's role in shaping the whole insurance industry has been a challenging job since its inception because the insurance companies enjoyed the freedom of non-regulation before IRDA came into existence. This is the reason why IRDA worked tiresomely in order to put everything in place and faced so many challenges for regulating the insurance industry as a whole.