ESSENTIALS AND LEGALITIES OF AN INSURANCE CONTRACT

by
Dr. G. Gopalakrishna
Retd. Senior Officer
LIC of India, Visakhapatnam.

NATURE OF INSURANCE

Insurance means the act of securing the payment of a sum of money in the event of loss or damage to property, life, a person etc., by regular payment of premiums. Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual. The aim of all insurance is to protect the owner from a variety of risks which he anticipates. The happening of the specified event must involve some loss to the assured or at least should expose him to adversity which is, in the law of insurance, called commonly the 'risk'.

The nature of insurance depends on the nature of the risk sought to be protected. The chief and classical varieties of insurance contracts are (i) life, (ii) fire, (iii) marine and in the modern times new varieties have been added from time to time like liability insurance, third party risk. In fact, in modern times, the happening of any event may be insured against at a premium directly proportional to the risk involved on its happening. An element of uncertainty must be present in the course of the happening of the event insured against; in some cases, in almost all non-life insurance contracts, the happening of the event itself is uncertain while in life insurance the event insured, that is, the death of an individual is a certain event, but the uncertainty lies in the time when it happens.

The fundamental function of insurance is to shift the loss suffered by a sole individual to a willing and capable professional risk-bearer in consideration of a comparatively small contribution called premium. In this process the professional risk-bearer, the insurer collects some small rate of contribution from a large number of people and if there is any unfortunate person among them, the risk-bearer, the insurer relieves the sufferer from the effects of the loss by paying the insurance money. Thus it serves the social purpose; it is "a social device whereby uncertain risks of individuals may be combined in a group and thus made more certain; small periodic contribution of the individuals providing a fund out of which those who suffer losses may be reimbursed. The insurers collect the contributions of numerous policyholders and those funds are invested in organized commerce and industry. They help the running of giant industries and mobilize the capital formation.

Life insurance business is the business of effecting contracts of insurance upon human life, by which they will acquire peace of mind and can become carefree. So, it has been rightly said "Life insurance is one of those agencies which improves the mental, moral and national circumstances and raises the conditions of the community of which they are members." These observations apply to all branches of insurance. The insurers will have large funds available with them which they may utilize in helping the formation of big industries directly or by underwriting securities of those companies which tend to grow the commercial prosperity of the nation. There is no denying the fact that growth of industrialization is an adventure in which the triumvirate namely, industry, credit and cover of insurance make a sojourn in each other's championship. Insurance thus reduces the fears of the future risk to the individual insured and by capital formation it helps the growth of industrialization, accelerates production, lubricates the machinery of production and distribution and improve the economy of the nation. It mobilizes the resources, accelerates and stabilizes growth and help in the establishment of a welfare state, as envisaged in the Constitution of India.

LEGAL NATURE OF INSURANCE CONTRACT

The concept of insurance as an effective mechanism for risk transference was first introduced in the marine trade. Later on, the utility of the concept was realized in its expansion to the non-marine types like life and fire insurance. Almost until the middle of the nineteenth century these were the three types which obtained prominence in insurance law. The applicability of the principle of insurance has been found to be wider and at the present day, besides the various types like motor, accident and fidelity insurance, its scope is extended in no small a measure to crop and cattle insurance. Insurance has become the usual mode of providing security against future contingencies and it plays a significant role in the social and commercial life of all modern communities. Particularly in the field of commerce its benefits are most conspicuous. In the commercial world profits are often considered as the reward for undertaking of risks. Therefore the aspect of the risk is of paramount importance in all commercial enterprises and insurance as a technique of management of risk is bound to be of invaluable help.

The law of insurance forms part of the general law of contract and whatever type of contract of insurance may be it invariably represents the agreement between the assured and the insurer. The essential ingredients of a contract under law, for example, offer and acceptance, consideration, capacity of the parties, mutuality of understanding, legality of object are of equal application to a contract of insurance. But it is the existence of a separate set of principles distinctly applicable to a contract of insurance that furnishes the correct appraisal of the nature of insurance contract.

Though insurance has been differentiated into marine, fire, life etc., there are certain general principles applicable to all forms of insurance. These general principles have a two-fold purpose. They serve as a guide to the sound interpretation of the purport of the insurance contracts in their diversified forms. For example, the principles of indemnity, insurable interest, uberrima fides and the existence of risk are some of the principles having common application.

(a) Existence of risk:

It is indispensable to every contract of insurance that the subject matter should be exposed to the contingency of loss or risk. Risk involves the happening of an uncertain event adverse to the interest of the assured. In marine insurance the ship or cargo is exposed to the loss by perils of the sea. In fire insurance the risk is destruction of property by fire. In life insurance the risk in the death of the assured is, though a certainty, uncertain as to the time of its happening.

In an abstract sense risk may be defined as the chance of loss. It can either be an uncertainty as to the outcome of some event or events, or loss as the result of at least one possible outcome. In any case, the promise of the insurer is to save the assured against the uncertain consequences.

(b) Indemnity, the key principle :

Insurance is essentially a contract of indemnity. All the claims of the assured will be adjusted only with reference to the actual loss sustained by him. Thus it is implicit in every contract of insurance that the assured in case of a loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified.

The effect of the principle of indemnity, in laying down that the satisfaction ought not to exceed the actual loss, is to prevent fraud on the part of the assured. It checks the temptation to gain by unfair means and willful causing of loss. However, the real basis for the application of the principle of indemnity is not the prevention of crime or consideration of public policy but it derives from the intrinsic nature of the bargain.

In assessing the amount payable on a contract of insurance, the principle of indemnity though a guiding principle, is not an unqualified one. It is common that insurers limit their liability to a particular amount of money known as the 'sum assured.' In case of loss, the 'sum assured' is all that the assured is entitled to even if the value of the thing is far in excess of it. But in all other cases, excepting the valued policies (in Marine Insurance) the insurer is liable to indemnify only to the tune of the actual loss, even though the 'sum assured' is a higher amount. In 'valued policies,' the parties agree that the value of the subject-matter shall be agreed. The object of the valued policies is to avoid dispute after the loss occurs as to the quantum of the assured's interest.

In contracts of life insurance, personal accident and sickness insurances and in some forms of

contingency insurance, the loss is seldom measured in monetary terms. They are to be distinguished from contracts of indemnity like marine and fire insurance. It is now well established that life insurance in no way resembles a contract of indemnity.

Not infrequently the contract of life insurance is considered as an arrangement for profitable investment. It is because the assured by paying the premiums is effecting a saving, the cumulative sum which he can recover after the expiry of the fixed period. Life insurance may properly be considered as an investment of money because it enables to secure an ultimate fund to those persons who have no greater opportunity of making savings or which left to themselves they would have found it beyond their means. Yet, the objective of a contract of life insurance is mainly to provide for the risk of death happening at an uncertain time. Though to consider it as a sort of investment holds good in some cases, it is departing from the essential feature of insurance security against risk. It is, therefore observed that a life policy is not a contract of indemnity. Generally a contract of indemnity is entered into for the sole purpose of making good a loss incurred. The value of a life, however, is incapable of estimation and except, in a limited sense, cannot be "made good" by insurance. An important distinction which thus arises between life insurance and other forms of insurance is that the principle of "subrogation," under which the insurer (i.e., the company) takes the right of recovery against the third party causing the loss, has no application to life insurance.

(c) Insurance and wager not identical:

The fundamental principle of indemnity on which the greater part of the law of insurance is based, prima facie, negatives any treatment of insurance on par with wagering contracts. Wagering contracts are those, wherein "two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay and hand over to him, a sum of money or stake." Again, "the distinction between a wagering contract and one which is not a wager, depends upon whether the person making it has or has not an interest in the subject matter of the contract." That means, "if the event happens the party will gain an advantage, if it is frustrated he will suffer a loss." Probably, the common feature of the two types of agreement – the element of uncertainty, gave rise to the misconception of insurance in terms of a gamble. At one time according to Sir William Anson, the father of the "Law of Contract" insurance was placed on a different ground from a pure wager merely because it is permitted by law. Insurance was regarded as no better than a wagering contract despite the presence of insurable interest. But this view has been modified by himself later on and now he affirms insurance is described as having only a 'superficial resemblance' to a wager.

Though the distinction is subtle, it is the intention of the parties rather than the form of the contract that distinguishes insurance from wager. A wagering contract is made generally with a view to secure profit. The probability of the happening of an event is completely extraneous to the interests of the parties except for the chance of gain. A wager is concerned with the happening of an event per se and the consequential determination of the conflicting interests. The purpose is to win or lose in lieu of the mere probability of an event. In insurance the interest of the assured in the subject-matter of risk known as insurable interest, is of the utmost importance.

A contract of insurance is described as aleatory. It is speculative to such an extent that the parties may not know whether the event insured against will occur or not, thus involving a case of mutual risk. The insurer in turn for a comparatively small sum in the shape of a premium undertakes to compensate against a heavy loss. But such undertakings will normally be with reference to actuarial practice and therefore insurance always stands apart from a mere speculative venture.

Insurance can be only with reference to a previously existing risk and unlike a wager it does not create risk with its inception. The interests of the parties in a pure wager are centered round the fact that they have contracted to pay each other certain sums on the happening or otherwise of a certain event thereby bringing into being risk not of previous existence. In the case of insurance, the individual subjected to the risk before negotiations, obtains security and to that extent there will be a shifting of risk rather than a creation of it. Therefore, to say that

insurance accomplishes the reverse of a wagering contract seems to be correct proposition. At one time life insurance was considered to be immoral, as "gambling in human life." This idea arose because policies were taken where no insurable interest existed and where the insurance was effected solely for speculative purposes. Life insurance, however, is now chiefly used and properly regarded as an economic and social necessity and when properly understood cannot be considered as a "wager" even though a large financial gain may result from the early death of the insured. On the other hand, a wagering contract is one where profit is sought to be made through chance, while the true object of life insurance is rather the opposite, the avoidance of loss arising through chance. A life insurance policy, therefore, is not a wagering contract, which would be unenforceable on grounds of public policy.

Life insurance was regarded as a contract of indemnity similar to other contracts of insurance even so late as 1854. It will, therefore, be not out of place to note here the contrast that now exists between life insurance and other forms of insurance.

1. Most contracts of insurance are usually annual contracts and the insurers have option to refuse renewal at the end of each and any period of insurance. In some cases the insurer reserves to him the right to terminate the insurance any time on a proportionate return of premium in respect of the unexpired period of the risk. Life assurance contracts are, in the main, long-term contracts, and in the absence of any fault or any flaw the insurer has no option to cancel the insurance.

2. The risk insured against under a fire, accident or marine insurance contract may or may not occur but the event insured against under life assurance contract is bound to happen.

3. From the above we see that the general contract of insurance continues to be a contract of indemnity, but life insurance is considered as an assurance contract. Regarding the life insurance contract, McGillivray says, "the contract of insurance may be to pay on the happening of the event insured against, a certain or ascertainable sum of money irrespective of whether or not the assured has suffered loss or of the amount of such loss if he has suffered any."

(d) Insurable Interest:

The next test for a valid insurance contract is the existence of insurability interest. The 'insurable interest' may be defined thus:

"Where the assured is so situated that the happening of the event on which the insurance money is to become payable would, as a proximate result involve the insured in the loss or the diminution of any right recognized by law or in any legal liability, there is an insurable interest to the extent of the possible loss or liability."

Here again we see that such interest should exist at the time of happening of the event in the general insurance contracts, but is not necessarily so in the case of the life insurance contracts. This is because the former is a contract of indemnity and the latter is a contract of assurance. Taking an example of fire insurance, it is clear that an insured person suffers no loss under a policy if at the time of loss or damage to the property he has no interest in it either as full or partial owner. McGillivray says, "if the assured has no interest at the time the event happens it is clear that he cannot recover anything, because he suffers no loss, and therefore has no claim to an indemnity. Similarly, if he has an interest which is limited to something less than the full value of the subject-matter, he suffers no greater loss than the value of his interest at the time of the loss, and therefore, his claim to an indemnity cannot exceed the value of his interest." He further continues: "An interest is required by the terms of the contract itself if the promise of the insurer is merely to indemnify the assured against pecuniary loss arising from the event insured against." If the above was not so, insurance would prove to be a good inducement to the deliberate destruction of insured property with a view to making a profit out of the loss.

In this connection life insurance stands on different ground. No value can be assigned to human life in the same way as is done in respect of tangible property. But all the same it is possible to measure the extent of loss that would be caused by the failure of a given life. Insurable interest of some

kind is necessary to every contract of insurance of whatever kind and any insurance made without such interest is illegal and void.

It is clear from the above discussion that an insurable interest as defined above is an indispensable feature of contracts of indemnity. Life insurance, however, stands on a different footing and it is now established that provided a bona fide interest exists at the date of the contract no interest need be shown at the date of loss. Similarly the amount recoverable under a life policy refers to the interest at the time of making of a contract. These conclusions are based on judicial interpretation and are now universally recognized.

The guiding factor is that an insurable interest is a reasonable expectation of financial benefit from the continued life of the subject or an expectation of loss if the subject dies. For instance, a parent has a clear insurable interest in the life of a minor child, since he is entitled to the services and earnings of that child.

The concept of insurable interest primarily appears to be an invention of the courts. It may be necessary for the assured to show interest but common law contains no general prohibition of contracts in which no insurable interest exists. It was perhaps introduced to curb insurances by way of wager, and obtained statutory recognition.

The presence of insurable interest is insisted for two reasons: (1) the assured cannot be taken to have suffered any damage if he has no interest in the property insured at the time of loss. (2) Secondly, if the interest of the assured is limited to something less than the full value of the subject-matter, no greater damage than his interest in the subject matter will result. In both cases the interest in the subject-matter is required by the terms of the contract itself since the promise of the insurer will be only to compensate the actual loss.

To have insurable interest, it is essential that there should be some contractual or proprietary right, whether legal or equitable so long as it is enforceable in the courts. Accordingly the main principles determining the existence of insurable interest are (a) the interest must be enforceable at law; (b) the continued existence of the interest will be beneficial to the assured. Strict legal or pecuniary interest is not necessary. Equitable interest is sufficient to give rise to insurable interest.

Under the contract of life insurance, the assured has insurable interest in his own life to an unlimited extent. But where a person takes an insurance on the life of another, the criteria applied in assessing the insurable interest are of great importance. It is not the legal or beneficial interest as in the case of marine and fire insurance, but the person insuring the life of the other must stand in such relationship as will justify a reasonable expectation of advantage or benefit from the continuance of the life of the person on whom the insurance is effected. The test applicable is whether there was actual dependence of the person effecting the insurance on the person whose life is insured, or he had an expectancy of some advantage from the continued existence of the person insured.

The effect of the requirement of insurable interest in all contracts of insurance seems to be two-fold. Its absence makes a contract of insurance equivalent to a wager. Also the principle of indemnity cannot be applied unless there be some interest in the subject-matter, because, the actual loss alone will be indemnified. Thus it became a preventive of wagering policies and also limited the amount recoverable to the loss sustained by the assured.

(e) Principle of utmost good faith :

In the case of ordinary commercial transaction the legal maxim "caveat emptor" (meaning "let the purchaser beware") prevails. In the absence of an enquiry the other party to the contract is under no obligation voluntarily to furnish detailed information regarding the subject matter of the contract. It is, however, understood that one party to the contract should not be misled by the other by any false declaration. All the same it is open to both the parties to the contract to satisfy themselves and each party is entitled to make the best bargain that he can make.

As a contrast to such commercial contracts the insurance contract is dominated by the legal maxim "the utmost good faith". The observance of utmost good faith by the parties is vital to a contract of insurance. Insurance is called an UBERRIMAE FIDEI contract because the parties are required to conform to a higher degree of good faith than in

the general law of contract. Good faith and honesty though principles of equity and justice are equally applicable to every agreement; yet, in contracts other than insurance, the parties are free to settle their own terms. In a contract of sale of goods CAVEAT EMPTOR is the principle and the seller has no obligation to make known to the purchaser all facts that might affect his decision. But in insurance there is something more than an obligation to treat the insurer honestly and frankly.

Insurance being a device of risk transference stands on a separate basis. The non disclosure of a material fact by the assured whether fraudulent or innocent, has the same effect of avoiding the contract. A stringent duty is imposed on the assured to provide all the material facts that might influence the decision of the insurer. The fact that the assured believed as a reasonable man certain information as immaterial to the purpose does not provide a defense. The materiality of a particular fact will be considered independently of the belief of the assured. This fundamental principle applies to all branches of insurance. It may be summarized from one of the several judgments pronounced:

"It is the duty of the assured to disclose all material facts within their knowledge. In cases of life insurance, certain specific questions are proposed as the points affecting in general all mankind. But there may be circumstances also affecting particular individuals, which are not likely to be known to the insurer, and which had they been known, would no doubt, have been made subject to specific enquiries."

The onus of good faith lies equally on both the parties to the contract, but in the nature of things the assured has to pay more particular attention to the observance of the principles. The selection of a life for insurance by the company depends to a large extent on the information supplied by the proposer. As the company solicits proposals from the general public whose members are total strangers to the company there is an urgent need for disclosing all material facts within the knowledge of the proposer to enable the company to come to a decision. The proposer has within his knowledge all the facts, which are material to the risk. He is morally and legally bound to disclose all matters, which in point of fact are material to the contract.

The question as to which information is material to the contract is a wide one. In case of dispute a court or a committee of arbitrators may decide it. But this cannot certainly be left to the opinion of the proposer. "Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk". This definition has been embodied in the Marine Insurance Act of 1906 and is equally applicable to life insurance. Nevertheless, the proposer is excused from explicitly disclosing certain facts. These are:

(1) What the insurer already knows,

(2) What the insurer ought to know,

(3) What the insurer waives being informed of,

(4) Features, which lessen the risk.

We thus see that in an insurance contract each party acts on the good faith of the other. If the proposer conceals or misrepresents material facts, the contract is vitiated. Deliberate concealment or misrepresentation amounts to fraud, and the policy is legally void. Innocent misstatement or misrepresentation renders the policy voidable at the option of the insurer up to two years. In practice, however, policies are usually allowed to continue, subject to adjustment, if the company is satisfied that there was no intention on the part of the assured to defraud it.

Incidental to our discussion of the subject is the consideration of representations and warranties which we may now examine. As stated before, full disclosure of material information having a bearing on the risk is necessary on the part of the proposer. This is due to the principle of uberrima fides that governs the insurance business. The statements made by the proposer in the proposal form and his statement before a medical examiner are, in legal language, either representations or warranties.

A warranty in insurance is a statement or condition incorporated in the contract relating to the risk, which the applicant presents as true and upon which it is presumed that the insurer relied in issuing the contract. Marine insurance, the first branch of insurance to develop commercially, evolved the doctrine of warranty. The Marine Insurance Act, 1906 (England), gives the following definition of a warranty:

"A warranty is a statement by which the assured

undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of fact." This Act states further that "A warranty as above defined is a condition which must be exactly complied with, whether it be material to the risk or not."

The other replies given by the proposer, which are not intended to have the force of warranty, are known as representations. In life insurance there is a recital clause by which the answers given in the proposal and the replies made to the medical examiner are made the basis of the contract and thereby given the effect of warranty. The present tendency of the offices is to treat the replies as representation. Any misstatements are, therefore, judged from this approach and if the company thinks that the misstatement is material, that is, the knowledge of the correct statement would have influenced the decision of the company adversely, the insurer can seek to avoid the policy on the ground of non-disclosure or misstatement and must also offer to return the premiums. The law courts also do not favour any unfair rigidity in the interpretation of answers to the questions in the proposal form. Even then it is always desirable on the part of the proposer to warrant the answers to the best of his knowledge and belief. This materially safeguards his interests.

A contract is vitiated when it contains some flaw, which renders it legally of no effect. In life insurance the breach of warranty voids a contract absolutely. The other cases in which it becomes void are, mistake, illegality, fraud. In these cases they vitiate the contract and is voidable at the option of the insurer. The contract becomes voidable also on account of innocent misrepresentation or non-disclosure. As stated above, if the insurer seeks to void the policy he must show that the non-disclosure or misrepresentation was material to the assessment of the risk and was of such a nature as would influence the judgment of a prudent insurer.

We have just seen that a policy may be void on the ground of mistake, fraud or illegality. It is also voidable at the option of the injured party under certain circumstances. In such cases, the insurer may not pay the whole sum assured, but may be bound to return the premiums already paid. It is because if a policy is void ab initio the risk has never been covered and, therefore, no premiums have been earned. On the other hand, if the risk has once commenced under a valid policy, the entire premium is deemed to have been earned by the insurer and the assured can claim no return if under changed circumstances the contract is rendered void in future. In cases where the insurer seeks to avoid a policy on grounds of non-disclosure or misrepresentation, he is in equity bound to offer the return of premiums, but in practice, life offices provide for the forfeiture of all premiums paid. To obviate the difficulties of the assured, the offices generally have an indisputability clause in their policies and all answers given in the proposal and the medical report become indisputable after a period of two or three years. After this period the policy cannot be called into question except on grounds of fraud and illegality. The above indisputability clause has been made a part of the Insurance Act of 1938.

In contracts of utmost good faith, contracting parties are placed under a special duty towards each other, not merely to refrain from active misrepresentation but make full disclosure of all material facts within their knowledge and the principle of caveat emptor has no place.

In saying that the utmost good faith be observed by both the parties the salient feature to be noted is that 'FIDES UBERRIMAE' is not one sided requirement. The duty lay not only upon the assured, but also upon the underwriter.

The question of interest that sometimes arises in insurance cases is whether a person can claim the insured amount by pleading ignorance to the contents of a proposal to which he previously gave his signature. The insured person must be held responsible for the untrue averment in the application form which he signed, as the duty of making himself acquainted with the contents of what he was signing lay upon the insured person himself. It is a general proposition of law binding on every insured person who merely puts his signature to forms in a language quite unknown to him when these forms are filled in by an agent. Insurance contracts are a special class of contracts, one of the distinctive features of which is that they are based on the rocky foundation of utmost good faith. Such good faith is not a matter of art, but has to be really and sincerely appreciated by the insured . . .' Insurance is a form of contract where an onerous duty of disclosure surpassing the boundaries of the general law of contract, is placed on the assured. The obligation of utmost good faith operates generally in cases where the assured has to answer the questions

in the declaration form, the contents of which he has understood clearly. It is submitted that the same principle of good faith, should be applied even where the assured gives answers without properly understanding the questions. In such cases the insurance policy would stand to be avoided because (i) the insurance company cannot be said to have consented to insure the life of the person on the basis of the wrong information, although unwittingly given; (ii) the obligation to provide the correct information should be the same whether it is a case of non-disclosure by reason of the assured believing the facts are immaterial or due to the reason of not knowing the proposal. Therefore, a positive duty to know the contents of the insurance policy may be imposed. A person cannot be in a better position with regard to the requirement of good faith, merely because he is a stranger to the language contained in a proposal form.

Under section 45 of the Insurance Act, 1938 in the case of life insurance a two years' time limit is imposed in bringing the validity of the policy into question by the insurer on the ground of misstatements in answers to questions in the proposal form or in any report or document leading to the issue of the policy. Section 45 says that after the expiry of two years from the date on which it was effected no policy of life insurance be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false. The insurer cannot avoid the consequences of the insurance contract by simply showing inaccuracy or falsity of the statement made in the proposal form but has to prove under section 45 that the life insurance policy has been obtained by means of fraudulent misrepresentation. For avoiding the policy on the ground of fraudulent concealment under the provisions of section 45, "it must be convincingly shown that the matter in question was knowingly concealed." The insurer has also to show '(1) that such statement was on a material matter or suppressed facts which it was material to disclose' and '(2) that it was fraudulently made by the policyholder' and '(3) that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.'

The courts generally do not uphold the plea of the insurer that the information given by the assured is fraudulent. In life insurance, the liability of the insurers is dependent on human life, or on the happening of some other contingency which is itself dependent on human life. The cover afforded by the policy of life insurance is not restricted to loss by accident as in other insurances but provides also against the death of the assured from disease or other natural causes. The prime factor of risk lies not so much in the happening of the death of the assured but relates to the uncertainty of human life. The death of the assured though 'most natural event' is uncertain as to the point of time at which it will happen.

Under an endowment policy the insurer promises to pay a fixed sum on the death of the assured, or on the arrival of a specific date during the life of the assured. This differs from strict life insurance because the event insured may not be the death but the duration of life up to a specified date. So to be inclusive of this type of insurance, namely, endowment policy, life insurance may be broadly considered as a contract in any way relating to human life. In a wider sense, Life Insurance comprises any contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another party. Life insurance is a special form of insurance contract. It is a financial arrangement by which a man protects himself and/or the members of his family against the contingencies of life. In a contract of life insurance the agreement made by the insurer is to pay a certain sum of money on the death of a person or on maturity and when once fixed, it is constant and invariable.

Thus, the life insurance contract is a special contract with many legal dimensions. In spite of its legal character, life insurance contract has some 'social value' in the sense, it has to consider social realities and economic limitation when offered to the general public. The life insurance which has theoretical basis of providing security measure to the risk of death considers the welfare of the family of the insured. Above all, it has legal rigidity while such contracts are construed by the courts.

The principal legislation regulating the insurance business in India is the Insurance Act, 1938 (hereinafter referred to as the Act), and the recently enacted Insurance Regulatory and Development Authority (hereinafter referred to as IRDA) Act, 1999. Apart from these, the

provisions of the Companies Act, 1956 are applicable to companies carrying on insurance business. Further, insurance being a contract, the provisions of the Indian Contract Act, 1872 are applicable to such contracts.

The subordinate regulations that need to be referred to are the Insurance Rules, 1939, the Redressal of Public Grievances Rules, 1998 and around 27 regulations framed by IRDA on various subjects ranging from the Actuarial Report and Abstract Regulations to the Protection of the Policyholders' Interest Regulations, 2002.

The IRDA made a reference to the Law Commission of India 3, 4 years ago to make recommendations for the revision of the Insurance Act, 1938 and for consequential amendments thereto. The present exercise of the Law Commission is confined to the restructuring of the Insurance Act, 1938 in the light of the changes in the insurance sector and the merging of the sections of the IRDA Act, 1999 with the Act. One of the purposes of this exercise is to bring a consistency among the various provisions placed in different sections of the Act by putting them into a core provision relating to a particular subject/topic. Another aspect is that with the enactment of the IRDA Act, 1999 some provisions have been inserted in the principal Act, the effect of which is to nullify some of the existing provisions. In fact merging of the provisions of the IRDA Act, 1999 would also make it a comprehensive statute and would avoid multiplicity of legislations for an industry. As such it would make it easier for the insurers, insured, intermediaries and the public at large and the functioning of the IRDA, and would also be of assistance in locating all the provisions at one place. Moreover, some of the provisions of the Act are now dealt with by the Regulations framed by the Authority and hence the same need to be deleted from the principal Act to avoid duplication. The revised legislation is intended to present a simplified and streamlined legal framework to strengthen the IRDA, to promote insurance in liberalized era and to protect interests of the policyholders. The report of the Law Commission on the Revision of the Insurance Act, 1938 and the IRDA Act, 1999 needs to be finalized and released at the earliest for the smooth functioning of the Insurance Industry in the light of the present day scenario.