

# Insurance Conundrum

*(In lighter vein)*



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**M**an has a natural tendency to avoid displeasure. Whenever he encounters a threat, a risk, his reflex would be to circumvent it in any manner, even by tossing it impulsively over to any other entity. Insurance is regarded as a similar risk transfer mechanism that essentially suits to man's instinct. The very term insurance presupposes an active presence of threat to life, property or interest, a lurking 'risk', as insurers call it. In fact, the concept of insurance originated from presumption of some devastation or deprivation.

Starting from Edward Lloyd's Coffee house as a simple loss sharing practice, insurance continued its journey to modern age contributing in its stride to the progression of tremendous transformation the world society has undergone. Until early 40's insurance did not enjoy the status of commerce. It has since developed to be so important a constituent of a nation's financial sector that its growth began to be measured in relationship with the

growth of GDP. Despite this however, a question frequently asked even on these days is "why insurance?"

An insurance policy certainly cannot prevent a loss or damage. It only provides compensation after a loss has occurred. But then, isn't it true that the safety and security of life and property of the people should be the primary responsibility of the Government of the day? So there is one school of thought that maintains that there is no need for another independent body like an insurance company for providing such essential social security to the general public.

They refuse to understand the logic of forming and sustaining an entity with whole lot of personnel and paraphernalia engaged in collecting money from several persons, maintaining a corpus and of the fund so created, providing relief to those few persons

who are affected by some unfortunate events and in this process creating two distinct classes in the society - the insurers who have adopted management of the corpus as a business and insureds who are the real owners of the fund undergoing a role change as to ever remain dependent on the fund managers as they may need help when any disaster strikes them.

Lately, however it is found that more and more countries have started adopting insurance as one of the techniques to ensure reasonable financial protection to the general public and also as an effective



instrument for spreading the loss of one to many even beyond the borders of the nations.

Now, what does an insurance policy cover? An insurance policy covers risks which in common parlance is hazard. But in insurance terminology, 'risk' also means a peril that is capable of causing some loss that can be measured in terms of money. All risks are not insurable. Insurance covers risk, which is fortuitous in nature. To be more specific, if the probability of an event occurring is greater than 0 but less than 1, it is said to be a Risk for the purpose of insurance. Thus, Risk denotes a perception of some threat. The term "Risk" also means the subject matter of insurance. Getting confused? Only know that you can transfer your risk to a risk carrier, an insurer, by effecting an insurance cover on your risk against such risks as may be granted by the insurer.

Remember those promotional ads given out by insurers to print and visual media propagating their various insurance products? These ads signify the rider "Insurance is subject matter of solicitation". Doesn't this remind us of the rider "cigarette smoking is injurious to health" and get an instant impression that insurance is somewhat analogous to and harmful like smoking?

To a prospective insurance buyer, this rider appears menacing as also it sends confusing signals, for, it is not clear why an accredited insurance carrier should take such extra caution stipulating that insurance products may have to be sought before being granted. Maybe, the insurers want those who venture to avail of an insurance cover to understand that it is they, who

have asked for it, and hence they have no reason to complain about it later on. Nevertheless, the rider, in the first place, impacts any person negatively, regardless of whatever it intends to convey.

Customer delight is the ideal goal any marketing person desires to achieve and he strives to attain this by keeping his customer happy and contented. But, insurance sales person has to adopt an uncanny method even to create customer curiosity, let alone customer delight, in an insurance product. Contrary to conventional marketing ethos, an insurance salesman tries to arouse in his prospect an apprehension about the scary uncertainties and misfortunes that occasionally visit human life.

Fatalism should be his philosophy and mysticism, his force, if he desires to be successful. He should act virtually as a prophet of doom. Insurance Salesman perhaps is the only dealer who perforce adopts the unconventional method of trying to stir his prospect out of euphoria and poke negative emotions in him, so that he can sell his product as a solution to the problems his customer must have woken up to. Like a sorcerer doing his tricks on his client and offering an amulet to ward off evil spirits, perhaps.

An insurance policy is beset with complicated syntax, hackneyed jargons and terminologies, as also superfluous officialese and verbiage. Insurers repeatedly assure of simplification of the language used in insurance policies. But, they dare not to amend any words or terms in the policy, as they seem to believe that they are sacrosanct because of their so-called legal history. All the same, the insured is expected to

read the terms and conditions of policy and be convinced that the contract is as per requirement. For the purpose, insured is also given a Free Look Period of 15 days, which will operate to his benefit if he is lucky to get the policy document within reasonable period.

We all know that Indian non-life insurers have the age-old practice of providing insurance policies sans terms and conditions. The liberalization has only helped maintaining the system undisturbed to a greater extent. Insurance being a contract of Utmost Good Faith such terms and conditions may not be necessary! On the other hand, there are insurers who tend to overdo it attaching to the policy a bunch of print materials purported to be conditions and warranties irrespective of whether they are applicable to the particular case or not. Insured should feel happy browsing the documents and choosing the terms and conditions as he likes.

Then there are express conditions and implied conditions in the policy. Express conditions are clearly stated in the policy and for implied conditions; you have to rip open the veil of insurance contract and search



for them. It is said that these conditions have to be read into the contract. Don't worry; the insurers at their pleasure will infuse it into the contract. It must indeed be news to the insureds that if they are aggrieved by adverse interpretation of words or terms by insurer, they can take the help of the principle of "contra proferentum" which connotes that any ambiguity in the contract will be construed against the insurer who has framed the contract. But, one has to knock at the doors of judiciary for getting the benefit of this interpretation.

Insurance contract is contract of Utmost Good Faith. Now, Good Faith is Good Faith but how the superlative "Utmost" which is juxtaposed will qualify "Good Faith" is not discernible. The term however, suggests that both parties to the contract should observe Utmost Good Faith meaning thereby that both the insured and the insurer should honestly declare that material facts affecting the insurance contract. The principle of Utmost Good Faith is considered to be the pillar on which the edifice of insurance contract rests. This paramount principle however remains hidden behind the back-curtain of insurance contract in the guise of so-called Implied Condition or in some cases, it appears disguised as an express condition with an oblique reference to the principle.

One of the important ingredients of insurance contract is consensus and idem, the common intention, which is to say, the insured and the insurer should be of the same state of mind insofar as the subject matter of insurance contract is concerned. But, in effect, except that he has assented to take out an insurance

cover, the insured is practically oblivious of the greater details of an insurance contract since there is no practice of providing the particulars of insurance cover to the prospect before finalizing the contract.

Some insurers have the practice of marking "without prejudice" in all correspondence relating to claims. It will be wrong to hurriedly conclude that the insurer thereby means, "no malice involved". It only says that the action is without prejudice to insurer's right of alternative action.

One can glean more such snippets from insurers' glossary, which is full of wiggling words and phrases that are incomprehensible to common man. For instance, an "excess" in an insurance policy is not an excess amount to be paid in the event of claim but is a deduction from claim amount. The term "Market Value" which the insurer promises to pay in the event of loss is not the value at which you may buy the item from the market but the amount equivalent to value that may be fetched if the item is placed in the market for sale.

"Insurable Interest", for example, is not a person's mere interest in effecting an insurance cover but is his monetary interest in the subject matter of insurance. "Warranty" in an insurance policy does not provide any guarantee against defective cover, etc. but on the other hand, it is supposed to be a re-statement of the information furnished by the proposer concerning the property or interest proposed for insurance. Insurance policies contain arbitration conditions that occupy almost half of the policy space but the provision is seldom invoked.

Strangely, insurance many a time

has been a riddle to both the practitioners of the system and to the intended beneficiaries. It baffles the insurers when their carefully typeset words and phrases in the policy sneer at them, when they are told even by Hon. Courts, for instance, that "burglary" contrary to the definition in the Burglary policy also covers simple theft, that validity or effectiveness of Driving Licence should not be a condition for deciding insurers liability under Motor Insurance policy, that Pre-existing Diseases Exclusion under a Health Insurance Policy is a harsh condition, etc.

On the other hand, what puzzles the Insured is that although he is happy at the thought that he holds an insurance policy, he is more skeptical of insurer's response at the time of claim.

He knows fully well that insurers can reject or underpay a claim for number of reasons; it can be technical, guided by ulterior motive, a wrong notion or ignorance or insufficient knowledge of deciding authorities and so on. Insurers often seek reinsurance protection for the insurance covers they offer to the customers because of their so-called limited retention capacity. Insureds, who are unsure of what the fate of their claim would be, if and when it occurs, find themselves in fortuitous circumstance requiring protection.

There are insurance policies covering statutory liabilities such as liability under Common Law, WC Act, Public Liability Act, etc. Won't it be a great idea to formulate a suitable insurance policy covering original insureds in respect of contractual liability of insurers under insurance policies? Insurance on insurance, of course!