

BOOK REVIEW OF ‘AN INTRODUCTION TO INSURANCE LAWS’

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An Introduction to Insurance Laws

By: - Naresh Mahipal & Samta Soni

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About the Book

The authors have written that this first edition of the book adopts a fresh and novel approach to the study of insurance. However, this reviewer finds that even though the book contains very material on the subject relating to English and Indian insurance laws but there is very little analysis of the leading judicial decisions and materials. The book is in 347 pages but in real sense, they have discussed the insurance laws in only 161 pages. They have collected three legislations, got it typed and presented in three appendices. Appendices are spread over from 162 to 340 pages followed by 7 pages Index. They have not made a proper analysis of these three legislations.

The price of the book is quite reasonable at Rs. 230/-. This book is useful for the students of undergraduate levels (LL.B./B.A.LL.B.) and management, but it may not be recommended for Post graduate level students, researcher and legal practitioners.

1. Introduction

Judges speak only through their judgments and legal scholar research the roots of their thoughts in human experiences.¹ Authors have written this book through their research on legal aspects of Insurance Laws. They have made a sincere effort to bridge the gap on non-availability of a handy, complete and comprehensive book on emerging subject like Insurance Laws. Only focus on statutory provisions would not serve the purpose in real sense. Authors knew that the court's decision is an obvious source of Insurance

¹ Salman Khursid in Foreword, P. N. Bhagwati, *“My Tryst with Justice”*.

Jurisprudence. Therefore, they have been responsive in inclusion of the latest decision of various Indian Court's.

The authors of the book under review² dedicate it to the father of first author, referring to him as "Who has been a constant source of inspiration for me". This shows their utmost sense of respect for him.

Though, the concept of insurance has been prevalent in India since ancient times. But modern form of Insurance law in India had its origins in the English Law with the establishment of a British firm in India. The law relating to insurance has gradually developed, undergoing several phases from privatisation to nationalisation and from nationalisation of the insurance industry to the recent reforms permitting entry of private players and foreign direct investment (FDI) in the insurance business. *The Insurance Amendment Act, 2015* is crucial for the insurance industry to continue to grow in underinsured India.³

This book is supposed to cover the entire concept and development of Insurance Laws in India. Like British writing, the book is written in the topical style rather than section wise commentary of the Insurance legislations. While discussing the important topics the book articulately brings out the origin and development of insurance Laws, basic principles of insurance, regulatory authority of the insurance business, insurance intermediaries, insurance ombudsman and specific provisions of the Public Liability Insurance Act, 1991.

The book under review is a comprehensive treatise on insurance laws. It is divided into 5 parts. Each part has been designed to be helpful for student in understanding the basics of Insurance Laws. Each part has been further divided into several chapters. Three important legislations namely, *the Insurance Act, 1938*; *the Insurance Regulatory and Development Authority Act, 1999*(IRDA) and *the Public Liability Insurance Act, 1991* have been incorporated as three appendices of this book.

² Naresh Mahipal & Samta Soni, "An Introduction to Insurance Laws", (Central Law Publications, Allahabad, 1st edn. 2012).

³ The government circulated some amendments to the Bill on July 30, 2014, which were referred to the Select Committee in Rajya Sabha. The Select Committee report was tabled in Rajya Sabha on December 10, 2014. The Select Committee's recommendations included a draft Insurance Laws (Amendment) Bill, 2014. The provisions of the Ordinance were drafted on the line of the recommendations of the Select Committee. The Insurance Amendment Act 2015 has taken place of the Ordinance of 2014.

This book is not very bulky but it contains judicial decisions and statutory provisions at appropriate places. It is written in very straightforward words therefore it can be easily figure out by the students of LL.B., B.A.LL.B. and Commerce & Management. It is presented by the authors in well articulated manner with a student friendly approach.

2. Part -I

The first part of the book under review, which is divided into 5 chapters, deals with basic concept of insurance. In the first chapter, the authors have discussed meaning and definitions of insurance. Chapter 2 highlights the function of insurance, while chapter 3 focuses on nature of insurance. The function of Insurance is basically classified into three groups, namely primary functions, secondary functions and other functions. The elementary purpose of insurance to provide protection, making certainty, evaluation of risk and collective sharing of loss are the part of primary functions. Greater the security, lesser the possibility of loss and it would reduce the need of payment by the insured. Generation of capital is one of purpose of any business. Improvement in efficiency and sociological purpose i.e. welfare of society are also indirectly helpful in accelerating the growth of nation. These are the secondary function of Insurance. Risk free trade, Earning of Foreign Exchange and saving and investments are also additional advantages which come into category of other functions of Insurance. Origins and development of insurance have also been discussed under chapter 4. Various kinds of insurance are prevalent in the market which is explained briefly under chapter 5.

The contract of insurance is basically a specific type of contract. So, most of the aspects of insurance are governed by the Indian Contract Act, 1872. Besides these, there are some additional formalities are required in case of contract of insurance. The second part of the book contains 5 chapters which explained the basic principles of insurance. Chapter 1 of this part focuses on general principles as well as on specific principles of contract of insurance. Principle of *uberrima fides*, insurable interest, doctrine of *causa proxima*, principles of indemnity, subrogation, contribution and auxiliary principles have been explained in great detail. The principles are explained with the help of juristic opinions and judicial decisions, both foreign and Indian.

3. Part-II

Premium is a price that insurer charges from the insured. It is an essential requirement for validity of insurance contract. *Lawrence J.* defined premium as, “a price paid adequate to the risk.”⁴ Chapter 2 deals with ‘the premium’ and chapter 3 emphasises on meaning, scope, element and alteration of risk. In most of the insurance transaction, there is usually an insurance agent or broker, between the buyer and the insurer helping the buyers to identify their coverage and risk which helps him in purchasing appropriate policy. The controller of insurance was replaced by the IRDA on the basis of *Malhotra Committee* report. Insurance intermediaries (chapter 5) and salient features of IRDA, 1999(chapter 4) are explained by the authors in very expressive mode. Various aspects of IRDA have been discussed. The statutory provisions and leading judgments have been incorporated in this book.

It is well known fact that death is inevitable. It can't be avoided. However, the suffering of the individual or his or her family on occurrence of accident or death may be minimised. This can be done by spreading losses to persons who agreed to indemnify in lieu of payment of premium. So, idea of life insurance comes into our mind. Earlier, life insurance was considered purely a tax saving device and compensating the inauspicious event. But, at this time, it is elevated to the position of a product of a combination of both investment and risk cover. While balancing the interests of policyholders and the insurers and keeping in view the earlier recommendations of the Law Commission made in its th 112 Report, the Commission⁵ has recommended taking into account the suggestion of the Life Insurance Corporation of India, that after the expiry of five years, no policy of life insurance can be repudiated on any ground whatsoever. However, an insurer can repudiate a policy before the expiry of five years on the ground that the insured has made a mis-statement of or suppressed a material fact.

4. Part-III

The part III of the book entitles “Life Insurance” focuses on various aspects of life insurance such as nature and definition of life insurance, events insured in life insurance,

⁴ *Lucena Vs. Crawford* (1806) 2 B&P 269(NR).

⁵ Law Commission of India on the Revision of *the Insurance Act, 1938 and IRDA Act, 1999* in its *190th Report* (June, 2004). At present, the time period is 2 Years which is recommended for 5 Years. Accordingly, the Commission has recommended that section 45 should be substituted. But the Recommendation of Commission favoured the interest of Insurance Company rather than policy holder.

circumstances affecting the risk, amount recoverable under life insurance policy, person entitled to payment, settlement of claim and payment of money. The easy and timely settlement of a valid claim is an important function of an insurance company. Therefore, Chapter 6 is fully devoted by the authors on settlement of claim and payment of money. Last chapter of Part III (chapter 7) discusses about Life Insurance Corporation of India (LIC). LIC was created on 1st September 1956 by the enactment of *the LIC Act, 1956*. The Act has been passed with the objective of spreading life insurance much more widely and in particular to the rural areas with a view to reach all insurable persons in the country, providing adequate financial cover at a reasonable cost. Now, like other insurance business Life insurance business has also been opened for private players. From nationalisation to privatisation, LIC of India has crossed many milestones and has set unprecedented performance records in various aspects of life insurance business.

Marine insurance is the oldest form of insurance in English as well in Indian law. The fourth part is devoted to the marine insurance. Marine insurance involves various perils of the sea. For that reason, it is quite difficult to ascertain the perils insured against as well as real cause of loss. The authors have lucidly explained in eight chapters of this part that marine insurance may be classified under various marine insurance policies. It is based on certain fundamental principles of insurance laws. However, there are some additional features of marine insurance which have been explained by the authors in chapter 5(The Voyage), chapter 6(Perils of the Sea) and chapter 7(Loss and Abandonment). The last chapter and first chapter of this part emphasise on measure of indemnity and fundamental concept of marine insurance.

5. Conclusive remarks

In order to take the country on progress and development, industries came to be established. In this process of industrialisation, certain industries carrying hazardous also come into existence. These hazardous industries have brought the risk of accidents to people working in those industries or living in its close vicinity. People have been severely affected by the occurrence of such accidents like *Oleum Gas leakage* and *Bhopal Gas Disaster*. The Supreme Court of India has shown apathy towards the victims of such accidents and evolved a new doctrine of '*Absolute Liability*' in place of '*Strict Liability*'.⁶

⁶ *M.C. Mehta Vs. Union of India*, AIR 1987 SC 1086

This principle has been extended in evolving the principle of 'no-fault liability'. That is the industrial enterprises will be held responsible to compensate the victim even if the enterprise has no fault. Sometimes enterprises are not in position to pay damage immediately. To make public liability insurance mandatory for the enterprise, *the Public Liability Insurance Act, 1991* has been passed by the Parliament. The last part of this book is divided into 2 chapters. Chapter 1 highlights the nature and scope of public liability insurance. Chapter 2 clearly explains the specific provisions of *the Public Liability Insurance Act, 1991*. The authors have explained the reliefs on *No-fault Liability* principles, establishment of Environmental Relief Fund and other rights to claim compensation. The penal provisions such as penalty for contravention, offences by companies or government departments have been precisely explained by the authors. Fire insurance is also an important part of insurance business but it did find place in this book. Miscellaneous insurance is also left out by the author. They put emphasis on only life insurance and marine insurance.