M.A. (Security and Defence Laws)

DEFENCE PERSONNEL INSURANCE: TYPE AND SCOPE

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LIST OF ABBREVIATIONS

AGI – Army Group Insurance

AGIF – Army Group Insurance Fund

DHFL – Dewan Housing Finance Limited

EI – Extended Insurance

HDFC – Housing Development Finance Corporation

JCO – Junior Commissioned Officer

KB – King’s Bench

LIC - Life Insurance Corporation

LICI – Life Insurance Corporation of India

OR – Officer Rank

PBOR – Person Below Officer Rank

Rs. – Rupees

TRIA - Terrorist Risk Insurance Act

USA – United States of America

"Yat bhavathi tat nasyathi" means "whatever is created will be destroyed"

CHAPTER-I
INTRODUCTION

The general phenomenon of any natural or otherwise is creation is inevitably followed by destruction[1]. So the risk of destruction is ineludible in life. So the owner wants himself to be protected from this risk and out of this want, the concept of Insurance is evolved[2]. The aim of all insurance policies is to protect the insured[3] i.e., owner from all the anticipated risks. There are different types of insurance like for example Marine insurance, Fire insurance, Life insurance. While marine insurance and fire insurance are for objects and are used in business, Life insurance is only one for the Human being. So in life insurance, the life of the person is insured against specific risk or a combination of risks like accident or due to ailments and so on depending on the policy and premium paid. In the contract of insurance, the liability of insurer is so much as specified in the policy covered. The risk involved determines the premium in a specific policy. This applies in marine, fire insurance as well.

The oldest form of insurance is marine insurance when the goods which are shipped are insured again any perils of sea. Later the fire insurance came into existence in England after the "Great fire of London" in 1666. The objective of Fire insurance is also the property of one's own. Later in recent times, the third party insurance came into existence. In this if any loss is incurred to other's property, and the cause arises with insured, then the third party is indemnified for the loss. This usually exists in Fire insurance or in accident insurance of motor Vehicles[4]. As said earlier, Life insurance can be considered as only one for the person himself. Researcher opines that only Life Insurance is relevant for the present paper for defence personnel. Defence personnel may take insurance policies for properties as well, but to confine to the object of paper, life insurance is given priority.

Statement of Problem:

As said earlier, in Life insurance the life of a person is insured against death or any accident which leads to disability. For defence personnel, the exposure to risk is more than a normal person. They are involved in protecting the country and its population risking their lives. So general life insurance does not cover defence personnel. Even the Government of India does not provide any proper

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1 K S N Murthy and Dr. K V S Sarma, Modern Law of Insurance, 4th ed, 2002, pg: 3

2 ibid

3 The person who seeks protection is called insured or assured, and the party who undertakes the risk of protection is called insurer or underwriter, and the amount paid or consideration paid for the protection is called premium.

4 The type of insurance involved in motor vehicles is different from the basic ones. The policy can be taken only for vehicle or third party or person and vehicle together. It can be considered as hybrid one.

insurance against death and accidents which lead to permanent disability to the defence personnel. However, there are schemes and policies which provide certain financial assistance to the defence personnel or his family but are not adequate.

Research Questions:

1. What is the definition and elements of Insurance?
2. What is the nature of Insurance of defence personnel?
3. What is the scope of life insurance with respect to defence personnel?

Hypothesis:

It is hypothesised that there are lacuna in providing the insurance to defence personnel. There exists no government led life insurance policy to the defence personnel.

Research Methodology:

The researcher followed the doctrinal method for the purpose of this paper. For this paper, the researcher uses the conceptual-analysis method. The researcher relied on the primary sources of legislation (Life Insurance Act, 1956), judicial decisions and secondary sources of Books, web pages of various insurance companies and government websites.

Tentative Chapterization:

The following is the chapterization of the paper:

I. Introduction

   It introduces the concept of Insurance and the scheme of paper.

II. Definitions

   This chapter stipulate the definition of Insurance and the life Insurance, which is relevant to this paper and also discusses the contract of Insurance and indemnity in Insurance.

III. Nature and scope of Insurance of defence personnel

   The researcher in this chapter explains the nature and scope of insurance in correspondence with the defence personnels.

IV. Common defence personnel Insurance Policies

   This chapter provides data on the existing policies applicable to the defence personnels in India.

V. Suggestions and Conclusion

CHAPTER-II

DEFINITIONS

Protection from risk has been the primary motive for humans and institutions. Insurance has evolved from that motive of protection. Over 5000 years ago, insurance was observed as a preventive measure against piracy on the sea in China[5]. Insurance in India can be traced back to the Vedas. For instance, "Yogakshema" the name of LICI's corporate headquarters is derived from the Rig Veda. The term suggests that a form of "community insurance" was prevalent around 1000 BC and practised by the Aryans[6].

The object of Insurance is to mitigate the loss incurred on the contingent event. To achieve this end, the principle of co-operation is employed and the loss suffered is distributed over the community at large. This is further achieved by entering into a legally bound contract. So Insurance can be considered as a contract of reimbursement.

Contract of Insurance:

Hardy Ivamy[7] defines the contract of Insurance as, "A contract of insurance is a contract whereby one person called the 'insurer', undertakes in return for the agreed consideration called the 'premium' to pay to another person , called the 'insured' a sum of money or its equivalent on the happening of a specified event"[8].

In Prudential Insurance Company v. Inland Revenue Commissioner[9], Justice Channel said "There must be either some uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time or another, there must be uncertainty as to the time at which it will happen".

For an insurance agreement to be a valid contract, the following conditions are to be satisfied –

1. It should be a contract between 'insured' and 'insurer'.
2. The contract should be based on the loss due to happening or not happening of a future incident.
3. A consideration in the form of payment of an amount by the insured and
4. The insurer promises to make good the loss in so far money can do it, in case the loss occurs on the happening of the contingency[10].

Thus, it can be observed that in a contract of Insurance, one can insure ship or house but cannot ensure that the ship shall not be lost or the house shall not burnt, but what one can insure is that a

[5] Chapter-2, concept, nature and scope of Insurance, shodhganga; available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/130702/10/10_chapter%202.pdf; last accessed on 12-12-2019
[6] ibid
[7] In his book - General principles of insurance law
[8] concept, nature and scope of Insurance; note-5
[9] (1904)2KB658
[10] concept, nature and scope of Insurance; note-5

sum of money shall be paid on the happening of a certain event. Thus the subject matter of insurance is the compensation in the form of money to be paid to the assured on happening of a risk. In other words the insurer will indemnify the loss incurred to the insured or his/her nominee.

Insurance as a contract of indemnity:

While every form of insurance has an element of speculation or wagering, it is taken out of the category of gambling transactions by the principle which has come down from the custom of merchants, that its object is indemnity and not profit[11]. Hence, the insured must have an appreciable pecuniary interest in the subject of the insurance. In marine and fire insurance he must be the owner of the property covered by the policy, or of some legal or equitable interest therein, such as that of mortgagee, bailee, tenant, or the like. In life-insurance the insured must be the person on whose life the policy is taken out, or someone having a pecuniary interest in the continuance of that life. A wife has an insurable interest in the life of her husband, and the husband in that of the wife; a parent in the life of a child, and a child in the parent's life; a partner has an insurable interest in the life of his copartner, and a creditor in that of his debtor[12].

Life Insurance:

The contract of Insurance, as one of indemnity, had been extended to human life. An insurance upon Life is a contract by which the underwriter for a certain sum, proportioned to the age, health, profession, and other circumstances of the person, whose life is the object of insurance, engages that that person shall not die within the time limited in the policy; or, if he do, that he will pay a sum of money to him in whose favor the policy was granted[13]. A modern English writer thus explains it: “The risk in that branch of insurance called Life Insurance, is the death of the person whose life is the object of the security, and the insurer undertakes by the policy to pay the assured or his representatives a sum of money, either when that event may take place, if the insurance be for the whole life; or upon the happening of that event within a certain limited period, or before the occurrence of some other uncertain event, where the policy is effected for a term”[14].

From the above analysis of life Insurance, it can be deducted that, it is the importance of a person’s security to personal representatives, to be disposed in such manner as he directs, a sum of money upon his death, where he paid the annual premium, proportioned to his age at the time of effecting the insurance.

Principle of indemnity and life insurance:

While the beneficiary in a life-insurance policy-that is, the one to whom the insurance is payable-must have a pecuniary interest in the life on which the policy is taken out, the principle of

[11] Burdick, Francis M, chapter-VII, Essentials of Business Law. New York, D. Appleton and Co. HeinOnline.; pg: 180
[12] ibid
[13] Angell, Joseph K.,chapter-XII, Treatise on the Law of Fire and Life Insurance. Boston, Little, Brown & company. . HeinOnline.; pg: 298
[14] ibid

indemnity does not extend beyond this in life-insurance. Upon the death of a husband, whose life was insured for the benefit of his wife, the latter is entitled to the whole sum named in the policy, and the company cannot cut this down by showing, as in the case of a fire policy, that the life was not worth the sum specified.

“Insurers, in such a policy,” to quote from a decision of the Supreme Court of the United States, “contract to pay a certain sum in the event therein specified in consideration of the payment of the stipulated premium or premiums, and it is enough to entitle the assured to recover if it appears that the stipulated event has happened”[15]. Moreover, the premium varies with the age of the insured, and is fixed at a rate determined by the average life of healthy persons, and by the certainty that the death, or other event, upon which the sum becomes payable by the insurer, must happen; while in fire and marine insurance the event insured against may never happen, and this uncertainty is taken into account in fixing the premium[16].

[15] ibid

[16] ibid

CHAPTER-III

NATURE AND SCOPE OF INSURANCE OF DEFENCE PERSONNEL.

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 risk too serious to be conveniently sustained by an individual. The aim of all types of insurances 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 insured or at least should expose him to adversity which is, in the law of insurance, called commonly the 'risk'[17].

The nature of insurance depends on the nature of the risk required to be protected. An insurance contract makes available the risk coverage to the insured. The buyer of insurance pays a fixed premium in exchange for a promise of compensation in the event of some specified loss[18].

The important purpose of insurance is to provide risk coverage but when the contract period extends over a period of time, as in the case of life insurance, premium payments comprise of two components – one for buying risk coverage and the other towards savings. The joining together of risk coverage and savings is peculiar with the life insurance and is more common in developing countries like India[19].

In many developed countries, citizens are to a certain extent protected by social security schemes provided by the government. These schemes offer financial aid to citizens who are eligible on grounds of unemployment, old age, sickness, disability, etc[20]. The social security scenario in India is quite different, having traditionally been the responsibility of the family or community. However, with industrialization, urbanization, breakup of the joint family system and weakening of family bondage, it has become necessary to provide social security arrangements that are institutionalized and regulated by the state rather than the society[21].

Basic principles of Insurance:

Though insurance has been differentiated into marine, fire, life etc., there are certain general principles applicable to all forms of insurance. These general principles serve as a guide to the sound interpretation of the purpose of the insurance contracts in their diversified forms[22].

Some important principles of insurance are as follows:

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[17] Dr. G. Gopalakrishna, Essentials and Legalities of an Insurance Contract; available at: https://www.insuranceinstituteofindia.com/.../Journal08_%20pg06-14_ess.pdf; accessed on: 12-12-2019

[18] concept, nature and scope of Insurance; note-5

[19] ibid

[20] ibid

[21] Tapen Sinha, "An Analysis of the Evolution of Insurance in India"; available at: http://www.icpr.itam.mx/papers/IndiaChapter.pdf; accessed on: 12-12-2019

[22] concept, nature and scope of Insurance; note-5

Existence of risk:

It is important 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 life insurance, the risk is in the death of the assured, though a certainty, but uncertain as to the time of its happening. In an abstract sense, risk may be defined as the chance of loss[23]. 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[24].

Principle of indemnity:

As discussed earlier, 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 implied in every contract of insurance that the assured in case of a loss against which the policy has the actual loss, is to prevent fraud on the part of the assured. It checks the temptation to gain by unfair means and the wilful causing of loss. However, the factual 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 inherent nature of the bargain[25].

In assessing the amount payable on a contract of insurance, the principle of indemnity is a guiding principle. It is common that insurers limit their liability to a particular amount of money known as the 'sum assured'.

In contracts of life insurance, personal accident and sickness insurances and in some forms of emergency insurance, the loss is frequently measured in monetary terms. They are 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. 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[26].

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. The important distinction which thus arises between life insurance and the 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[27].

[23] ibid
[24] Dr. G. Gopalakrishna; note-17
[25] ibid
[26] ibid
[27] concept, nature and scope of Insurance; note-5

Principle of insurable interest:

The test for a valid insurance contract is the existence of the insurable interest. The 'insurable interest' is nothing but an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured and such an interest which can be or is protected by a contract of Insurance. This interest is considered as a form of property in the contemplation of law. The insurable interest should exist at the time of happening of an 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.

Principle of utmost good faith:

The observance of the utmost good faith by the parties is vital to a contract of insurance. Insurance is also called as an *uberrima fide* contract because the parties are required to confirm 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.

With the analysis of above principles it is evident that the principle of risk plays a major role. For defence personnel, the risk of his life and other accidental injuries is more than a normal person. Hence, in India, the Life Insurance Corporation (LIC), which is a governmental organization and which provide various schemes for the life Insurance does not have any schemes for the defence personnel. A person enrolled in the defence service, who knew the risk involved, is signing a wavering agreement of his life security. So the very first principle is ruled out. As discussed earlier, the principle of indemnity is not applicable to life insurance.

Types of life insurance:

Term Insurance:

Life insurance providing coverage at a specified premium for a specified length of time is known as term Insurance. This type of insurance does not build up cash value and the premium normally increases after a specified time period[28].

Permanent Insurance:

[28] Life Insurance Information for military personnel, National Association of Insurance Commissioners, 2008; available at: https://www.naic.org/documents/consumer_military_brochure.pdf; last accessed on: 12-12-2019

Permanent insurance provides long-term financial protection, including both a death benefit and, in some cases, a cash savings[29].

Some other common life insurance policies include –

Universal Life policies, which offer a flexible premium life insurance policy under which the policy owner may change the death benefit from time to time (with satisfactory evidence of insurability for increases) and vary the amount or timing of premium payments.

Variable Life policies, allow the money that remains after payment of premiums to be invested in vehicles of your choosing. Variable life insurance does have the option of a minimum guaranteed death benefit; however, variable life insurance can be expensive and risky, depending on the type of investments made.

Whole Life policies provide lifetime protection at a level premium. Premiums must generally be paid for as long as the policy is in force[30].

Scope of Defence Personnel Insurance:

The insurance sector has a huge potential not only because incomes are increasing and assets are expanding but also because the increasing instability in the system. In a sense, we are living in a extra risky world. Trade is becoming more and more global. Technologies are changing and getting replaced at a faster rate. In this more uncertain world, for which enough evidence is available in the recent period, insurance have an imperative role to play in reducing the risk burden that the individuals and businesses have to bear. The approach to insurance should be in tune with the changing times[31].

The aim of the insurance sector in India is to extend the insurance coverage over a larger section of the population and a wider segment of activities. The three guiding principles of the industry must be to charge premium not higher than what is acceptable by strict actuarial considerations, to invest the funds for obtaining maximum yield for the policy holders consistent with the safety of capital and to render efficient and prompt service to policy holders. With a creative corporate planning and an abiding commitment to improved service, the mission of widening the network of insurance can be achieved[32].

This creative approach to increase the business in Insurance sector had paved path for private Insurance Companies to make policies for the high risk induced defence personnels. Other than the private company insurances, there is a non-governmental group insurance maintained by the defence personnels.

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[29] ibid

[30] ibid

[31] concept, nature and scope of Insurance; note-5

[32] Dr. C. Rangarajan, "The widening scope of Insurance", available at: http://www.eac.gov.in/aboutus/chspe/rep13_widescop.doc; accessed on: 12-12-2019

There had been a trend in some of the developed countries, which introduced some insurances policies relating to the contingencies arising from the terrorist attacks or natural disasters. Insurance policies on natural disasters are prominently seen in Latin American countries and Caribbean. These policies are not only confined to the human life but for the property loss incurred during a natural disaster or during a terrorist attack. USA had a legislation pertaining to the terrorist risk Insurance, known as “Terrorist Risk Insurance Act (TRIA)”.

CHAPTER-IV

COMMON DEFENCE PERSONNEL INSURANCE POLICIES

As discussed earlier, there are no government provided Insurance policies for the defence personnel. The government provides certain benefits in medical aid and some other benefits when a personnel is met with accident. However, these benefits do no good to the family members after the demise of the service personnel. But there are certain private companies and some group insurance schemes which can compensate the loss to some extent. The following are some policies –

Army Group Insurance:

Under this Insurance, the benefits are provided to the family members of army personnel who may die during their service. The amount paid is Rs.50 lakhs for officers and Rs.25 Lakhs for JCOs/OR. The monthly subscription for this Insurance policy is Rs.5000 and Rs.2500 respectively.

Maturity Benefits:

The maturity benefit, which is accumulation of saving element of amount contributed by member along with interest and bonus, is paid on discharge/release of a serviceman. The maturity amount is also paid along with death benefits to the NOK, in case of sad demise of any member[33].

A member can withdraw 50% from the maturity benefit after 15 years of service for the purpose of education / marriage of wards. In addition, member can withdraw up to 90% of the maturity amount for repair / renovation of house or for the purpose of conveyance during last two years of service before superannuation[34].

Disability Cover:

If an individual is invalided out of service prematurely due to injury or disease, the Officers and JCOs/OR, with 100% disability, will get an amount of Rs.25 lakhs and Rs.12.5 lakhs respectively. This amount gets proportionately reduced for lower element of disability up to 20 percent. An *ex Gratia* disability allowance is also granted by AGIF in case a member with 100% disability has been recommended a constant attendant[35].

Extended Insurance (EI):

Army Group Insurance Fund Extended Insurance (EI) Scheme provides insurance cover to servicemen after leaving the service. It provides Rs.6 lakhs for Officers and Rs.3 lakhs for PBOR

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[33] Army group insurance, soldier2 nd life; available at: https://soldier2ndlife.com/card/army-group-insurance; last accessed on: 12-12-2019

[34] ibid

[35] ibid

for a period of 26 years after retirement or 75 years of age whichever is earlier. The amount is received by the family of the ex-serviceman in case of his demise. The amount has been recently revised and is now Rs.10 Lakhs for officers and Rs.5 lakhs for PBOR for all those who join the scheme after 01 Jan 14. For those who joined earlier, the amount will remain at the earlier rate of Rs.6 lakhs and Rs.3 lakhs for officers and PBOR respectively[36].

Army Group Insurance Fund (AGIF):

This is an in-house insurance fund created by the Armed Forces for their own members. A similar insurance fund is also available for the navy and the air force. This insurance fund was created without any tie-up with the Life Insurance Corporation of India (LIC) or any other insurance service providers in the country. The premium for this coverage is deducted directly from the salary of cadres. The coverage amount available for an individual may vary based on his/her rank in the army, and the premium is likely to vary accordingly[37].

As of now, officers in the Indian Army are eligible for life insurance coverage up to Rs.40 lakh. Jawans, on the other hand, are eligible for a life cover of Rs.20 lakh. To avail this coverage from the Army, Jawans have to pay a premium of Rs.2,000 per year. Officers must pay a premium of Rs.4,000 per year. This cover provides relief to the families of army personnel in case of unexpected death during a war or battle. The insured person may also receive adequate compensation under this cover even during the time of superannuation[38].

HDFC Life Defence Personnel Plan:

HDFC Life has been pioneering to introduce insurance cover in “war/war like situations, terrorism, natural calamities, I.S duties & other hostilities”. HDFC Life’s insurance solutions are designed to meet your long term protection & financial needs[39].

SHAURYA by HDFC Life:

The initiative Shaurya is designed with a view to augment existing insurance, provide various financial saving solutions with tax benefits & a secured second innings career to Ex-servicemen[40].

Aviva Suraksha:

[36] ibid

[37] Life Insurance For Armed Forces In India, bank bazar Insurance, available at: https://www.bankbazaarinsurance.com/life-insurance/life-insurance-for-armed-forces-in-india.html; last accessed: 12-12-2019

[38] ibid

[39] Defence personnel plans, HDFC, available at: https://www.hdfclife.com/defence-personal-insurance-plan-offerings; last accessed on: 12-12-2019

[40] ibid

Suraksha is an umbrella policy that contains various products specifically designed for the benefit of Armed Forces. It contains various covers for the investment, retirement, and child protection needs of the military personnel in the country. The coverage provided by this policy ensures that policyholders and their families are protected from mortality arising out of warlike situations. The claim settlement process and other requirements are simplified to ensure that the needs of the dependents are adequately covered during a time of unfortunate event[41].

DHFL Pramerica Prahri:

This is another life insurance cover available for military personnel who dedicate their lives for the welfare of the country. This policy is designed exclusively for the welfare of members of the Armed Forces in India. The products available under this policy provide coverage for war and warlike situations. The protection offered by this cover helps military personnel and their family members plan their financials effectively[42].

[41] Life Insurance For Armed Forces In India; note-37

[42] ibid

CHAPTER-V

SUGGESTIONS AND CONCLUSION:

Suggestions:

Though certain policies are available for the defence personnel, they do not meet the requirement of the family on happening of an incident of demise. The persons who risk their life for the protection of the country should be provided better policies and the family of such personnel should be provided scope of survival if any unfortunate incident occurs.

There should be a government Insurance scheme for the defence personnels, with better benefits that the private operated schemes. It is the least a government can provide for the persons who risk their life for the protection of the country.

These benefits should also extend to the Para-military forces and to the next kin and kith of the servicemen.

There should be better benefit schemes than the existing schemes for the family of the personnels who demised in service. Such measures will encourage people to join defence forces with peace of mind.

Conclusion:

Members of the Armed Forces play a major role in protecting the welfare of the country. While most of the common insurance plans will not provide coverage for them, the options listed above help them access the life insurance coverage available. When it comes to life insurance for military families, members who are not part of the active service will not have any issues in getting regular life insurance covers available in the market. For military personnel and ex-servicemen, these plans provide adequate coverage to meet the financial requirements.

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