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THE INSURANCE LAW CONTRACT AS A CONTRACT OF GOOD FAITH

INTRODUCTION

The doctrine Uberrimae Fidei is originated from English law to the formation of insurance contract. Principle of Uberrimae fidei (a Latin phrase), or in simple English words, the Principle of Utmost Good Faith, is a very basic and first primary principle of insurance.. Contract of Insurance is basically a contract for discharging indemnificatory liability by insurer for premium considered tendered by the insured to the insurer.

Principle of Utmost Good Faith is one of the basic features of an insurance policy. It means that both the policyholder and the insurer need to disclose all material and relevant information to each other before commencement of the contract. It means that both the Proposer (who wishes to buy the insurance plan) and the Insurer will be honest and not withhold critical information which is required to issue the insurance policy.

According to this principle, the insurance contract must be signed by both parties (i.e. insurer and insured) in an absolute good faith or belief or trust. The person getting insured must willingly disclose and surrender to the insurer his complete true information regarding the subject matter of insurance. The insurer's liability gets void (i.e. legally revoked or cancelled) if any facts, about the subject matter of insurance are either omitted, hidden, falsified, distorted or presented in a wrong manner by the insured.

Thus the insured must reveal the exact nature and potential of the risks that he transfers to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs of, and benefits, the insured.

A higher duty is expected from parties to an insurance contract than from parties to most other contracts in order to ensure the disclosure of all material facts so that the contract may accurately reflect the actual risk being undertaken. The principles underlying this rule were stated by Lord Mansfield in the leading and often quoted case of Carter v Boehm (1766) 97 ER 1162, 1164,

The principle of Uberrimae fidei applies to all types of insurance contracts. :

LIC v. G.M.Channabsemma, - In a landmark decision the SC has held that the onus of proving that the policy holder has failed to disclose information on material facts lies on the corporation. It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know.[1]

The foregoing was given effect in the decision in Modern Insulators Ltd. Vs Oriental Insurance Co. Ltd[2]. Where in the court observed: In Insurance Policies there are many EXCLUSIONS which are required to be carefully read by the insured. .In a very recent S.C. case New India Assurance Co.Ltd.vs Rajeswar Sharma and others [3]it was held that (2 (2007) 4 SCC 105 where there is an exclusionary clause in an insurance Policy, the burden lies on the insurer to establish that the exclusion is attracted. Any ambiguity must be construed in favor of the insured....The appeal filed by the insurer was allowed.

GOOD FAITH : AS PER CONTRACCT LAW AND CRIMINAL LAW - IPC

[1] (*AIR 1991 SC 392*)
[2] *(2000 (2) SCC 734)*

[3] *(10-12-2018) CA No.11885/2018*

In contract law, the implied covenant of good faith and fair dealing is a general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith so as to not destroy the right of the other party to receive the benefit of contract.

In Criminal law – Indian Penal Code , "good faith" is defined under section 52 as Nothing is said to be done or ; believed in good faith which is done or believed without due care and attention.

RESPONSIBILITY OF THE INSURANCE COMPANY :-

The insurer or its agent should disclose all critical terms and conditions of the plan, including exclusions, so that the person taking the policy knows exactly what she or he is buying.

RESPONSIBILTY OF THE PROPOSER :-

The person who wishes to take the policy should disclose all material facts which can impact the decision to issue the policy or impact the pricing decision of the insurance company.

UTMOST GOOD FAITH AS PER INSURANCE ACT,1938 :-

Insurance Contract being a financial contract needs to follow Utmost Good faith. Commercial contracts are subject to the principle of Caveat Emptor i.e. let the buyer beware. Hence it becomes very important for the policyholder to disclose all relevant information at the time of commencement of the policy so that his family doesn't have to face difficulty at the time of getting the claim in the unfortunate event of death of the life insured.

Section 45 of Insurance Act, 1938:

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.

INDISPUTABILITY OF POLICY :-

The doctrine of utmost good faith works as a great hardship for a long period on the plea of miss-statement at the time of proposal. In such cases, it would be very difficult to prove or disprove whether a particular statement made, at the time of policy was true. Therefore, to remove this hardship, certain sections in the concerned Act are provided.

In India, Section 45 of the Insurance, Act 1938 deals with such dispute. It is called indisputable clause. No policy of life insurance, after expiry of two years from the date on which it was effected, be called into 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, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and 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. Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so.

MATERIAL FACTS :-

Material facts are based on the legal principal of "utmost good faith," which requires a person who is seeking insurance of any kind to disclose any and all information that could be deemed relevant by an insurer. This information, known as material fact, may be any fact or facts that an insurance underwriter could use to assess the level of risk associated with insuring a particular individual. This degree of risk is what an insurer uses to determine your coverage and your premium, or cost.

In the case , the term “material fact” was explained by the court to mean any fact that would influence the judgement of the insurer in fixing the premium or determining if he would like to accept the risk or not[4].

UBERRIMA FIDES : Duty Of Both The Parties

Good faith is expected from the insured or assured as well as the insurer. It is the buyer’s duty to disclose all facts related to the risk to be covered. Similarly, it is the insurer’s duty to inform the insured of all the terms of the contract. However, it is generally the assured person on whom there is a bigger duty to disclose. This is primarily because very often the insurer has to depend upon what details the insured mentions in his form. If the insured gives wrong details or details of goods which are actually not in existence, the insurer may end up paying for the wrong claims in the future. The insurer faces a lot of problems trying to verify all such details, even though the advent of technology has made the task comparatively easier nowadays. Wrong information given not only affects the insurer but also the other people involved in the insurance pool whose premiums may be wrongly utilized to satisfy the claims. It is therefore an implied condition or principle of insurance that the Assured be required to make a full disclosure of all material particulars within his knowledge about the risk. Further, considering the increase in new businesses in which insurance is being taken, it becomes mandatory for the assured to inform the insurer if there are any alterations or changes to the business which increases the risk during the validity of the policy and get his permission. If no disclosure is made, the insurer has every right to avoid the contract.

INSURANCE CONTRACTS :-

[4] *Satwant KaurSandhuvs New India Assurance Co. Ltd*

In order to ensure the disclosure of all relevant details, a higher obligation is required from the parties to an insurance contract than from the parties to most other contracts, so that the contract will adequately represent the real risk being undertaken. Lord Mansfield stated the principles underlying this rule in the leading and often-quoted case of Carter v Boehm (1766) 97 ER 1162, 1164, "Insurance is a speculative contract...

Most commonly, the special facts on which the contingent opportunity is to be measured lie in the knowledge of the insured only: the under-writer trusts his representation and continues to trust that he does not hold any circumstances in his knowledge, to trick the under-writer into a belief that there is no situation... By concealing what he privately knows, good faith forbids any party to lure the other into a deal out of his ignorance of that fact, and his belief in the contrary."

The insured party must also disclose the precise existence and potential of the risks it passes to the insurer (which, in turn, can be sold to the reinsurer) and, at the same time, the insurer must ensure that the potential contract meets the needs and benefits of the insured party. Reinsurance contracts involve the highest degree of ultimate good faith, and the cornerstone of reinsurance, which is an integral component of the modern insurance industry, is considered to be such ultimate good faith. A reinsurer should not duplicate expensive insurance underwriting and claim management costs in order to make reinsurance viable, and must rely on the insurer's utter honesty and candor. In exchange, a reinsurer must fully examine and refund the good faith claim payments of an insurer, following the fortunes of the cadent.

CONCLUSION:

The term good faith has been mentioned in the Indian Penal Code and it signifies good intention and due care and caution. The contracts of insurance including the contract of life insurance is contracts Uberrima fides that means contract based on "utmost good faith" hence each and every material facts must be disclosed and the concealment of any material information or providing any false or incorrect information in the policy is a violation of the insurance contract. This emanates from the right of every person to know about every material fact associated with the subject matter of the contract and there is no escape to this. Concealment of any material fact will entitle the insurer to deprive the assureds' benefits of

the contract. It was observed that the purpose for taking a policy of insurance is not very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered.

The proposer must show that his intention was bona fide. It must appear from the face of the record. Thus, this principle forms an integral part of insurance law. It gives a fair chance of risk assessment to the insurer and also ensures that the assured fully understands all the terms and conditions of the contract. But, this principle is more favorable to the insurer as it is the assured who has to generally make all the disclosures. Further, the Insurance Act lays down that an insurance policy cannot be called in question two years after it has been in force. This was done to obviate the hardships of the insured when the insurance company tried to avoid a policy, which has been in force for a long time, on the ground of misrepresentation.

However, this provision is not applicable when the statement was made fraudulently. Never the less, technological advancements have further made it possible for both parties to see to it that their interest is taken care of. But, there are several other grey areas to this doctrine as well.

Firstly, There is still no clear cut distinction between as to what is material or immaterial and the same is largely dependent on the whims of the insurers and the terms of the contract. It is still very easy for an insurer to repudiate the contract on the slightest point of non-disclosure by treating them as warranties, thereby putting the assured in an even more difficult position.

Secondly, while both parties are under a duty of utmost good faith, it is unclear what this entails on behalf of the insurer. In effect the insurer is left with the minimum or no duties at all other than a duty to make certain questions. These questions are often vague and it is not clear to the assured, what he is being asked or what to disclose. Therefore the assured may find himself in a position where he is required to disclose material facts.

An effective solution must be provided considering the principle of utmost good faith is one of the most fundamental principles associated with insurance law.

The word good faith has been referred to in the Indian Penal Code and it means good intention and due care and caution. Insurance contracts, including the life insurance policy,

are contracts Uberrima fides, which implies a contract based on "utmost good faith" so that all relevant data must be revealed and any material information must be withheld or any false or incorrect information given. This stems from every individual's right to know and there is no escape from every material reality connected with the subject matter of the contract.

Concealment of any material fact entitles the insurer to deprive the arrangement of the benefits of the insured. It was noted that the object of taking an insurance policy is not very material. It can serve the function of social security, but with a dishonest act by the insured, the same should not be accomplished. If a fraudulent act is found, the idea will be repudiated. The proposer must demonstrate that he was bona fide in his intent. From the face of the record, it must appear.

This concept therefore forms an integral part of the law of insurance. It provides the insurer with a reasonable chance of risk assessment and also guarantees that all the contract terms and conditions are well understood by the insured.

However, this concept is more beneficial to the insurer since it is the insured who has to make all the reports in general. Additionally, two years after it has been in effect, the Insurance Act stipulates that an insurance policy should not be called into question. This was intended to avoid the difficulties of the insured because, on the grounds of misrepresentation, the insurance provider decided to avoid a policy that had been in effect for a long time. However, where a statement has been made fraudulently, this clause is not applicable. Furthermore, technical developments have made it possible for both sides to ensure that their needs are taken care of. But, there are a few other grey areas to this as well.

First, there is still no strong differentiation of what is substantive or immaterial, and the same depends mainly on the insurers' whims and the contract terms. By treating them as promises, it is still very straightforward for an insurer to repudiate the contract at the slightest point of non-disclosure, thereby placing the insured in an even more difficult role.

Second, although all parties are under an obligation of utmost good faith, it is unclear on behalf of the insurer what this means. In essence, the insurer is left with a minimal or no responsibility other than the obligation to ask any questions at all. These questions are also unclear and the assured person is not clear what he is being asked or what to reveal. The

insured will therefore find himself in a role where he is expected to reveal material information.

Considering that the principle of utmost good faith is one of the most basic concepts synonymous with insurance regulation, an appropriate remedy must be given in Indian Contract Act (1872).