

**Notes****4****RIGHTS & REMEDIES AVAILABLE TO CONSUMERS****4.0 INTRODUCTION**

Man is a social & rational animal. He has throughout his evolution tried to improve upon everything, he has laid his hands upon, anything which he has thought & about everything which he has invented or discovered. This special faculty which has been blessed on man & which inspires a person to channelize all his energies to reach a destination of perfection in life is the power to think. One cannot survive alone. Interaction is must. There is interaction between two individuals, between families, between societies, between nations and so on & so forth. Education, trade and commerce, all are focuses of human interaction. But the indispensable interaction between the entities, if one may think of minutely keeping in view the commercialization of every sphere of life is the interaction between the seller & the buyer, the giver & the recipient, the skilled ones & the beneficiaries, the trader & the consumer. In fact, every body is a consumer because one may sell something but at the same time has to buy also. Insurance activity is also one of the intangible products i.e which can not be seen or touched. In fact it is only a promise on piece of paper which no consumer/buyer reads unless & until any dispute arises in fulfilling the promises by the insurers. The government/IRDA has protected the interest of the consumers/policyholders through various laws which have been explained in this chapter.

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4.1 OBJECTIVES

After this chapter you will be able to know various remedies for the Policyholders under the following acts

- Protection of Policyholders Interest.
- Consumer Protection Act 1986.
- Insurance Ombudsman.

4.2 PROTECTION OF POLICYHOLDERS' INTERESTS

Under the provisions of Protection of Policyholder's Interest the procedure is defined for the insurance companies to be followed at the time of issue of policies and the documents required at the time of claim and how the disputes are to be resolved.

4.2.1 Procedure before the sale of product:—

A prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with-profits) or non-participating (without-profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and in no case, the premium relatable to all the riders put together shall exceed 30% of the premium of the main product.

4.2.2 Proposal for insurance:—

Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.

The proposal forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India.

4.2.3 Grievance redressal procedure

Every insurer shall have in place proper procedures and effective mechanism to address complaints and grievances of policyholders efficiently and with speed and the same along-with the information in respect of Insurance Ombudsman shall be communicated to the policyholder along-with the policy document and as may be found necessary.

4.2.4 Claims procedure in respect of a life insurance policy

A life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim.

A life insurance company, upon receiving a claim, shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piece-meal manner, within a period of 15 days of the receipt of the claim.

A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurance company, it shall initiate and complete such investigation at the earliest. Where in the opinion of the insurance company the circumstances of a claim warrant an investigation, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim.

If a claim is ready for payment but the payment cannot be made due to any reasons of a proper identification of the payee, the life insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information).

Where there is a delay on the part of the insurer in processing a claim for a reason other than the above, the life insurance company shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

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**Notes****4.2.5 Claim procedure in respect of a general insurance policy**

An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall

do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

Upon acceptance of an offer of settlement by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is received by it.

General

Any breach of the obligations cast on an insurer or insurance agent or insurance intermediary in terms of these regulations may enable the Authority to initiate action against each or all of them, jointly or severally, under the Act and/or the Insurance Regulatory and Development Authority Act, 1999.

INTEXT QUESTIONS 4.1

1. What penalties are imposed on Insurer on delaying the payment of claim?
 2. Mention the procedure to be followed by Insurer to sell their product.
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4.3 CONSUMER PROTECTION ACT 1986

As every one is a consumer therefore, the legislative has enacted the Consumer Protection Act 1986, which was made more powerful by the Consumer Protection (Amendment) Act 1993 to arm each & every consumer or consumer associations with rights to seek speedy & cheap remedies in such manner which is proving to be very popular & effective as well, leaving behind a trail of rulings & findings where under so many of us have benefited.

The statute has been enacted to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith.

Let us discuss the various provisions of the Act in brief to explain the basics of Consumer Protection Act 1986.



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4.3.1 General

1. This Act applies to all the goods and services.
2. It covers private, public and cooperative sectors.

4.3.2 Rights of the consumers

The Act seeks to promote and protect the rights of the consumers such as: -

- (i) The right to be protected against marketing of goods which are hazardous to life and property.
- (ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices.
- (iii) The right to be heard and assured that consumer's interests will receive due consideration at appropriate forums.
- (iv) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- (v) The right to consumer education.

4.3.3 Who is a consumer for the purpose of services?

- a) One who hires any services for a consideration, which has been paid or promised or partly paid or partly promised or under any system of deferred payments.
- b) It includes any beneficiary of such service other than the one who actually hires the service for consideration and such services are availed with the approval of such person.

4.3.4 What constitutes a defect or deficiency?

A defect or deficiency is a

- Fault.
- Imperfection.
- Shortcoming.
- Inadequacy.
- Quality.
- Nature.

- manner of performance which is required to be.
- maintained by or under any law.
- in pursuance of a contract.
- undertaking in relation to that service.

4.3.5 The main objective of the Act is:—

- To provide simple, speedy and inexpensive redressal to the consumer's grievances.
- To provide this, a **three-tier quasi-judicial** machinery at the national, state and district level has been envisaged under the Act.
- National Consumer Disputes Redressal Commission (National Commission).
- State Consumer Disputes Redressal Commission (State Commission).
- District Consumer Disputes Redressal Forum (District Forum).

4.3.6 Who can file a complaint?

1. Consumer.
2. Any voluntary organisation representing consumers registered under Companies Act/Societies Act.
3. Central Government.
4. State Government or Union Territory.

A group of consumers having common dispute.

4.3.7 Where to file a complaint?

1. If the cost of goods or services and compensation asked for does not exceed Rs.20 lakhs then the complaint can be filed in the District Forum which has been notified by the government for the District **where the cause of action has arisen or where party resides.**
2. If the cost of goods or services and compensation asked for is more than Rs. 20 lakhs but less than 1 Crore, the complaint can be filed before State Commission.



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3. If the cost of goods or services and compensation asked for exceeds Rs. 1 Crore, the complaint can be filed before the National Commission.

4.3.8 Appeals:

If a person is not satisfied with the decision of the district forum, he can file an appeal with the state commission and in case of not being satisfied with the decision of state commission; appeal can be filed before the national commission. Appeals against the decision of the national commission can be filed in the Supreme Court.

4.3.9 Relief available to consumers:

Depending on the nature of relief sought for by the consumer and facts, the redressal forum may give order for one or more of the following relief:-

1. Removal of defects from the goods.
2. Replacement of goods.
3. Refund of consideration paid.
4. Award of compensation for the loss or injury suffered.

4.3.10 Limitations:

Complaint is to be filed within 2 years from the date on which cause of action has arisen. Time-barred complaints shall not be entertained by Forums.

INTEXT QUESTIONS 4.2

1. Whether an individual can file complaint in the Consumer Courts on account of repudiation of the claim?
 2. Where to file a complaint if the disputable amount is more than Rs 20 lakhs?
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4.4 OMBUDSMAN SCHEME**Introduction to the Scheme:—**

- (i) Central Government framed rules known as Redressal of Public Grievances Rule 1998, in exercise of the powers vested in it under section 114(1) of Insurance Act, 1938.

- (ii) These rules are in respect of the Ombudsman Scheme to resolve all complaints relating to claims against insurers.
- (iii) Complaints are to be resolved in cost effective, efficient and impartial manner.
- (iv) The Scheme has been notified in the Gazette of India on 11.11.98.



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4.4.1 The Ombudsman may receive and consider complaints of individuals relating to:

- (i) Any partial or total repudiation of claim by an insurer.
- (ii) Any dispute in regard to premium paid or payable in terms of the policy.
- (iii) Any dispute in regard to the legal construction of the policies in so far as such disputes relate to the claims.
- (iv) Delay in settlement of claims.
- (v) Non-issue of an insurance document to customers after receipt of premium.
- (vi) The Ombudsman shall act as counselor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.
- (vii) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.

4.4.2 When can a complaint be made to the Ombudsman?

- (i) If the insurer has rejected a written representation of the complainant.
- (ii) The complainant had not received any reply within one month after the insurer received his representation.
- (iii) The complainant is not satisfied with the reply given to him by the insurer.
- (iv) The complaint is made not later than 1 year after the insurer had rejected the representation or sent his final reply on the representation of the Complainant.
- (v) The complaint is not on the same subject matter, for which any proceedings "before any court, or Consumer Forum, or arbitrator" is pending or were so earlier.

**Notes****4.4.3 Recommendations:**

When a complaint is settled through mediation of the Ombudsman.

- (i) He makes a 'recommendation' which he considers fair in the circumstances of the case.
- (ii) Copies of the 'recommendation' shall be sent to the complainant and the insurance company.
- (iii) Such 'recommendation' shall be made not later than one month from the date of the receipt of the complaint.
- (iv) If a complainant accepts the recommendations of the Ombudsman, he will communicate his acceptance within 15 days of receipt of the recommendation.
- (v) Acceptance letter to the Ombudsman should clearly state that the settlement reached is acceptable to him in totality in full and final settlement of his claim.
- (vi) Thereafter, the Ombudsman will send a copy of the recommendation along with complainant's acceptance letter to the insurance company.
- (vii) The insurer shall comply with the terms and conditions of the recommendation immediately but not later than 15 days of the receipt of such recommendations.
- (viii) Finally, the insurer shall inform the Ombudsman about its compliance.

4.4.4 Awards

Where complaint is not settled through mediation of the Ombudsman

- (i) He shall pass an Award.
- (ii) Which he considers fair in the facts of the case.
- (iii) Award shall be in writing.
- (iv) It shall state the amount awarded to the complainant.
- (v) Ombudsman shall not award any compensation in excess of the loss suffered by the complainant or 20 lakh, whichever is less.
- (vi) Award shall be passed within a period of three months from the date of receipt of the complaint.

- (vii) Copies of the award shall be sent to the insurer and the complainant.
- (viii) Complainant shall furnish to the insurer within one month, a letter of acceptance that award is in full and final settlement of his claim.
- (ix) Insurer shall comply with the award within 15 days from the receipt of the acceptance letter and intimate compliance to the Ombudsman.



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4.4.5 Consequences of non-acceptance of award:

If the complainant does not intimate acceptance within one month from the date of receipt of the award, the insurance company may not implement the award.

4.4.6 Ex-gratia payment

If the Ombudsman deems fit, he may award an Ex-gratia payment.

The decision of the ombudsman is binding on the insurers, but the consumer if he feels aggrieved by the decision can approach the civil courts for relief.

INTEXT QUESTIONS 4.3

- 1. What are the consequences of non acceptance of award?
- 2. When the Scheme of Ombudsman was implemented?

4.5 SUMMARY

As and when any business activity increases the disputed do arise and to resolve the disputes at the earliest the Govt has framed the Consumer protection Act 1936, and IRDA has issued regulations to protect the interest of Policyholders. Any dispute related to insurance activity can be resolved through Insurance ombudsman or filing a complaint at IRDA. If a person is not satisfied with the decision of any of such legal organization then the policyholder can file an appeal in the Courts.

4.6 TERMINAL QUESTIONS

- 1. What are the rights of consumer under Consumer protection Act 1986?



2. List the remedies available to the policyholders under Protection of Policyholder rights.
3. What action will be taken by Ombudsman if a policyholder is not satisfied with the decision of the Ombudsman?

4.7 OBJECTIVE TYPE QUESTIONS

1. The limit of dispute can be referred to the District Consumer Court _____(up to Rs 20 lakhs/ up to Rs 25 lakhs).
2. The limit of dispute can be referred to the State Consumer Court _____(Rs 100 lakhs/Rs 50 lakhs).
3. The limit of dispute can be referred to the District Consumer Court _____(More than Rs 100 lakhs/Rs 250 lakhs).
4. The limit of dispute can be referred to the Insurance Ombudsman _____ (Rs 20 lakhs/Rs 10 lakhs).
5. Consumer Protection Act is applicable to
 - a. Goods
 - b. Service
 - c. Goods & Services
 - d. None

4.8 ANSWERS TO INTEXT QUESTIONS

4.1

1. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.
2. A prospectus in which the details of the products is explained will be provided to the customers.

4.2

1. Yes an individual can file an complaint on the basis of deficiency of the service.
2. State Consumer Court.

4.3

1. If the complainant does not intimate acceptance within one month from the date of receipt of the award, the insurance company may not implement the award.
2. In Nov 1998



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4.9 ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. 20 lakhs
2. 100 lakhs
3. More than 100 lakhs
4. 20 Lakhs
5. C