Part II Insurance Consultation Paper contd

8.4 Interests of the policyholders

8.5.1 Supply of copies of proposal and medical reports

Every insurer carrying on life insurance business is under an obligation to supply to the policyholder under s.51 certified copies of the questions put to him and his answers thereto contained in his proposal for insurers and in the medical report supplied in connection therewith, on an application by the policyholder and payment of the fee which shall not exceed Re.1. The fee prescribed is too inadequate. It would be appropriate if the fee which is to be charged for such purpose is prescribed in the regulations. Hence amendment to this effect may be made.

8.5.2 Notice to given of the options on the lapsing of the policy

Every insurer carrying on life insurance business is required under s.50 of the principal Act to give notice to the holder of life insurance policy before the expiry of three months from the date on which the premium in respect of a policy of life insurance were payable but not paid, informing him of the options available unless these are set forth in the policy.

The notice given by the life insurer is certainly a notice given prior to the lapsing of the policy and in fact protect the interests of policyholders. But the provisions of this section do not mentioned of this notice if the options available to the assured on the lapsing of the policy are set forth in the policy. It is suggested that even if the policy details about options, such a notice is required because life insurance policies are long-term policies and in the ordinary course of business. These options are seldom noticed by the policyholder. Hence the words “unless these are set forth in a policy” may be omitted, which would make the notice requirement unconditional.

8.5.3 Policy not to be called in question on the ground of mis-statement after three years

8.5.3.1 section 45 places restrictions on the right of the insurer to repudiate his liability under the policy. This section provides that a life insurance policy cannot be called in question after the expiry of two years from the date on which it was effected on the ground of mis-statement in the policy unless it is shown that all the three conditions enumerated in second part of s.45 are satisfied, *viz*., (i) the statement must be on a material fact, (ii) there has been suppression of the material fact which it was material to disclose or the facts have been fraudulently made by the policy holder, and (iii) the policy

holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material.

8.5.3.2 The section was enacted to prevent immense loss and hardships caused to the insured and his legal representatives because the insurers avoided contract of life insurance policy due to incorrect statements whether material or not made by the insured even after the policy had been in force for several years and all the premium paid were forfeited in that case by the insurer. Thus the provision in effect mitigated the rule of *uberrima fides, i.e.,* utmost good faith. The life insurance contracts are basically governed by this rule and obligation to deal fairly and honestly is upon both the parties equally.

8.5.3.3 The provisions of this section does not affect the insurer's right for a period of two years from the date of the policy, but thereafter, no policy can be challenged on the ground that mis-statement made in the proposal or in any report of the medical officer was inaccurate or false unless it was material to disclose and it was fraudulently made. However, the provisions of this section do not confirm any right on the insurer to repudiate a policy which has been in force for less than two years on the grounds as stated above irrespective of its materiality.

8.5.3.4 In the past, problems have arisen with misrepresentation or non-disclosure whenever personal characteristics are collected by insurance agents for risk classification. The legal questions involving this characteristic usually center on the disclosure of material information by the insured. In this context, the issue is when would failure to make such a disclosure render the contract void or voidable. There have been several judgments of the Hon'ble Supreme Court in this regard which have underscored the importance of the burden of proof shifting to the insurer after the expiry of two years after the effective date of the policy, if the insurer seeks to repudiate the claim on the basis of fraud or suppression of facts which were material be disclosed. (For e.g., ***Mithoolal Nayak v. Life Insurance Corporation of India***, AIR 1962 SC 814 and ***Life Insurance Corporation of India v. Smt. G.M. Channabasamma***, (1991) 1 SCC 357).

8.5.3.5 In its 112th Report in 1985, the Law Commission of India dealt with the question of repudiation of claim by the LIC in the context of s.45 of the Act. After considering the views of the insurers and policyholders, as well as the judgment reports, the Commission recommended that section 45 be recast in such a manner as would reconcile the rights of the insured or a claimant by giving protection from challenge on frivolous grounds and the right of the life insurer to repudiate only on good grounds Accordingly it recommended that section 45 may be recast as follows:-

Policy not to be Called in question on the ground of misstatement after three years

> *"1) No policy of life insurance shall be called in question after the expiry of three years from the date on which the policy is effected or where the policy is revived after it has lapsed for any reason, from the date on which it is so revived.*

(2) A policy of life insurance may be called in question at any time within three years from the date on which the policy is effected or, as the case may be, the date on which it is revived, on the ground that any statement being a statement material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived.

8.5.3.6 It is proposed that the changes recommended by the Law Commission in its 112th Report as stated above be once again recommended. This will, it is hoped, sufficiently protect the interests of the policyholders.

8.5.4 Policyholders to elect the directors of insurers

Section 48 of the Act provides for election of one–fourth of the directors of the insurance company by the holders of life insurance policies and also as to the eligibility requirements of policyholders for such election. This section had become irrelevant since the nationalization and establishment of LIC, therefore should have been repealed long back. But in the changed economic scenario and private players in the field, the provisions again require the reconsideration, especially in the context of insurance cooperative society as insurers, where the directors are elected by not only the members of the society but even by policy holders because many of them would be member-policy holders.

The deletion of this section has been suggested in view of the regulations relating to the protection of policyholder's interest, which adequately ensure the protection of their interest. It may be noted here that the IRDA itself has a member to represent the consumers. Moreover, regulations relating to solvency margin and investments also secure their interest. If this section is repealed, consequently s.114 (2) (f) would be required to be deleted as it empowers the Central Government to make rules for the purposes of s.48. Further, Rules 13, 14 and 15 of Insurance Rules would have to be deleted as they laid down the procedure for election of the Director by the policyholders.

This suggestion may be considered but in case of insurance cooperative society, the directors are elected by the members of the society and would be elected even by policyholders because many of them would be member-policy holders. Hence, in view of this, the repeal of this section would not be appropriate.

8.5.5 Life Insurance agents not to be appointed as directors of life insurance companies

8.5.5.1 Section 48A prohibits life insurance agents to become or to remain as directors of any insurance company in order to protect the interests of policyholders. The disqualification prescribed in this section may also be made applicable to insurance agents of general insurance business. Therefore, the provisions of s.48A may be amended to that effect.

8.5.5.2 The words “or general insurance business” may be added after the words “life insurance business”. Consequently, marginal note to the section would also require amendment. The word “Life” occurring in the marginal note may be omitted.

8.5.5.3 The words “and no chief agent or special agent” are required to be omitted. Similarly, the words, “carrying on life insurance business” need deletion, so also the proviso to this section.

8.5.6 Assignment and transfer of policies

8.5.6.1 Life insurance policies are held by the policyholders to secure their future as these policies create a vested interest and have been dealt as having the features of intangible property. Section 38 therefore provides for the transfer or assignment of a policy of life insurance by an endorsement upon the policy itself or by separate instrument signed by the transferor/ assigner or by any authorized agent and attested by one witness setting forth the fact of transferring assignment. The transfer/ assignment can be made in favour of the insurer also but shall not confer upon the transferee or assignee or his legal representative any right to sue for the amount secured under such policy until a notice in writing of the transfer have been delivered both by this transfer and transferee to the insurer. There can be more than one transfer/ assignment as per sub-section (3) of this section. In such cases the priority of claims shall be governed in the order in which notices have been delivered.

8.5.6.2 Although s.38 resembles s.130 of the Transfer of Property Act, 1882, it excludes the operation of the latter provision from the field since the former (s.38 of the Insurance Act, 1938) is a specific statutory provision.

8.5.6.3 This section deals with both absolute and conditional assignments, the former transferring to the assignee all rights, title and interest which the assigner has in the policy without any defeasance clause, and the latter being a conditional assignment as contemplated under sub-section (7) which creates an immediate vested interest in the assignee but which is liable to be divested on the happening of events specified in the assignment. **A question arises whether a conditional assignee is entitled to obtain a loan under, or surrender, the policy without the concurrence of the insured**. If it is answered in affirmative, the conditional assignment would stand converted into an absolute assignment and defeat the object of the former. While any transfer is subject to the terms and conditions specified in the instrument of transfer, the specific provisions in sub-section (5) of s.38 may mean either or both of the following: First, under sub-section (7), the assignor may become entitled to the policy money if the assignment becomes inoperative; second, the insurer may not recognize the assignee as the only person entitled to benefit under the policy if the terms of assignment expressly or by implication do not confer on him any particular right or benefit and treat the insured for such entitlement. If the insured reserves the right to receive the policy money on maturity, the assignee cannot exercise the right to surrender.

8.5.6.4 The interpretation of sub-section (7) may create some difficulty in view of sub-section (5), for example, a specified event during the life time of the insured may not refer to an event affecting the status etc of the assignee.

8.5.6.5 There is another difficulty if an assignment is duly executed but no notice has been delivered to the insurer under sub-section (2). The assignment is not invalid but the assignee will not have the right to sue the insurer. In this backdrop, the provisions of sub-sections (5) and (7) need reconsideration and revision so as to remove anomalies. However, a suggestion has been made that sub-section (7) should be dropped. This may, however, attract the application of s.130 of the Transfer of Property Act unless a proviso is made to exclude the application of s.130 of the Transfer of Property Act.

8.5.6.6 section 38 (4) prescribes one rupee as the fee for acknowledgement of the notice of the transfer of assignment. This amount is wholly inadequate. Hence, the words one rupee may be replaced by the words "not exceeding an amount prescribed by the Authority in the Regulations".

8.5.7 Proposal for partial assignment of policies

8.5.7.1 The Act does not provide for partial assignment of policies required especially in case of assignments for collateral security for loans, where the sum assured is more than the amount of loan. **It is, therefore, suggested that a new sub-section may be inserted to provide for partial assignment of policies with the rider that the original assignor is not allowed to further assign his residual rights to the third party with a view to prevent any clash of interest of several assignees at the time of making the claim**.

8.5.7.2 The provisions of this section are applicable to only life insurance policies. **It is desired that its application be extended to all personal lines of non-life insurance business**.

8.5.8 Nomination by Policyholder

8.5.8.1 Section39 provides for nomination of life insurance policies. It enables the holder of the policy to nominate the person to whom money secured by the policy shall be paid in the event of death of the policyholder. Such a nomination can be made when effecting the policy or at any time before the policy matures and can be changed or cancelled by an endorsement or a will. However, any change or cancellation in this regard is to be notified to the insurer under sub-section (2); otherwise insurer would not be liable to make any payment to the nominee.

8.5.8.2 Sub-section 3 prescribes fee of Re.1 to be charged for written acknowledgement in respect of registration of nomination or any change thereof. The fee is inadequate and hence be enhanced. The maximum limit may be specified in regulations by the Authority. Accordingly, sub-section may be amended. Thus the words "amount as specified in the regulations by the Authority" be substituted for the words "one rupee".

8.5.8.3 Sub-section (4) contemplates automatic cancellation of a nomination in case of transfer and assignment of the policy except where the assignment is made in favour of insurer for advancement of loan. What about a situation where a policy is assigned to a non-insurer under s.38? In such cases, the problem of nomination and related matters may create difficulties. In order to deal with this problem **it is appropriate that the existing proviso to this section may be given effect to cover this situation or another provision may be inserted to the effect that the nomination stands automatically revived when the policy is reassigned by the assignee in favour of the policyholder on repayment of loan other than on security of policy to the insurer**.

8.5.8.4 Generally, upon reassignment of the policy, the policyholders forget to intimate insurer of any change of nomination or their intention to continue the same nomination which existed at the time of assignment of the policy. Hence **an explicit provision may be inserted to the effect that nomination that existed at the time of assignment be restored or on assignment of the policy to the holder that very nomination shall be deemed to be in force till it is cancelled or changed as provided in sub-section (2)**. This kind of additional provision would facilitate insurers in discharging their liabilities expeditiously in respect of policy money.

8.5.8.5 Sub-section (6) of the section provides that if a nominee survives the insured person, the amount of the policy money would be payable to such nominee-survivor/s. The section does not indicate clearly as to whether the nominee is entitled to retain the money so paid as the beneficial owner of the amount or he is merely the nominal owner of the money which forms part of the estate of the insured person so that his heirs, creditors, legatees may have claims on that money.

8.5.8.6 The case law on this issue reveals two trends. One is that s.39 (6) confers on the nominee merely the right to collect and receive from the insurer, the policy money. The other is that the nominee is not merely a recipient of the money but also the beneficial owner thereof. Various High Courts have adopted different approaches in interpretation of the provisions of sub-section (6) of s.39 giving rise to two views. The Gujarat, Calcutta, Karnataka, Kerala and Orissa High Courts adopted one view and the Andhra Pradesh and Allahabad High Courts took the other view.

8.5.8.7 The Law Commission of India in its 82nd Report in 1980, dealt with the issue of the rights of the nominee, heirs, creditors, legatees of the insured of the money secured by the policy of life insurance after it is paid to the nominee. The Commission surveyed the then existing case law and other legislative precedents. It also considered the aspect of social justice i.e. legitimate expectations of the near relatives, especially women, parents and children who deserve financial protection after the death of policy holder because death is like to have the deepest impact on their personal lives and found that the existing provisions fail to fulfil the same. The Commission also noted that when a person makes a nomination, he cannot confer on any nominee any right higher than what he himself has and that this would accordingly determine the rights of the nominee in the sum assured under the life insurance policy. Accordingly, the Commission in its 82nd Report (1980) recommended the inclusion of the following provisions:

"(6A) Subject to the other provisions of this section, where the holder of a policy of life insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(6B) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (6A) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(6C) Nothing in sub-sections (6A) and (6B) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(6D) The provisions of sub-sections (6A), (6B) and (6C) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance (Amendment) Act….."

8.5.8.8 In ***Sarbati Devi* v. *Usha Devi***, AIR 1984 SC 346, the Hon'ble Supreme Court held that a mere nomination made under s.39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the policy on the death of the assured. The court further observed that the nominee acquires no interest in the policy during the life time of the policy holder, therefore, after the death of the policy holder, the amount under the policy becomes payable to his legal heirs, the nominee is only the authorized person to collect the payment so that insurer gets a valid discharge of its liability under the policy. A very important observation made in this case is that the provisions of s.39 cannot alter the course of succession under the law. The observations in the aforesaid case were followed by various High Courts.

8.5.8.9 The above decision in ***Sarbati Devi's*** case was taken note of by the Law Commission when it submitted its 137th Report in 1990 on the Employees' Provident Fund Act. The Commission modified its earlier view and recommended as under:-

"5.11. On giving anxious consideration to all the relevant aspects, it appears possible to evolve a formula which would satisfy the demands of social justice and fairness besides according due weightage to the desire of the employee concerned. The solution which strikes as eminently satisfactory is this. A statutory provision may be made to the effect that the amount payable under the Act and the Scheme will vest in the nominee who will be called the "beneficiary-nominee" unless the concerned employee has named some person as a "collector-nominee" for the specific purpose of collecting the amount on behalf of the members of the family as defined in Para 2(g) for disbursement as per Para 70(ii) of the scheme. In other words, it would tantamount to giving an option to the workmen concerned who can name

either a beneficiary nominee or a collector-nominee upon the significance of such nomination being explained to him. He may be required to express his option in clear terms stating that the nominee will be a beneficiary-nominee and not a collector-nominee or vice versa. The same formula can also be evolved in respect of life insurance policies and the recommendation by the Law Commission in its 82nd Report may be reiterated with this modification.

5.12. Nomination under life insurance policies – While it is outside the scope of the subject matter of this report it may not be in appropriate that a similar formula can be adopted in respect of nominations under life insurance policies in the context of the recommendation made by the Commission in its 82nd report presented more than a decade ago on 2nd February, 1980.

5.13. For, even in respect of life insurance policies, the public at large is perhaps unaware of the true legal position. Many of the persons seeking the protection of insurance policies may well be labouring under the misconception that the nominee would become an absolute beneficiary in his or her own right. The same would be the case with regard to those who are covered by the Act and the Scheme. It is, therefore, essential in the interest of all concerned that the position of law is settled. As has been recounted earlier, the Commission has already recommended amendment of the Life Insurance Act with a view to making a nominee a person in whom the beneficial interest would vest to the exclusion of other heirs. Since, however, no decision has been taken on the recommendation of the Law Commission, the matter is still not free from vagueness in the sense that the members of the public may not be fully aware of the implications of nominations and the import of the decision of the Supreme Court in Sarbati Devi's case. That is why the course suggested in para 5.12 read with para 5.11 hereinabove deserves to be adopted."

The above recommendation is reiterated and views are invited on whether section 39 can be amended accordingly.

8.5.8.10 A suggestion has been made that, in case the policyholder dies after the maturity of the policy but is not able to encash the proceeds because of his death, a nominee may be entitled to the same. To this effect, a proviso may be added to make the nomination effectual for receiving policy money.

8.5.8.11 Another suggestion has come for enabling the insured person, by way of an option, to make a nomination that confers absolute ownership of policy money on the nominee upon the death of the life assured. According to this suggestion, such a nomination will place the nominee on the same status as that of a nominee under s.45ZA of the Banking Regulation Act, 1949.

8.5.9 Payment of Money into Court

Many a times, it is impossible for the insurer to satisfactorily discharge any life insurance policy for payment due to conflicting claims, or insufficiency or proof of title, to the

amount secured thereby. In such situations, the insurer may, under the provisions of s.47, with the permission of the court and subject to conditions specified in sub-sections (3) and (4) of the section, make payment of the same (deposit) into the court. The claimants in such cases would certainly like to engage lawyers and ultimately in this process the claimants become the victim rather beneficiary of the amount so claimed. **It is, therefore, suggested that insurer may, in the circumstances as aforesaid, may deposit the amount with IRDA or the Insurance Appellate Tribunal as the case may be. It is appropriate if an Insurance Lok Adalat is constituted for disposing of such claims**. Such a procedure would be in the interest of the claimants because disposal by Lok Adalat would be speedy and without any technicalities.

8.6 Tariff Advisory Committee – Composition and Powers

8.6.1 The tariff rates in respect of general insurance business are determined by a body known as Tariff Advisory Committee established under a principal Act in 1968 (Insurance Amendment Act of 1968). Before its establishment, tariff committee regulated the rates and advantages in respect of general insurance business.

8.6.2 The principal Act provides under section 64 U for the establishment of a Tariff Advisory Committee (TAC), a body corporate having perpetual succession and common seal, to control and regulate the rates advantages, terms and conditions that may be offered by insurers in respect of general insurance business.

8.6.3 It is an important body functioning under the control of the Authority since 1999. Before 1999, TAC was functioning under the Controller of Insurance. The primary objective of the committee is to fix the price of the insurance products scientifically in order to standardize decision-making choice of the consumer.

8.6.4 **Composition of TAC**

The Act prescribes the composition of TAC, as to consist of a Chairman (ex-officio chairman of the Authority), a Vice Chairman (a Senior Officer of the IRDA to be nominated by the Authority), not more than 10 elected representative of insurers and not more than four representative of insurers domiciled outside India but registered in India.

8.6.5 At present the practice is that members of the Advisory Committee are not elected but are nominated or co-opted. In view of this practice, the provisions may be amended. The following provision may be substituted in clause (c) of section 64 UA (1):

> "not more than 10 representatives of Indian insurers and not more than 4 representatives from government departments, professional bodies, etc. nominated by the Authority and/or the Central Government".

8.6.6 The Authority is empowered to nominate Secretary of the TAC (section 64UA (2)) who functions under the direction and control of the Authority (sub-section (5))

8.6.7 Powers of the TAC

(i) Power to control rates, advantages, terms and conditions in respect of risk other than life (general insurance)

8.6.7.1 The Act empowers TAC, under section 64 UC to control and regulate the rates, advantages, terms and conditions offered by the insurers in respect of any class of risk and it shall be binding on all insurers. However, in certain cases it may permit any insure for a limited period (not exceeding 2 years) to adopt different rates from those fixed by it, subject to such conditions as may be imposed by TAC.

8.6.7.2 Sub-section 3 provides that every decision of TAC would be valid only after its ratification by the Authority, whereas, provisions of sub-section (4) states that the decisions of TAC under the provisions of this section would be final. The provisions of both these sub-sections reveal inconsistency, therefore provisions need to be recast so as to remove the same. The issue is – when decisions have to be ratified by the Authority, then obviously those should be treated as final, why should the provisions of sub-section (4) be retained?

8.6.7.3 The insurers, who commit any breach of rate/ advantage fixed by TAC, are guilty of the contravention of the provisions of this Act under sub-section (5) of this section. Surprisingly, proviso to this sub-section allows the Authority to make good the contravention by recovering from the insurer deficiency in the premium or compounding the offence of contravention by allowing the insurer to make payment to the Advisory committee of the fine of the amount not exceeding Rs.1000.

8.6.7.4 **The amount of fine is not adequate, hence should be enhanced**. Again, if deficiency in premium is not rectified then 25% of the difference of the premium to be recovered from the insurer may be provided for.

(ii) Power of TAC to require information

8.6.7.5 TAC may require by notice under section 64 UE any insurer to supply necessary information within the period specified by it and failure to do so would be deemed as contravention of the Act. This provision is similar to that of the section 44A wherein the Authority has been empowered to exercise similar powers.

8.6.7.6 Sub-section (3) of section 64 UE empowers the Authority to depute any of its officers to make personal inspection of accounts, ledger etc. in order to verify accuracy of statements furnished by the insurer.

8.6.7.7 Advisory committee is a statutory body and it is appropriate that the powers under this section be exercised by TAC instead of Authority because verification of whatever submitted by the insurers under sub-section [1] should be done by the Advisory committee and not by the Authority. Therefore, in sub-section (3), the word “Authority’” may be substituted by words ‘committee on its own or as directed by the Authority.’

8.6.7.8 TAC is also empowered to make arrangements for inspection on application of the insurer under sub-section (4) in respect of risks, adjustment of losses etc. However, the proviso to it states that such inspection can only be made with the written permission of the organization (insurer). **It is appropriate if instead of 'written permission' the words 'prior written intimation' be substituted, because inspection under this sub-section is on the application of the insurer, hence permission of organization seems to be irrelevant**.

(iii) Power of the TAC to constitute Regional committee

8.6.7.9 The provisions of section 64 UJ empowers the Advisory Committee to constitute regional committees. As already stated, the regional committees aren't functioning anymore, hence sub-sections (2) to (6) may be deleted and sub- section (1) may be recast as follows:

> "The Authority/ Advisory Committee may constitute such regional or other committees for the purpose as it deems fit."

(iv) Power to make rules

8.6.7.10 The authority has been empowered under section 64 UB to make regulations in respect of functions to be performed by the TAC, terms of the office of its members, procedure for election & other matters relating to the transaction of its business.

8.6.7.11 Clause (b) of sub-section (2) may be amended so as to give effect to 'nomination' in place of election of its members.

8.6.7.12 Sub-section (3) empowers TAC to make regulations in respect of Regional Committees. As the Regional Committees are not functioning anymore, the provisions of this sub-section maybe deleted.

8.6.7.13 Again, the provisions of sub-section (4) need omission as they are transitional in nature and have become redundant long back.

8.6.8 Need for repeal of certain provisions relating to TAC in part IIB of the principal Act

8.6.8.1 Some of the provisions in part IIB of the principal Act are required to be repealed as being transitional in nature which are as follows:

(a) The provisions of section 64 UD, except proviso to sub-section (1) (inserted by Act of 1999), being transitional in nature need to be repealed as they have become redundant long back.

(b) Proviso to sub-section (1) may also be repealed because its provisions have been taken care of under clause (a) of section 64 UA (1).

(c) The provisions of section 64 UF providing for assets and liabilities of General Insurance Council to vest in the Advisory Committee after the commencement of the Amendment Act, 1968 need to be repealed as the assets and liabilities have already been vested in TAC.

(d) The provisions of section 64 UG also need to be repealed because its provisions have become irrelevant as all the contracts/ agreements made by the Tariff Committee before 1968 are dealt by the Advisory committee as also the suits or legal proceedings filed by or against Tariff committee after 1968 Amendment are being dealt by TAC . It is obvious that after a period of more than 3 decades, these provisions do not have any relevance.

(e) Similarly, provisions of section 64UH protecting the interest of the employees of Tariff Committee who were in employment before the Amendment Act 1968 need to be repealed because all those employees are now the employees of the Advisory Committee and others, who could not, should have availed the benefits mentioned under this section.

(f) The provisions of section 64 UI obligates every person, who is in possession or custody of the property of the Tariff Committee or is in possession of documents relating to such property, to deliver those to the Advisory Committee. Here also there' is every possibility that the transfer of such possession of property and documents have taken place. Hence, provisions have become redundant, therefore, to be repealed. Even if such delivery has not taken place, can it be claimed under the law after a period of more than 3 decades?

8.7 **Machinery for redressal of grievances/ claims- The 1998 Rules**

8.7.1 In 1998, the central government framed the Redressal of Public Grievances Rules, 1998 in exercise of the powers under section 114 (1) of the Insurance Act, 1938. Under these Rules, there was to be a governing body of Insurance Council which was in turn, under Rule 6 to appoint one or more persons as Ombudsman for the purposes of these Rules. An Ombudsman is appointed under Rule 7 for a term of three years and shall be eligible for reappointment. However, no Ombudsman shall hold office after attaining the age of 65 years.

8.7.2 Under Rule 12 the powers of the Ombudsman are to receive and consider:

(a) complaints under Rule 13 - i.e., a grievance by a person against an insurer, which complaint has to be made after rejection of such persons representation by the insurer;

(b) any partial or total repudiation of claims by an insurer;

(c) any dispute in regard to premium paid or payable in terms of the policy;

(d) any dispute on the legal construction of the policies in so far as such disputes relate to claims;

(e) delay in settlement of claims;

(f) non-issue of any insurance document to customers after receipt of premium;

8.7.3 Under Rule 12 (2) the Ombudsman "shall act as counsellor and mediator in matters which are within his terms of reference and, if requested do so in writing by mutual agreement by the insured person and the insurance company".

8.7.4 The decision of the Ombudsman is final. Under Rule 15 it appears that the insurance company has to comply with the decision of the Ombudsman whereas an option is given to the complainant whether or not he accepts the award. Where there is no such acceptance by the complainants, it is open to the Ombudsman pass an award "which he thinks fare in the facts and circumstances of the case".

The Protection of Policyholders Interests Regulations

8.7.5 The IRDA has, in exercise of its powers under section 114A (2) (zc) made the IRDA (Protection of Policyholders' Interest) Regulations, 2002. Regulation 5 mandates that every insurer "shall have in place proper procedures and effective mechanism 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." Under Regulation 8 the procedure for maintaining and processing a claim in regard to a life insurance policy has been set out. Regulation 9 lays down a similar procedure in respect of a general insurance policy.

Other Mechanisms

8.7.6 Apart from the above mechanisms, at present a large number of complaints are being filed by dissatisfied policyholders under the Consumer Protection Act, 1986 alleging deficiency of service when either a claim is not settled or only partially settled. An analysis of the decisions rendered by the various consumer fora would reveal that a number of cases under this subject is growing by the day and the consumer fora are called upon frequently to interpret the provisions of the Insurance Act 1938. However, on account of the large number of other cases that are pending decision before the consumer fora, this remedy is no longer a speedy or efficient one.

8.7.7 Further, although there is some mechanism, as spelt out in the above Rules and Regulations in so far as the grievances of policyholders are concerned, there is no effective mechanisms as regards insurers vis-à-vis the IRDA. This also will have to be taken into account while suggesting a suitable grievance redressal machinery.

Securities Exchange Board of India Model (SEBI)

8.7.8 The Securities and Exchange Board of India Act, 1992 (SEBI Act) established the Securities and Exchange Board of India (SEBI) and has entrusted to it , the functions of a regulator of the stock markets. Chapter VI A of the said Act provides for penalties in adjudication. Sections 15A to 15H of the said Act provide for penalties for contravention or failure to follow the regulations prescribed by the SEBI and penalties will be adjudicated by adjudicating officers appointed under section 15-I of the Act. The adjudicating officers shall be appointed from amongst the officers of the SEBI not below the rank of a Division Chief who will hold an inquiry in the prescribed manner and after giving a reasonable opportunity of being heard, impose a penalty. Section 15J spells out the factors to be taken into account by the adjudicating officer. Appeals from the orders of the Adjudicating Officers will lie to the Securities Appellate Tribunal (SAT) presided over by a sitting or a retired Judge of the Supreme Court or a sitting or a retired Chief Justice of a High Court. The other Members of the Tribunal shall be appointed from persons who have expertise in dealing with problems relating to securities market and having qualifications and experience of corporate law, securities law, finance, economics and accountancy. Under section 15 Z of the SEBI Act, as amended in 2002, a further appeal to the Supreme Court from the decision of the SAT has been provided.

8.7.9 It is proposed to adopt SEBI model with certain modifications and additions. In order to redress the grievance of the policy holders, it is proposed to provide for the establishment of a three -member Grievance Redressal Authority (GRA) in the major cities to hear complaints from policy holders/consumers against the insurers. The GRA will be presided over a by a sitting or a retired district judge and in addition will consist of two members who have expertise in the field of insurance.

8.7.10 Further, on similar lines as the SEBI Act, it is proposed to provide for adjudication in matters involving contravention of the Act, Rules and Regulations made by the IRDA with maximum penalties specified in the Insurance Act, 1938 itself. In addition, sections 102-105C of the Insurance Act 1938 prescribe penalties for contravention of or default in compliance with the provisions of the Act. It appears from the reading of the provisions that the penalty will be determined by the criminal courts since it appears to be in the nature of a fine. It is proposed to modify these provisions and provide that these penalties will be levied after an adjudication/inquiry by adjudicating officers on the pattern of the SEBI Act. These adjudicating officers will be appointed from amongst the officers of the IRDA above a certain level like the Adjudicating Officers of the SEBI. The Adjudicating Officers will be positioned in different locations in the country to facilitate the widest geographical access to insurers, insurance intermediaries and insurance agents.

8.7.11 It is also proposed to provide for the establishment of an Insurance Appellate Tribunal (IAT) to hear appeals from the orders of the adjudicating officers and also from the decisions of the GRAs. The IAT will also hear appeals from the orders of the IRDA on matters involving insurers and insurance agents including registration and grant of licences. The IAT will have a retired or sitting judge of the Supreme Court or a retried or sitting Chief Justice of a High Court as its Presiding Officer. Two other members of the IAT will be persons of integrity, ability and standing and having requisite qualifications and experience in the field of insurance. It is proposed that there should be a further appeal to the Supreme Court from the decisions of the IAT similar to section 15 Z of the SEBI Act.

Proposed Suggestions

8.7.12 The tentative proposals for a full fledged grievance redressal mechanism are as under:

(a) The present system of having Ombudsman under the 1998 Rules at the major metropolises be replaced by Grievance Redressal Authorities (GRA) constituted by appropriate amendments to the Insurance Act, 1938 itself. These would thus be statutory authorities exercising statutory functions.

(b) The GRA could be multi-member bodies comprising one judicial member and two technical members. A certain degree of transparency should be induced in the process of selection of such members.

(c) The GRAs should be dispersed as geographically widely as possible. For instance, that could be GRAs in each of the major cities in the country. This is necessary given the large number of policyholders at present and the prospect of this growing in the future.

(d) The powers and jurisdiction of the GRAs would include all the powers and functions presently performed by Ombudsman under the 1998 Rules.

(e) In addition to the above, it could be provided that all pending disputes arising under the Insurance Act, 1938 before the consumer fora would be transferred to the GRAs for disposal in accordance with the provisions of the Insurance Act, 1938. To this extent an amendment may have to be made in the Consumer Protection Act, 1986 to provide that disputes arising under the Insurance Act, 1938 will not be entertained under the Consumer Protection Act, 1986.

(f) IRDA will appoint adjudicating officers in inquire/adjudicate violations of the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and levy penalties as provided for in the Act.

(g) An Insurance Appellate Tribunal (IAT) on the lines of the one under the SEBI Act should be constituted having its sitting as a principal bench in New Delhi and by circuit in the four major metropolises. The IAT will hear appeals against decisions of the GRAs and the Adjudicating Officers decision of the

IAT will be final. The IAT will also entertain appeals against the decisions/orders of the IRDA concerning insurers, insurance intermediaries and insurance agents including those pertaining to registration and licensing.

(h) There will lie a further statutory appeal to the Supreme Court from the decision of the IAT on the lines of section 15 Z of the SEBI Act. The appeal will have to be filed within 60 days of the decision of the IAT.

(i) There will be a clause expressly excluding the jurisdiction of civil courts in disputes arising under the Insurance Act, 1938. However, this will not include claims/ disputes arising under the Motor Vehicles Act, 1988 and the Marine Insurance Act 1963.

(j) On the lines of sections 41 & 42 of the LIC Act, 1956, the decision of the GRA may be made enforceable in any civil court within the local limits of whose jurisdiction the decree holder actually and voluntarily resides.

(k) With a view to encouraging alternative dispute resolution (ADR) mechanisms, it may be provided that a claimant may be first referred to an ADR mechanism, which would include mediation and/ or conciliation, and only if that fails, should the matter been placed before GRA. Further, the GRA may itself refer the pending dispute before it to an ADR process at any stage of the proceedings, with the consent of the parties.

8.7.13 The above framework of a grievance redressal mechanism is a tentative one and will require to be further developed and modified after consultation with all concerned parties.