

The Legal Environment

✓ OTHER LAWS ✓

1. Apart from the specific legislations relating to the insurance business, there are other laws, which have a bearing on the insurance business, both life and non-life. These laws lay down the validity of contracts, the avenues for settlement of disputes between the contracting parties and so on. These are
- (a) The Indian Contracts Act affecting the insurance contracts as well as contracts with intermediaries
 - (b) The Indian Stamp Act requiring the stamping of policies, documents and receipts
 - (c) The Exchange Control Regulations of the Reserve Bank of India as well as the Foreign Exchange Management Act, dealing with the movement of moneys across the boundaries of the country
 - (d) The Workmen's Compensation Act, Industrial Disputes Act, Shops and Establishments Act., etc., dealing with issues relating to the management of staff
 - (e) The Consumer Protection Act, 1986, which provides policyholders easy methods to get redress in case of deficiencies in service.

✓ MOTOR VEHICLES ACT ✓

2. The Motor Vehicles Act was passed in 1939. Chapter VIII of this Act, which was brought into force from 1st July, 1946, provides that no motor vehicle can be used in a public place unless there is in force, in relation to that vehicle, a policy of insurance issued by an authorised insurer. This policy is required to cover the insured's liability in respect of death or bodily injury of certain persons (e.g., third parties, fare-paying passengers, paid drivers, etc.) and damage to property of third

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parties. The limits of liability required to be covered are also prescribed in the Act.

3. This Act was amended in 1956, to provide for the constitution of Motor Accidents Claims Tribunals (MACT) by the State Governments. The object of this amendment was to ensure speedy settlement of claims of persons involved in Motor Vehicle accidents. The procedure adopted by these Tribunals is simple and fast, the Court fee is nominal and hence the procedure is not expensive. Yet, there is delay in the settlement of cases in the MACTs, mainly perhaps, because of the large volumes of cases.
4. The Motor Vehicle Act of 1939 has been amended and replaced by the Motor Vehicles Act, 1988. The changes brought about by the new Act are as follows.
 - (a) Under Section 140, the negligence of the owner or user of the motor vehicle is no longer relevant to decide the question of liability. The claimants are not required to plead and establish that the death or permanent disablement, in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner, or owners, of the vehicle or vehicles concerned or any other person. This concept is known as No Fault Liability. Even if the victim has contributed fully or partially to the happening of the accident, that fact is not to be taken into account to defeat the liability of the motorist or to reduce the amount of damages.
 - (b) The amount of compensation payable is restricted to Rs.50,000/- in the case of death and Rs.25000/- in the case of permanent disablement. Permanent Disablement is defined as any injury or injuries involving :
 - (i) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
 - (ii) destruction or permanent impairing of the powers

of any member or joint; or

(iii) permanent disfiguration of the head or face.

(c) **The right to claim compensation on the basis of No Fault Liability** is in addition to any other right that the victim may have under any other provisions of the Act or any other law for the time being in force. In other words, the victim can also proceed against the wrong-doer on the basis of negligence under the law of Tort.

HIT AND RUN ACCIDENTS

5. A Hit and Run accident is when the identity of the motor vehicle or motor vehicles involved in the accident cannot be established, despite reasonable efforts. Section 163 of the Act provides that the Central Government may establish a fund known as the Solatium Fund to be utilised for paying compensation in respect of death or grievous hurt to persons resulting from Hit and Run accidents.

6. It is provided that grievous hurt shall have the same meaning as in the Indian Penal Code. According to Section 320 of the Indian Penal Code the following kinds of hurt are designated as grievous:

(i) Emasculation.

(ii) Permanent privation of the vision of either eye.

(iii) Permanent privation of the hearing of either ear.

(iv) Privation of any member or joint.

(v) Destruction or permanent impairing of the parts of any member or joint.

(vi) Permanent disfiguration of the head or face.

(vii) Fracture or dislocation of a bone or tooth.

(viii) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain or unable to follow

his ordinary pursuits, during the space of twenty days.

7. The compensation payable for death claims is fixed at Rs. 25,000/- and in respect of 'grievous hurt' Rs. 12,500. This is subject to the condition that if any compensation is awarded for such death or grievous hurt under any other provisions of the Motor Vehicles Act or any other law the amount paid under Hit and Run accident has to be deducted from such compensation.
8. The Solatium Fund will consist of contributions from the General Insurance Industry, the Central Government and the State Governments as decided by the Central Governments. The Central Government is also authorized by the Act to make a scheme to provide for the administration of the Solatium Fund. The Act was further amended in 1999 providing for compensation for victims of fatal injuries, based on the age and the income of the victim.

✓ THE PUBLIC LIABILITY INSURANCE ACT, 1991 ✓

9. This Act was enacted in January 1991 to provide immediate relief to persons affected by accidents occurring while handling hazardous substances. An accident is a fortuitous, sudden and unexpected occurrence. A hazardous substance is as defined in the Environment (Protection) Act, 1986. A person, other than a workman, who suffers death or injury or damage to property is entitled to compensation under this Act.
10. Owners of undertakings handling hazardous materials are liable to pay compensations under the Act. Owners are required by law to insure their liabilities. The insurance amount should be not less than the paid-up capital of the undertaking and not more than the levels prescribed by the Government, not exceeding Rs. 50 crores. In addition, owners should also pay to the insurers an amount prescribed by the Government, which will be credited to a Relief Fund. Owners of certain kinds of undertakings, like Government or local authorities, are

exempted from these obligations.

11. When an accident of the nature envisaged under this Act occurs, the Collector of the district will invite claims for compensation. He will then decide on the amount of relief or compensation to be given. The limits of compensation have been laid down in the schedule to the Act as Rs. 12500 for reimbursement of medical expenses, and Rs. 25000 in the case of death. In case a person loses wages because of injury, he may be paid compensation of Rs. 1000 per month for a maximum of three months.
12. The Central Government is required to appoint an Advisory Committee consisting of 2 appointees of the Central Government, (one of whom will be appointed as the Chairman), 2 nominees of the insurers, 2 nominees of the owners and 2 experts to be chosen by the Central Government.

THE INDIAN STEAM VESSELS ACT, 1917

13. The Inland Steam Vessels Act, 1917 as amended in 1977 provides for the application of the provisions of Chapter VIII of the Motor Vehicles Act, 1939 in relation to the insurance of mechanically propelled vessels against third party risks.
14. The Act makes it compulsory for owners or operators of inland vessels to insure against legal liability for death or bodily injury of third parties or of passengers carried for hire or for reward and for damage to property of third parties. The limits of liability are also prescribed.

THE MARINE INSURANCE ACT, 1963

15. The Indian Marine Insurance Act 1963, is based on the Marine Insurance Act 1906, passed in the U.K. Before the passing of the Act, marine insurance was governed by common law. The Marine Insurance Act 1906 codified marine insurance law comprising a large body of case laws, consisting of over 2000

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reported cases, spanning a period of three centuries. The Act forms the basis of present day marine insurance law.

16. The important provisions of the Act relate to;
- Indemnity, insurable interest, utmost good faith, subrogation and contribution
 - Insurable value
 - Warranties
 - Types of losses, total, partial etc. and measure of indemnity thereof
 - Return of premium
17. Marine Insurance, being the oldest branch of insurance, its practice, over centuries, has been influenced by various customs and usages. A unique feature of the Act is that, whilst it states the law, it also allows for continuation of existing underwriting practices, conventions, etc. Some examples are;
- (i) The Act provides for measure of insurable value but subject to any express provision or valuation in the policy. Thus, underwriters issue 'agreed value' policies in hull and cargo insurance.
 - (ii) The Act provides that a marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. Thus, hull policies contain a clause prohibiting assignment, unless prior consent of underwriters is obtained

THE CARRIAGE OF GOODS BY SEA ACT, 1925

18. This Act defines the minimum rights, liabilities and immunities of a shipowner in respect of loss or damage to cargo carried. The Act deals with three aspects of a shipowner's liabilities towards cargo owners. These are:
- (a) The circumstances when the shipowner is deemed to be

liable for loss or damage to cargo

- (b) The circumstance when the shipowner is exempted from liability, viz., when the loss or damage is caused by events outside his control like perils of the seas.
- (c) The limits of liability of a shipowner for loss of or damage to cargo calculated in monetary terms per package or unit of cargo.

✓ THE MERCHANT SHIPPING ACT, 1958 †

19. This Act also provides some protection to shipowners. For example, the liability of a shipowner can be limited to certain maximum sums for certain losses, provided the incident giving rise to such claims has arisen without the actual fault or privity of the shipowner. These claims may relate to loss of life, personal injury or loss of or damage to property on land or water. The Act makes it the obligation of the shipowner to send his ship to sea in a seaworthy and safe condition.

~~THE INDIAN PORTS (MAJOR PORTS) ACT, 1963. †~~

- ~~20. This Act defines the liability of Port Trust Authorities for loss of or damage to goods whilst in their custody and prescribes time limits for filing monetary claims or suits against, the Port Trust Authorities.~~

✓ THE INDIAN RAILWAYS ACT, 1890 ✓

21. The Indian Railways Act, passed in 1890 was amended in 1961 and the amendment came into force from 1st January, 1962. Chapter VII of this Act deals with
- (a) Rights and liabilities of Railways as carriers of goods
 - (b) Procedure for notification of claims for compensation for losses.

Claims for loss or damage to cargo or persons (death or injuries) carried by the Railways, are adjudicated upon by the Railway Claims Tribunal set up under the Railway Claims

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Tribunal Act, 1987

THE CARRIERS ACT, 1865

22. This Act defines the rights and liabilities of truck owners or operators who carry goods for public hire in respect of loss or damage to goods carried by them. The Act also prescribes the time limit within which notice of loss or damage must be filed with the road carriers.

THE INDIAN POST OFFICE ACT, 1898

23. This Act defines the liability of the Government for loss, misdelivery, delay of or damage to any postal articles in the course of transmission by post.

THE CARRIAGE BY AIR ACT, 1972.

24. This Act gives effect to the provisions of the Warsaw Convention, 1929 and the Hague Protocol, 1955 relating to international carriage of passengers and goods by air. This Act defines the liability of the air carrier for death of or injury to passengers and for loss of or damage to baggage and cargo, prescribes the maximum limits of liability for death, injury, damage etc., and also prescribes the time limits within which claims have to be filed. The provisions of the Act also apply with some changes, to domestic air carriers operating within India.

MULTIMODAL TRANSPORTATION ACT, 1993

25. This Act seeks to regulate matters related to the transportation of goods from any place in India to any place outside India, using two or more modes (multi modal) of transport, under a single transport contract. The salient features of this Act are
- Those doing multi modal transportation business have to be registered
 - The multi modal transporter (MTO) has to assume responsibility for the performance of the contract

claimant, he has a right to seek redress through the MACT.

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✓ **CONSUMER PROTECTION ACT 1986 (COPA).** ✓

36. In the past several decades, there had been a movement to safeguard the interests of the customer. This has become known as consumerism and had developed as a reaction to business ignoring the rights of consumers and exploiting them. Issues of safety were raised, particularly in the case of motor cars. The following four consumer rights have been accepted as basic.

- (a) The right to safety. Goods which are hazardous to life and property violate this right

- (b) The right to be informed about all the relevant aspects of the product being sold
- (c) The right to choose.
- (d) The right to be heard against unfair trade practices

37. Under the COPA, a consumer, as an individual or along with other individuals, or through a consumer organisation, can approach the various forums prescribed under the Act for redress, in case he is not satisfied with the goods or service provided. He has to allege a defect in the goods or service. A defect or deficiency is a fault, imperfection, shortcoming or inadequacy in the quality, nature or manner of performance, which is required to be maintained, by or under any law or in pursuance of a contract or undertaking in relation to that service. Sale of spurious goods or services are termed unfair trade practice.

38. In order to attend to complaints under this Act, consumer dispute redressal forums are to be established in each District and for each State. The forum at the District level will hear complaints up to the value of Rs.20 lakhs and the forum at the State level will hear complaints above Rs. 20 lakhs upto Rs 1 crore. There is a provision also for the constitution of a National Commission, which will attend to matters beyond the jurisdiction of the State forums and also appeals against the decisions of a State forum. The Act provides for benches of the National Commission at various places and also for circuit branches. Time limits have been fixed for admission of complaints, issue of notices and disposal of complaints. Cases must be decided within 3 months, unless lab tests are required, in which case, the time limit will be 5 months. Non-compliance with the orders of the forum are liable to be penalized with fines of up to Rs. 10000 and jail terms of upto 3 years. The compensation ordered by the forum can be recovered in the same manner as land revenue.

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39. (The COPA applies to the insurance business as well. Policyholders have the right to seek redress against unfair practices or unsatisfactory service from insurers and from agents. The majority of disputes relating to insurance arise out of repudiation and delays in claims.) Such delays occur often due to non-compliance with requirements or ambiguity in title. If due care is taken at the time of proposal and all material information supplied, there cannot be a repudiation of a claim.
40. (Fifty international supermarkets, collectively representing 65% of food retail revenues worldwide, announced in April 2003, a set of guidelines to be used by their suppliers across the world while sourcing and processing food products. This global initiative is based on the principle that food safety and consumer protection is a non-competitive issue, because any potential problem has repercussions for the whole sector.) The guidelines include food safety standards, early warning systems and good practices for agriculture, manufacturing and distribution. This action is indicative of the trend towards industry taking responsibility for its action avoiding dissatisfactions on the part of the customers.

CORPORATE GOVERNANCE

41. The expression 'Corporate Governance' refers to the system by which organizations are directed and controlled. That would include the structure, the distribution of rights and responsibilities among the different participants in the corporation, like Board, managers, shareholders and stakeholders, and also the rules and procedures for making decisions on corporate affairs. It also includes the means adopted to achieve corporate objectives and to monitor performance.
42. The emphasis on Corporate Governance began in the U.K. in the 1990s. The drive for Corporate Governance in the U.K. came from the following developments.

~~in companies, about which they or their employees comment.~~

INDIAN INFORMATION TECHNOLOGY ACT, 2000

50. This Act recognises the new developments in the field of commerce because of the growth of the Internet and computers. Known as e-commerce, business is being done on the Internet. This business is very different from the traditional trading practices. Either party to the transaction will have little knowledge of the other party. The business operates through networks, is information intensive and is enabled by Information and Communication Technologies (ICTE). The growth of the Internet (9 million users in 2001) is the fastest (76%) in Asia. The business done in India through the Internet is US\$ 255 million, less than China, S. Korea and HongKong (nearly \$700 million). But this is a growth area.
51. Every business transaction is a contract, sometimes written and often implied. In the e-commerce business, where the two parties do not even meet and the exchanges of messages are through e-mail or websites, capable of being altered accidentally or deliberately, and signatures are difficult to be authenticated, the existing laws are inadequate to protect the interests of the contracting parties. This Act aims to rectify this deficiency. The Act
- Provides for the legal recognition of transactions carried out by alternatives to paper-based method: of communication and storage of information
 - Deals with contractual frameworks, evidentiary aspects, digital signatures, time of dispatch and time of receipt of electronic records
 - Lays down authorities for certification, regulation, licensing, and their duties
 - Clarifies cyber contravention, civil and criminal, lays down penalties and adjudication

- Appropriately amends the Indian Penal Code 1860, Evidence Act, 1972, Bankers Book Evidence Act, 1891, the Reserve Bank of India Act, 1934
52. Publication of obscene information, hacking, destroying or altering data are all offences punishable with fines and / or imprisonment. If an employee is found to be guilty of such offences, the employer may also be liable.
 53. Under the Prevention of Terrorism Act (POTA) passed in 2002, authorities are allowed to monitor all kind of electronic communications, without legal constraints. There are concerns of human right violations in these provisions.
 54. Under the Contract Act, when an offer is accepted, the contract is complete. This Act clarifies what constitutes an offer and what constitutes an acceptance of offer, when done through electronic media. Acceptance is binding on the offerree when the same is out of his control and enters the information system, that is when he sends it out. It is binding on the offerer when it enters the computer resource designated by the addressee, or when it is retrieved by the addressee, if it had gone to some other computer resource.
 55. The condition that the information has to be in writing, whenever applicable, is deemed to be satisfied in an electronic record, if it is accessible so as to be usable for subsequent reference. The use of zeros and ones is considered to satisfy the requirements of the General Clauses Act, which states, in Section 31(8), that a document includes any matter written, expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, for purposes of receiving that matter.
 56. An electronic record will be deemed to be secure and the integrity of the information accepted, if any security procedure is applied. Security procedures are normally applied through