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The Doctrine of Utmost Good faith in Health and Life Insurances: A Critical Analysis

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ABSTRACT

Health and life insurances are governed by the fundamental doctrine of Utmost good faith (uberrimae fidei). The principles requires parties to a contract to ensure absolute honesty by disclosing all the material facts required for risk assessment. The disclosure requirement becomes more stringent in case of insurance contracts as the other party faces the problem of information asymmetry due to the inherently personal nature of the information. This research paper critically analyses the evolution, application and the modern challenges put forth by the doctrine in Indian insurance market. It recognises that while the doctrine of utmost good faith requires transparency and fairness, practical application of the doctrine entirely faces hurdles due to unawareness of consumers, asymmetry in information and the prevalence of standard form of contracts in India. Indian judiciary through its judgements have shifted the burden of proof on the insurers in case of non-disclosure or misrepresentation in order to protect the vulnerable policyholders. The paper deals with the relevant regulatory framework in India including the Indian insurance act, 1938 and other regulations issued by Indian insurance regulatory and development authority. It further incorporates the changes brought by the 2015 amendment. Moreover, The paper argues that systematic widespread of misinformation and complex languages of the contracts undermines the efficacy of the doctrine. The paper advocates a balanced approach by bringing legal precedents, regulatory vigilance, accountability of insurer and enhanced protection for the consumers. Thus, it aims to foster an equitable insurance sytem where transparency, trust and fairness underpin the social welfare functions of Insurance in India.

Keywords: *Policy holders, Non-disclosure, Transparency, Consumer, Fairness*

I. INTRODUCTION

The foundational pillar of all insurance contracts is the principle of Utmost good faith. It has its origin in latin as the term 'Uberimae Fidei'. This principle compels all the contracting parties to stick to absolute honesty while contracting and refraining from showing any misinformation or concealing matreial information. Every contract required certain conditions to be met before

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entering but an insurance contract requires certain additional conditions to be met. It requires higher transparency from the parties. In the realm of health and life insurance, where the information sought is extremely personal, the principle finds its vital importance.

This research paper emphasises on the importance, application of the principle of utmost good faith in the indian health and life insurances. The central proposition of the paper is that though the principles is very important for such insurances, but the application is filled with complex challenges. The challenges are deeply rooted in the indian market because of the low consumer awareness and information asymmetry. The judicial stand on putting the burden on this has also shifted towards the insurers to protect the vulnerable policyholders. This is also important because of the standard form of contracts that the policyholders must sign and hence no bargaining powers.

The principle was adopted in commercial markets with an assumption that both the parties are on a level playing field while entering into a contract. However, if we take a look on the insurance sector in India the situation is starkly different. In india, the percentage of peeople having health insurance are as low as 25% hence 3/4th of population is still uninsured. The insurance market is also faced with the problem of knowledge gap between the insurers and general public. In such a scenario, a failure of the policyholder to disclose a fact may not be deliberate but might be an innocent mistake because of illeteracy, complexity of forms or inadequate explanation by the insurers. This creates a problem that a principle which was designed to maintain level playing field may lead to penalising the individual it should protect. The research paper argues that this tension is the modern challenge put forth with the indian insurance jurisprudence and legislations.

II. THE HISTORY AND CONCEPTUAL MOORING OF GOOD FAITH

The principle is not of a recent origin but has deep historical rotting, thus reflecting the long-term need of having a ned for integrity in the agreements where ther are significant information imbalances. Earlier it was an abstract concept. But its unique and demading nature led to it becoming a cornerstone of the insurance contracts. The origin is worth tracing because insurance contracts require higher standards when compared to other commercial transactions[2].

The origin of the principle can be traced back to the romans who believed that in a contractual agreement good faith is of utmost importance. The concept according to romans emphasied on honesty, fairness and parties' mutual reliance. The concept further gained traction in the

[2] Ahlin, T., Nichter, M., & Pillai, G. (2016). Health insurance in India: What do we know and why is ethnographic research needed? Anthropology & Medicine, 23(1), 102-124.

 [ISSN 2581-5369]

medieval era, when in trade and commerce trust and equitable dealings became essential. The conduct of english equity courts by adopting good faith and integrity in conduct of parties was made a part of the legal principle[3]. However, the concept of good faith as it remains today was adopted through the marine insurance. The 18th century case of Carter v. Boehm, in which the judgement was pronounced by Lord Mansfield added the core logic which is present today, to the principle. He observed that in marine insurance one party knows all the risks involved & associated with it while the other party has no access to information. He further added that the principle of good faith ensures that one party do not conceal from the other party any fact which he privately knows. Through this judgement, the duty to answer question was made not merely a passive duty but an active, positive duty of the person who is being questioned to volunteer[4].

This duty of disclosure is different to that of uberrimae fidei which means 'let the buyer beware'. This principle governs the ordinary contracts. Under the uberrimae fidei principle, it is up to the buyer to inspect and satisfy himself with the quality of the product. It also propounds that the seller is not required to disclose any fact if not asked. This principle cannot be applied in the context of insurance contracts because of the inherent intangible nature of the thing being insured[5]. The insurer cannot find a way to inspect the person being insured. Thus, insured becomes the sole source of providing this critical information to the insurer.

The evolution of Principle of utmost good faith also marks that the duty to disclose is not an isolated incident but an ongoing relationship which is built on mutual trust. In other contracts, the focus is on the point of formation of contracts while in the insurance contracts the duty persists throughout the duration of the policy[6]. But, in insurance contracts, the parties are required to disclose any material change at the time of renewal. Thus, ensuring that both the insured and insurer's conducts are subject to good faith. At every stage it is important to ensure that both the parties follow this principle.

III. THE STATUTORY AND REGULATORY FRAMEWORK IN INDIA

In India, the concept of utmost good faith of the common low is not merely a judicially adopted concept but a concept recognised by legislative and regulatory framework. The insurance act, 1938[7] after the amendment in 2015 and the IRDAI regulations[8] together govern the doctrine's

[3] Dixit, A., & Picard, P. (2002). On the Role of Good Faith in Insurance Contracting. SSRN.
[4] J Anita. (2018). Emerging Health Insurance in India: An Overview. 10th Global Conference of Actuaries.
[5] Mishra, A. (2013). Introduction, special issue on engaging with public health. Indian Anthropologist, 43(1), 1-12.
[6] Binny & Gupta. (2017). Health Insurance in India: Opportunities and Challenges. International Journal of Latest Technology in Engineering, Management & Applied Science (IJLTEMAS).
[7] Insurance Act, 1938, No. 4, Acts of Parliament, 1938 (India).
[8] Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors)

application. This framework thus tries to strike a balance between the insurer's need of accurate information and the protection of policyholders from any arbitrary or unfair terms by the insurer.

The Mandate of Section 45 of Insurance act, 1938

Section 45[9] of the act primarily deals with the repudiation of life insurance policies in india and is central for application of good faith doctrine. The 2015 amendment made the section more consumer centric. The timeline under this law[10]:

- **Within Three Years:** In the first 3 years from the inception of a policy or its revival, the insurer has a right to get the insurance challenged on the grouod of any misstatement or suppression of any material fact by the insured. If the insurer claims that a fraud is committed, it must prove that the non-disclosure was deliberate and made with an intent to deceive. Burden of proving the concealed fact was material also lies with the insurer. It is also up to the insurer to prove that the disclosure would have an impact on the decision.
- **After Three Years:** Once the period of three years has completed, the policy becomes incontestable on any ground. The policy cannot be challenged even in case of a fraud. This acts as a safeguard for the policyholders providing certainity after a reasonable period. It forces insurers to conduct due diligence and investigations before giving the policies. Thus, the long-term risk of concealed discrepancy is shifted to the insurer company, because it is better equipped to deal with such risks.

This provision thus marks a shift from the punitive stance to a protective stance. The strict three-year limit put by the law acknowledges the vulnerability of an average policyholder and restricts the insurer to cancel the claims on the ground of non-disclosure. This principle thus shifts the focus from uberrimae fidei which was unforgiving to the purpose of insurance policy ensuring financial assistance when needed the most. If for non-fraudulent misstatement a contract is repudiated, the insurer is required to return all the premiums collected from the policyholders[11].

The Role of IRDAI in Upholding Good Faith

The IRDAI further complements the statutory framework by the IRDAI (Protection of policyholders' interests), 2017[12]. The regulation aims to protect the interests of policyholders

Regulations, 2015, F. No. IRDAI/Reg/18/108/2015 (India).

[9] Insurance Act, 1938, No. 4, § 45. Acts of Parliament, 1938 (India).

[10] Selvaraj, S., & Karan, A. K. (2012). Why publicly-financed health insurance schemes are ineffective in providing financial risk protection. Economic & Political Weekly, 47(11), 60-68.

[11] Devi, S. (2015). The problems with health insurance sector in India. Indian Journal of Research, 4(3).

[12] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, Ref: IRDA/Reg/8/145/2017 (India).

 [ISSN 2581-5369]

and to ensure transparency[13].

Key provisions of the regulations are:

- Definition of Material Information – According to the regulation, material information includes all the relevant and essential information that is sought by the insurer from the person being insured in order to make informed decisions. This puts a duty of disclosure on the specific questions asked by the insure.
- Reciprocal Duty of Disclosure– It explicitly states that the duty of disclosure of material information applies to both the insured and the insurer. Good is a two-way street not a single way route. Duty to disclose terms, conditions and exclusions is on the insurer.
- Consumer protection mechanisms – This provides a free look period to the policyholder for 15 days after the date of entry and 30 days in case of electronic policies. If during this period, the policyholder disagrees with any term, they can return the policy and ask for refund of the premium, however, the insurer is entitled to make proportionate deductions. Thus, empowering the consumer to make informed decision and puts a burden on the insurer.

Harmonious interpreration of section 45[14] and regulations of IRDAI creates a system whereththe duties and rights of both the insured and insureres is balanced. Policyholders have a duty to disclose whereas the insurer has duty to ask clear questions, maintain transparency and act diligently.

IV. JUDICIAL SCRUTINY: BALANCING THE SCALES OF GOOD FAITH

The interpretation and applying of the doctrine is done by the Indian judiciary. Judiciary navigates the difference between full disclosure of insurers and the right to fair treatment of the insured. On analysing the precedents set by the judiciary it can be observed that the judiciary has upheld principles of disclosure, court takes a critical view of conduct of insurers by putting a higher burden of proof on them[15].

Affirming the Insured's absolute duty of disclosure

Proposer of a policy is absolutely under a duty to disclose all material facts of the proposal. In the cases of Satwant kaur sandhu v. New India assurance co. and M/s Reliance life insurance co. ltd. v. Rekhaben Nareshbhai Rathod, the supreme court explained the meaning of material

[13] Id. at 1.
[14] Supra note 8.
[15] Rao, M., & Choudhury, M. (2012). Healthcare financing reforms in India. National Institute of Public Finance and Policy

fact. It stated that any fact which influences the fixing of premium or which determines whether to take the risk or not will be considered a material fact. Also, any information soght in the proposal form by the insurer is also considerd to be a material fact. In case of failure to provide such a material fact, the insurer has the right to repudiate the contract. These judgements lay the insured's primary responsibility of disclosure[16].

Shifting the onus: The insurer's burden of Proof

While the duty of the insured is clear, courts have progressively shifted the onus onto the insurer to demonstrate not only that a fact was suppressed but also that it was material and that the repudiation is justified. In this direction, the decision of the supreme court in the case of Manmohan Nanda v. United India Insurance Co. ltd[17]. can be referred. The court held that if a policy is ussed by insurer despite the proposal form containing blank or unanswered columns, the insurer cannot later claim suppression of material facts related to those unanswered or left blank questions. Thus, a duty of inquiring and due diligence is put on the insurer, stopping them from turning a blind eye at that time and use the same as a ground for repudiation later.

Similarly, the national disputes redress commision in the case of LIC v. Priya sharma[18] held that the duty to prove that the insured was suffering from a pre-exsiting disease was entirely on the insurer. A mere allegation is insufficient in such a case. The fact must be substantiated with credible expert or medical evidence. This case rulings strengthens policyholder protection against arbitrary claim rejections based on unsubstantiated assertions of the insurers.

The Contentious Nexus Debate: Causality and Materiality

The most complex & contested area of judicial interpretation revolves around the question of nexus. Is it must the the non-disclosed medical condition will be the cause of the insured's death for the repudiation to be valid. The judiciary has offered seemingly conflicting views on this issue, revealing a deep seated tension between a strict contractual interpretation and a more equitable, purpose-oriented one.

One line of reasoning, substantiated by the Supreme Court's decision in Sulbha Prakash Motegaonkar v. Life Insurance Corporation of India, hints that a nexus is relevant. In this case, the insured failed to disclose a history of lumbar spondylitis but died of a heart attack. The Court allowed the claim, reasoning that the repudiation was incorrect because the concealed ailment was not life-threatening and had "nothing to do with" the actual cause of death. This judgment

[16] Reddy, K. S. et al. (2011). Towards achievement of universal healthcare in India by 2020: A call to action. The Lancet, 377(9767), 760-768.
[17] Civil Appeal No. 8386 of 2015, Supreme Court of India,
[18] Consumer Complaint No. 413 of 2006, District Consumer Forum (India).

 [ISSN 2581-5369]

leans towards an equitable interpretation, where the materiality of the non-disclosure is viewed in light of the actual loss that occurred.

However, a more recent judgment from the Supreme Court in Branch Manager, Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur[19] has clarified the position, favoring a stricter contractual approach. The Court held that the materiality of a fact must be judged at the time of underwriting, not at the time of the claim. If a material fact is suppressed, the subsequent death because of any other reason is irrelevant. The Court distinguished the Sulbha Prakash[20] case by noting that the ailment in that instance was not life-threatening, whereas in Bajaj Allianz, the non-disclosed condition was serious. This ruling reafirms that the core test is whether a prudent insurer, had it known the suppressed fact, would have issued the policy on the same terms. The evolution of these judicial interpretations highlights a continuous effort to balance the doctrine's strict requirements with the need for fairness, as summarised in the table below[21].

V. PRACTICAL CHALLENGES AND THE EROSION OF GOOD FAITH

While legal and judicial frameworks provide the theoretical structure for the principle of good faith, its application in the real world is systematically undermined by deeprooted. structural issues within the Indian insurance ecosystem. The transition from legal doctrine to market reality reveals a landscape where information asymmetry, consumer vulnerability, and misaligned incentives often erode the very foundation of trust that uberrimae fidei is meant to build[22].

The Pervasiveness of Information Asymmetry

The classic justification for the doctrine of utmost good faith is the information asymmetry that is in favour of the insured, possessing unique knowledge of their own risk profile. However, in the modern market of India, a more potential and damaging asymmetry exists in the opposite direction: consumers often lack a basic understanding of complex insurance products. This problem is enhanced by the low awareness among public regarding the health insurance concepts. Studies show that a great portion of the population is either unawaer of the working of insurances or misinformed about them. It is also revealed that the the complex terminologies of the insurance contracts increased the struggles of the common man to grasp the meaning and

[19] Revision Petition No. 522 of 2019, Supreme Court of India.
[20] (2021) 13 SCC 561.
[21] Garg, C. C., & Karan, A. K. (2009). Reducing out-of-pocket expenditures to reduce poverty: A disaggregated analysis at rural-urban and state level in India. Health Policy and Planning, 24(2), 116-128.
[22] Devadasan, N., Ranson, K., Van Damme, W., Acharya, A., & Criel, B. (2006). The landscape of community health insurance in India: An overview based on 10 case studies. Health Policy, 78(2-3), 224-234.

principle of the insurances[23].

This gap in the information creates a ground for mis-selling of the insurances by the insurance companies. Agents of these companies are motivated by the commissions they receive on selling the insurances completely ignoring the customer interests. They are found to be concealing crucial information before selling the policies. This is blatant breach of the good faith duty by the insurers through their representatives. Through the act of representatives, the insurer companies are breaching the duty of utmost good faith[24].

The ambiguity of materiality in modern health

The modern health challenges are bringing out ambiguity in the concept of material fact. The increasing cases of Diabetes and hypertension are becoming common lifestyle diseases nowadays resulting in complicated disclosure processes. The spread of these diseases is so common these days that the NCDRS in the case of Neelam Chopra v. LIC, held that merely on the ground of non-disclosure of these diseases cannot be the sole ground for denying a claim. If done so, it can lead to making the insurance contracts meaningless. This poses a significant question of whether having these diseases is a material fact or not. the inherent nature of such disclosure which is minor or one and chronic for the other complicates the situations and hence a clear definition is required[25].

The crisis of consumer trust

These challenges cumulatively put the consumer in a deep pervasive crisis of not being able to trust the insurance industry. Researches reveal that for medical insurances, the recommendations of family members, friends and known agents are give far more importance than the reputation of companies. It is also widespread amongst the consumers that insurance companies are adversarial entities making the use of technicalities and mis-prints to escape their liability during claims. The negative experiences of delayed claims, non-transparent processes and late discovery of hidden clauses have fuelled this mistrust on the companies[26].

This vicious cycle further erodes the trust customers have on the insurance industry leading to failure of the principle of good faith. Customers believe that they are dealing with an entity

[23] Sen, A., Pickett, J., & Burns, L. R. (2014). The health insurance sector in India: History and opportunities. In L. R. Burns (Ed.), India's Healthcare Industry: Innovation in Delivery, Financing, and Manufacturing. Cambridge University Press.
[24] Narasimhan, H. et al. (2014). The best laid plans: Access to the Rajiv Aarogyasri community health insurance scheme of Andhra Pradesh. Health, Culture & Society, 6(1), 85-97.
[25] Mahal, A. (2002). Assessing private health insurance in India: Potential impacts and regulatory issues. Economic & Political Weekly, 37(6), 559-571.
[26] Mahal, A. (2002). Assessing private health insurance in India: Potential impacts and regulatory issues. Economic & Political Weekly, 37(6), 559-571.

 [ISSN 2581-5369]

which is less likely to be transparent and can misuse the data if provided correctly. As a result, the insurers act more stringently & suspiciously towards the insured while claims, thereby reinforcing district that the customers have initially. This mutual suspicion acts as an antithesis to the concept of utmost good faith which the law aims to promote[27].

VI. CONCLUSION

In the law of health and life insurance, the prinicple of utmost good faith remains in a very vital position. It forms the base for honest exhange of information for assessment of risks by the insurers. The traditional appraoch of its application is found to be untenable and inequitable in the modern indian market. But it is noteworthy that for the effective implementation of insurance system in India the utmost good faith principle is vital and it must be revamped rather than being abandoned. It must be changed from being a one side principle to become robust duty of disclosure, transparency and fairness for all parties.

Hoverer, the evolution can be witnessed in the indian laws by the introduction of amendments like that of 2015 to the section 45 of insurance act, with the inclusion of 3 year rule, highlighing a step forward towards protecting both the parties by protecting consumers and putting burden on the insurers. Judicial decisions has developed a pragmatic approach while upholding the disclosure necessity, increase scrutiny of conduct for the insurers and strict burden of proof for allowing repudiation of policies.

However, this legal evolution alone is not sufficient. It must be supported by combined efforts to address the deficiencies in the structures that undermine good faith in real practice. The path towards a more balanced and equitable application of the doctrine requires a multi-pronged approach consisting of:

A Context Sensitive Judicial Approach: The judiciary should continue to refine its interpretation of materiality and non-disclosure. Courts are uniquely positioned to Consider the context of a disclosure failure, distinguishing between a deliberate act of fraud intended to deceive and an omission resulting from a consumer's vulnerability, lack of understanding, or the misconduct by an agent. The principles laid down in cases like Manmohan Nanda should be strengthened & bolstered, holding insurers accountable for the actions of their representatives[28].

Enhanced Regulatory Oversight: The IRDAI must intensify its focus on curbing the pervasive

[27] Ranson, M. K. et al. (2007). Equitable utilisation of Indian community based health insurance scheme among its rural membership: Cluster randomized controlled trial. British Medical Journal, 334(7607), 1309.
[28] Thomas, K. T., & Vel, R. S. (2011). Private Health Insurance in India: Evaluating Emerging Business Models. Journal of Health Management, 13(4), 401-417.

 [ISSN 2581-5369]

concern of mis-selling by insurance agents. This requires stricter enforcement of the code of conduct, reforms to agent commission structures to align their incentives with consumer interests, and a mandate for the simplification of policy language. Policy documents must be made clear, transparent, and comprehensible to the average citizen, not just to legal experts.

Greater Insurer Responsibility: Insurance companies must accept greater responsibility in order to foster a culture of trust among the consumers. This involves investing in technology and in processes that simplify the application process, provide better training and ensure monitoring of their agents, and designing products that are not only financially viable but also fair and accessible. The duty of good faith must be embedded in their corporate ethos, from product design and sales to claims settlement.

Ultimately, the goal is to rebalance the scales. The doctrine of utmost good faith must be applied in a manner that acknowledges the realities of the Indian market. It should serve the original purpose that is to cultivate a transparent, equitable, and trustworthy relationship that simultaneously protects the financial stability of insurers and, most importantly, safeguards the right to financial security of policyholders in their time of greatest need.

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