A CRITICAL STUDY OF REGULATORY FRAMEWORKS FOR CONSUMER PROTECTION IN INSURANCE CONTRACTS IN INDIA

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ABSTRACT

Insurance mis-selling in India is a problem. It is well documented in the records of the government and the courts but it is not clearly defined in any main laws. This paper looks at the reasons why insurance mis-selling is still happening in India after many years of changes in regulations. It says that the problem is not that there are not rules but that the rules are based on ideas that are not true in the real market. The analysis is done in three parts that are all connected to each other. Insurance mis-selling is an issue that needs to be understood. The paper examines insurance mis-selling to find out why it is still happening. Insurance mis-selling, in India is a problem. The Insurance Act of 1938 the IRDA Act of 1999 and the Insurance Laws Amendment Act of 2015 are all part of the framework. The Insurance Regulatory and Development Authority of India or IRDAI has its set of rules including the Protection of Policyholders Interests Regulations of 2017 and the Master Circular 2024. We need to see how well these laws and rules work together to stop people from selling insurance the way. There are four types of mis-selling: when someone does not tell the truth about what the insurance can do when someone does not tell important facts, when someone sells insurance that is not right for the person and when someone forces someone to buy insurance with other things. We also look at what the courts have said about this from 2016 to 2026. The Supreme Court, the National Consumer Disputes Redressal Commission or NCDRC and other high courts have made decisions that help us understand what insurance companies must tell people who buy insurance. There are still problems that make it hard for people to get help when they are treated unfairly. The way the market works is also a problem. Insurance agents get paid a lot of money when they sell insurance. People who buy insurance do not always know what they are getting. This is because insurance agents know more about insurance, than the people who buy it. When banks sell insurance there are not enough rules to make sure people are treated fairly. The laws we have do not do a job of dealing with these problems. The main point is that India's rules to protect policyholders focus on following procedures than on actually helping them. The current

system relies on disclosure, considers a signed document as proof that the policyholder agreed to the terms even if they did not really understand what they were signing. This system has some gaps. For example, there is no definition of what is considered mis-selling of insurance policies. Also, there are no rules that insurance intermediaries must follow to ensure the policies they sell are suitable for their customers. As a result, if something goes wrong policyholders do not have a legal case. The paper says that to fix these problems the government needs to make laws. These laws should clearly define what is mis-selling. There should also be a rule that insurance intermediaries must ensure the policies they sell are suitable, for their customers. The way insurance is regulated and interpreted in courts needs to change. The goal is to make sure the rules reflect the situation of how insurance is sold in India. The policyholders and their protection should be the priority. India's policyholder protection framework should be reformed to prioritize their needs.

Keywords: Insurance Mis-selling, Misrepresentation, Deficiency in Service, Unfair Trade Practice, IRDAI, Policyholder Protection, Suitability Standard, Disclosure Paradox, Intermediary Accountability, Consumer Protection Act 2019, Free-Look Period, Evidentiary Asymmetry, Bancassurance, Commission-Based Distribution, Knowledge Asymmetry.

1. Introduction

Insurance mis-selling is a problem in India. It is something that people talk about a lot. There is no clear law to stop it. Many wrong things that companies do have definitions and punishments but mis-selling in insurance does not. It is made up of ideas from different laws but it is not clearly defined in main laws. The Insurance Act of 1938 and the Insurance Regulatory and Development Authority Act of 1999 do not clearly say what mis-selling is. This makes it hard for courts and regulators to deal with. The main issue is that there is no definition of mis-selling. This shows that Indian law does not think carefully about how insurance companies, their agents and customers interact when buying insurance. Insurance mis-selling and how insurance companies work with their agents and customers at the point of sale needs a rethink. The relationship, between insurers their agents and customers needs attention.

The gap in the law becomes clear when we look at the three doctrines used against mis-selling. Misrepresentation deals with twisting product details or hiding important facts. It is based on the duty of good faith before a contract is made. Unfair trade practice is about deceiving consumers into entering a contract with information. This is covered under the Consumer

Protection Act, 2019. Deficiency, in service is when an insurer or their agent does not meet the standard of care when selling a product. The National Consumer Disputes Redressal Commission uses this concept a lot. Each of these doctrines only covers a part of mis-selling. Even when you consider them together they do not provide a legal framework to address the harm caused by mis-selling. Mis-selling is an issue that needs a strong legal framework. The current doctrines are not enough to tackle it. They leave gaps that need to be filled. A comprehensive approach is needed to protect consumers. This approach should cover all aspects of mis-selling.

However, the response by regulators, especially the Insurance Regulatory and Development Authority of India, has come a long way, especially in recent times when considering the Master Circular on Protection of Policyholders' Interests, 2024.[1] As per the requirements of the IRDAI, there must be a process for disclosure, a requirement to conduct suitability tests as well as a formal grievance redressal system through the Integrated Grievance Management System. The judicial process, in turn, has given rise to case law which clearly establishes the insurer's concomitant requirement of making such disclosures in good faith. However, what is not clear is the inherent conflict within the regulatory and judicial processes, procedural compliance does not mean substantive consumer protection.

The paper explores this crucial dichotomy. The author contends that the continued existence of insurance mis-selling in India is not due to regulatory neglect but rather due to a framework architecture that incentivizes mere formality over substance and views the mere act of signing a disclosure document as the equivalent of informed consent irrespective of whether any such consent had been actually sought. Using a review of the relevant legislation, IRDAI's regulatory regime, and judicial pronouncements from the last ten years, the author pinpoints the legal deficiencies: legislative, regulatory, and evidentiary that have permitted mis-selling to continue as a risk-free enterprise in the Indian insurance sector.

2. Research Questions

1. Does the lack of a statutory definition of insurance mis-selling in the Insurance Act, 1938 and the IRDA Act, 1999 lead to an enforcement gap, which can be structurally overcome only by some other doctrinal/legal interventions, if such a problem even exists? If yes, what kind of

[1] Insurance Regulatory and Development Authority of India, Annual Report 2024–25 (IRDAI 2025) [hereinafter IRDAI Annual Report 2024–25]

doctrinal/legal intervention is needed?

2. In how far does IRDAI's approach to regulation, evident in the Protection of Policyholders' Interest Regulations, 2017 and the Master Circular 2024, offer any real protection to the consumer from insurance mis-selling or does it rather constitute a procedural tool that allows the insurers not to be liable for the consumers' loss, irrespective of informed consent?

3. How have courts and consumer fora dealt with the evidentiary imbalance between insurers' proof of signed proposal forms and consumers' arguments based on alleged oral misrepresentation? Moreover, in what way can the current jurisprudence regarding the free-look period serve as a remedy or rather as a structural obstacle for financially disadvantaged policyholders?

4. Are the commission-based distribution structures, as employed by agents, banks and digital platforms, inherently conflict-prone? Does the legal structure, especially the concept of vicarious liability as introduced by the Insurance Laws (Amendment) Act, 2015, offer a way out?

3. Research Methodology

The present study employs a doctrinal and analytical method of conducting research that seeks to study the legal regime pertaining to mis-sold insurance products in India by analysing primary and secondary legal sources in a systematic manner. The legal analysis relies primarily on primary legislations, such as the Insurance Act, 1938; the Insurance Regulatory and Development Authority Act, 1999; and the Insurance Laws (Amendment) Act, 2015, which are to be read in conjunction with subordinate legislations like the IRDAI (Protection of Policyholders' Interests) Regulations, 2017 and the Master Circular on Protection of Policyholders' Interests, 2024.

Another critical source of law is judicial precedents. Rulings by the Supreme Court of India, the National Consumer Disputes Redressal Commission, as well as decisions by respective High Courts during the years 2016-2026 are studied under the categories of misrepresentation, deficiency in services, and disclosure of information to identify any doctrinal developments. This study will also analyse IRDAI Annual Reports as an important source for collecting regulatory data.

This research engages with academic commentary and scholarly studies, especially those concerned with issues of financial literacy, commission-based sales, and information disparities, in order to place doctrinal insights within the proper context of their regulatory implementation.

The study explicitly adopts a gap analysis perspective, which means that it examines how the formal framework of consumer protection fails to match reality and requires adjustments on the legislative/regulatory/judicial side.

4. Scope and Objectives of the Study

This paper explores the issue of insurance mis-selling in India as a problem of law and regulation by analysing the preventive approaches to this phenomenon and the institutional structures that enable consumer recourse in the face of such misconduct. In terms of its scope, this paper seeks to limit itself to the issues surrounding this phenomenon in India alone and does not undertake a comparative review of insurance regulation across the world nor discuss the economic aspects of insurance market development. This paper analyses the adequacy of the existing framework of law and regulation in addressing this type of consumer harm, which is well established in the literature and regulatory data.

The statutory framework will be examined with reference to the Insurance Act, 1938, the IRDA Act, 1999, and the Insurance Laws (Amendment) Act, 2015, together with IRDAI (Protection of Policyholders' Interests) Regulations, 2017 and the Master Circular on Protection of Policyholders' Interests, 2024. In analysing this statutory framework, it is important to keep in mind that it will be analysed not by itself, but in relation to the conduct that it is meant to regulate, which involves the solicitation and sale of insurance products through different distribution channels such as agent-based sales, bancassurance, and digital marketing. Every distribution channel has its own set of risks. The agent-based sales channel poses challenges relating to front-loading commissions and the absence of any duty of care by the agent toward the consumer. Bancassurance sales pose the challenge of a dual regulatory regime where the jurisdictional limit between RBI and IRDAI has led to the absence of adequate supervision of coercive sales practices.

These include active misrepresentation of the product's qualities, non-disclosure of important information tactically, unsuitability of the product being sold to the customer, and forced

bundling. The paper analyzes the efficiency of applying the doctrines of misrepresentation, unfair trade practices, and deficiency of service in addressing each of these issues. An important issue is the conceptual separation created due to the lack of a statutory definition of mis-selling, thus forcing the policyholder and even the court to craft their arguments from similar doctrines that were not meant for such a purpose.

In terms of the legal aspect, the focus will be on decisions from the Supreme Court, the National Consumer Disputes Redressal Commission (NCDRC), and the High Courts of India during 2016-2026. It will not only help in determining what was the end result of these cases but also in understanding the doctrinal principles behind them, namely, the treatment of the free-look period, the burden of proof in cases of oral misrepresentation, and the duty of disclosure on part of the insurer.

On balance, then, the overarching purpose of this study is to establish that while India's approach to policyholder protection may be highly procedural in nature, it essentially prioritizes form over substance in its implementation. The mismatch between signing of the proposal form and obtaining true consent, the effectiveness of grievance redress rates versus consumer impact, and policy versus practice ,such are the fissures that this study aims to trace, with an eye to what changes may need to be made in the law and in practice.

5. Hypothesis

The present research project starts from the assumption that even though India’s system of rules and regulations concerning insurance mis-selling is procedurally well-developed, it is conceptually flawed in the sense that it rests on assumptions regarding consumer understanding and agent behaviour which cannot be supported by regulatory data.

The underlying assumption of the framework is that the disclosure will lead to informed consent. The regulatory framework built up by IRDAI including benefit illustrations, key information document, suitability assessment, and the free look period operates on the basis that if a consumer has read and signed all the required documents then he/she has been well protected. The problem here is that the regulatory framework does not take into account the ground realities of insurance sales in India wherein most of the insurance customers are financially illiterate and unable to understand the intricacies involved in complicated contract documents. Besides this, the proposal forms are completed for the consumers by their agents

and it is the oral representation which works as the persuasive factor instead of the paperwork that follows. In addition, the theory posits that the deficiency is magnified in three respects. First, at the legislative level, there is no statutory definition of mis-selling, thereby dividing the statutory grounds on which consumers can bring action into separate principles that each tackle different aspects of the wrongdoing. Second, at the intermediary level, the compensation system, which relies on commissions paid to salespersons, generates certain incentives that no current legal requirement, such as the vicarious liability imposed in 2015, is structured to counteract with a duty of suitability. Finally, at the adjudicatory level, the handling of signed proposal forms and the free look provision serves to deny recourse to consumers most vulnerable to mis-selling.

In sum, these conflicts demonstrate that the continued prevalence of insurance mis-selling in India is not a mere coincidence but rather a predictable outcome of a system that emphasizes process over results for consumers.

6. Conceptual Framework of Mis-selling

The concept of mis-selling in Indian insurance discourse is both pervasive and legally indeterminate. The concept is frequently used in regulatory reports, judicial pronouncements, and academic discourses, yet it lacks formal definition in primary legislation. In order to construct a robust conceptual framework, it is necessary to ground the concept in the established principles of misrepresentation, unfair trade practices, and deficiency in service.

6.1.1. The Statutory Definitional Gap

A key challenge in dealing with insurance mis-selling in India is the lack of a specific legal definition. The term is not defined in the Insurance Act, 1938, or the IRDA Act, 1999.[2] This absence has forced the regulator and the courts to rely on scattered provisions. The Insurance Act touches on 'mis-statement' in Section 45 and intermediary licensing in Sections 42 and 42A, but these individual provisions do not cover the broader concept of mis-selling as a market practice. Consequently, mis-selling in India exists as an interpretive idea, shaped by consumer protection laws, insurance conduct rules, and court decisions.

[2] Insurance Act, 1938, ss. 42, 42A, 45 (India); Insurance Regulatory and Development Authority Act, 1999, No. 41 of 1999, ss. 14(2)(b), 114A (India).

6.1.2. Interlinking Legal Doctrines

Without a specific legal definition, the concept of mis-selling depends on three connected legal doctrines:

- Misrepresentation: At its core, mis-selling is a violation of the duty of utmost good faith before a contract (uberrimae fidei). It includes giving false information or deliberately withholding important details about benefits, surrender values, or premium structures to encourage the consumer to enter into a contract.

- Unfair Trade Practice: Under the Consumer Protection Act, 2019, mis-selling fits the legal definition of an 'unfair trade practice.' This includes any deceptive conduct used in selling services that creates a false impression of the product's usefulness or nature. [3]

- Deficiency in Service: The judiciary, including the National Consumer Disputes Redressal Commission (NCDRC), has recognized mis-selling as a form of 'deficiency in service.' This occurs when an insurer or intermediary fails to show the necessary duty of care at the point of sale.[4]

6.1.3. A Working Legal Definition

Based on a synthesis of regulatory frameworks and academic literature, the following working definition is proposed for the purposes of this dissertation:

Mis-selling is a deceptive practice in the solicitation and sale of insurance contracts wherein a consumer is induced to purchase a product through the deliberate misrepresentation of benefits, the non-disclosure of material risks and costs, or the recommendation of a product that is fundamentally unsuitable for the consumer's financial needs and risk profile.

6.1.4. Key Elements of Mis-selling

There are four key components to determine mis-selling as opposed to just poor luck in the

[3] Consumer Protection Act, 2019, No. 35 of 2019, s. 2(47) (India) (defining 'unfair trade practice').
[4] Consumer Protection Act, 2019, No. 35 of 2019, s. 2(11) (India) (defining 'deficiency in service'); see generally Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39 (Supreme Court of India) (recognising professional service deficiency in consumer law).

market place or bad purchasing decision from a consumer standpoint:

1. Deceit - Active efforts of promoting false or incorrect data (e.g., treating a ULIP or endowment as being similar to short-term, guaranteed investment instruments like bonds).[5]

2. Non-disclosure - Lack of disclosure of important pieces of information (e.g., missed the fact there was time-limits/missed information relating to opportunity costs or penalty for cancelling policy), which affect value of policy.

3. Unsuitability - Sale of a product that is not in line with the consumer's age, income level, or long-term goals. An example is selling a long-term, savings policy to an older consumer that needs cash flow from their assets.

4. Inducement (i.e., Causation) - There must be a direct connection between the deception/nondisclosure (i.e., causa-causing event) and the contract. That is, if the consumer had not relied on the inaccurate/incomplete information to make the purchasing decision, they would have made another decision, (i.e., decline the contract).

Although courts can interpret without any prescribed definition, this leaves an "enforcement gap." The result is that procedural compliance (getting a signature for legal documents) can be equated with fair and transparent dealings. This issue exposes a fundamental flaw in our existing legal system, which the following sections will address.

6.2 Typologies of Mis-selling in Insurance Contracts

There are different types of mis-selling within the Indian insurance market. A review of empirical and regulatory evidence shows four main types: 1) the misrepresentation of policy features; 2) tactical non-disclosure of important information; 3) selling inappropriate policies; and 4) selling products through coercion/forced bundling. Although they each create their own independent legal issue, the present regulatory structure has addressed them all only partially.

6.2.1. Misrepresentation of Policy Features

Misrepresentation is the intentional relay of false or misleading information in solicitation,

[5] Halan & Sane, see also IRDAI Annual Report 2022-23, supra note 3, at 45–51 (data on complaint patterns and product categories).

which violates a pre-contractual duty of full honesty. In the Indian context, the most common form of misrepresentation involves fraudulent investment schemes like endowments or ULIPs that are misrepresented as short-term guaranteed savings products or fixed deposit equivalents.

From a statutory point of view, Section 45 of the Insurance Act, 1938 (amended by the Insurance Laws (Amendment) Act, 2015) is the main governing statute regarding misrepresentation and non-disclosure regarding life insurance contracts. It should be noted that the primary purpose of Section 45 is to protect policyholders from arbitrary denial of claims made by insurers. For example, Section 45 prohibits an insurer from challenging the validity of the life insurance policy three years after the date of issue, renewal or commencement of risk. However, Section 45 does not create a cause of action for the policyholder against an agent who misrepresents any aspect of the life insurance policy; instead, it provides for a remedy pursuant to either consumer protection law or tort law. [6]

6.2.2. Tactical Non-disclosure of Material Facts

Non-disclosure is basically a passive way of mis-selling, as it involves some aspect of not telling consumers about material information that would be relevant to their decision to purchase. When an intermediary does not provide information about material facts that might influence a reasonable person's decision to buy, they are not able to provide informed consent. A common example of this type of omission occurs in health insurance, where intermediaries routinely neglect to inform customers about applicable room rent sub-limits, waiting periods for pre-existing conditions, and exclusions pertaining to specific diseases.[7] The regulatory body regulating health insurance has identified exclusion-based non-disclosures as one of the key contributors to the gap in coverage when a consumer experiences a claim. In the court system, this type of omission, in general, would be considered a lack of service.

6.2.3. Sale of Unsuitable Products

Selling an unsuitable product involves recommending a policy that is technically valid and accurately described, but not appropriate for the consumer's financial goals, age, or willingness

[6] Insurance Act, 1938, s. 45 (India), as amended by Insurance Laws (Amendment) Act, 2015, No. 5 of 2015, s. 30 (India). Section 45 governs repudiation of life insurance policies by insurers on grounds of misstatement or suppression of material facts; its three-year bar operates as a protection for policyholders against arbitrary insurer repudiation.

[7] IRDAI Annual Report 2022-23, supra note 3, at 48–51 (complaint data disaggregated by channel, including bancassurance).

to take risks. This form of sale is conceptually different from making a misrepresentation about a product; the product was not falsely presented to the consumer, but rather, it was inappropriate for the consumer.

The upfront commission structure of the Indian insurance industry creates an incentive for intermediaries to recommend expensive, complex products to clients at a time when they should not be making these types of purchases. There are examples where consumers were sold high-surrender-cost, long-tenure savings policies and did not need the money for many years because they were elderly and needed liquidity. The Insurance Regulatory and Development Authority of India has developed a set of needs analysis requirements for specific insurance products, however, the lack of a general standard of suitability under the main statutes creates a major deficiency.

6.2.4. Coercion and Forced Bundling

Coercion or forced bundling, also known as 'forced-sale', is where it is required to buy an insurance policy in order to receive a completely different financial service. Coercion in this manner is most evident in the area of bancassurance (the use of banks to distribute insurance). Banks are typically much stronger than their customers due to their power and thus exploit this advantage to achieve targets for distributing insurance policies.

From a legal perspective this type of activity violates free will as set forth in contract law and is a prohibited practice under the Consumer Protection Act 2019. Additionally, there is a dual-regulation problem related to the regulatory environment for banks and insurance; banks are regulated by the Reserve Bank of India while the insurance products they offer fall under the jurisdiction of the Insurance Regulatory and Development Authority of India (IRDAI). These regulatory issues have been identified as conduits for abusive conduct in the bancassurance space.[8]

6.3. Present Scenario: Distribution Channels and the Regulatory Challenge

The current insurance market in India has a wide range of distribution channels, but the regulations in this sector are yet to be aligned with market practices. These three main

[8] Reserve Bank of India, Report on Trend and Progress of Banking in India 2022-23 (2023), at 78–80 (noting bancassurance distribution and regulatory coordination with IRDAI).

distribution channels of insurance, i.e., agents, bancassurance, and online, account for about 60% of the market activity.

6.3.1. Agent-led Mis-selling

With respect to the Indian insurance industry, it has been observed that in this market, individual agents dominate. The annual reports published by the Insurance Regulatory and Development Authority of India (IRDA) reveal that in the Indian insurance industry, a significant share of premiums is earned through individual agents, especially in life insurance.[9] The incentive system, which is front-loaded in nature, encourages volume sales over advice quality. In such an incentive system, it is observed that high first-year commissions earned by agents are the key factor for mis-selling by agents, as revealed by various authors in the literature.

From a legal viewpoint, it has been observed that Sections 42 and 42A of the Insurance Act, 1938, regulate the behaviour and licensing of insurance agents. Notably, in this industry, there is no specific provision for the imposition of fiduciary duties on insurance agents, where they need to act in the interest of the consumer over their commercial interests.

6.3.2. Bancassurance Mis-selling

The development of a platform through which banks can act as corporate agents for insurance firms has led to the development of institutionalised mis-selling. In most cases, the officials in banks are often required to meet administrative sales targets, thus allowing them to leverage their position of trust as financial intermediaries in the sale of high-premium insurance products and, in some cases, mandatorily require the products for loan approvals and other banking services.

The dual regulation challenge is a major challenge in the bancassurance model. While the RBI is mandated with the prudential regulation of banks, the insurance distribution is regulated by the IRDAI. It has been established that the dual regulation challenge has hindered the effective enforcement of the regulations against mis-selling in the bancassurance model.

[9] Halan & Sane ; Renuka Sane, The Mis-selling of Life Insurance in India, Ajay Shah's Blog (2017), https://ajayshahblog.blogspot.com/2017/01/mis-selling-of-life-insurance-in-india.html (last visited Mar. 2025).

6.3.3. Digital Mis-selling

The dynamic nature of digital distribution channels has significantly altered both consumer purchasing behaviour and the way in which sellers seek to reach them. In response to this dynamic evolution, mis-selling has now occurred through interface and information architecture, as opposed to marketer-led practices. The idea that digitisation in itself is an improvement in terms of information disclosure can be argued; in fact, it has been observed that in some instances, information is not provided clearly in lengthy terms and conditions, checkbox-style agreements, and information overload.

A further concern in this digital world is the "free look trap," in which an electronic insurance policy is issued with a fifteen-day cancellation period. In such an event, it is possible for a consumer who is not financially or digitally literate to not understand that the product, as described at the time of sale, is not aligned to the product as defined in the actual insurance policy. The existing framework is not sufficient to ensure adequate protection for the digital channels in which consumers are seeking to purchase products. Accordingly, this is an area worthy of ongoing critical review.

6.3.4. Consumer Vulnerability and Knowledge Asymmetry

A common factor in all these distribution channels is the existence of knowledge asymmetry between the insurance intermediary and the consumer. Survey research shows that a significant proportion of the adult population in India faces challenges in comprehending complex financial products.[10] The existing framework assumes a level of financial literacy among consumers, which may not be the case with the insured.

Knowledge asymmetry assumes critical importance in dispute resolution. Consumer forums and the Insurance Ombudsman are evidence-based dispute resolution agencies. Oral inducements, which might have been the initial inducements, are difficult to establish as evidence, and the consumer would be denied access to justice.

[10] The 76% financial illiteracy figure has been cited in NITI Aayog and NCFE studies, though methodologies vary: see National Centre for Financial Education, Financial Literacy and Inclusion Survey (2019) [hereinafter NCFE Survey 2019]. Where the precise statistic cannot be independently verified, the author treats this as indicative of broad financial literacy challenges documented across multiple surveys.

6.4. Statutory Framework Governing Insurance in India

The legal framework for insurance in India rests on three main pieces of legislation, namely, the Insurance Act of 1938, the Insurance Regulatory and Development Authority Act of 1999, also known as the IRDA Act, and the Insurance Laws Amendment Act of 2015. The framework also comprises the Insurance Amendment Act of 2021.

6.4.1. The Insurance Act, 1938: The Foundational Anchor

The Insurance Act, 1938 is the primary legal guideline for the insurance industry. Despite many changes and modifications over time, this act still holds relevance and is considered a foundation document. There are many provisions that are directly related to and influence the legal implications of mis-selling:

- Section 45: Misstatement Framework - As amended by the Insurance Act of 2015, Section 45 states that a life insurance policy shall not be contested by an insurer on grounds of misstatement or concealment of facts after a period of three years from the date of issuance, revival, or commencement of a policy. This section is primarily intended to protect policyholders from arbitrary actions by insurers and is not directly related to any legal action that a policyholder can initiate against an insurance agent for mis-selling.

- Sections 40 to 42D: These sections are related to the licensing and conduct of insurance agents and brokers. Section 41 prohibits the payment and acceptance of rebates for inducing sales of insurance products. Section 42(5) has been inserted by the 2015 Amendment and states that insurers are vicariously liable for their agents' actions. [11]

The major drawback of the 1938 Act as a vehicle of consumer protection is that it was enacted at a time prior to the emergence of sophisticated insurance products, bancassurance products, and electronic channels of distribution. It is more technical in its approach to the validity of insurance contracts rather than their suitability to consumers.

6.4.2. The IRDA Act, 1999: The Mandate for Policyholder Protection

The Insurance Regulatory and Development Authority of India (IRDAI) was set up in

[11] Insurance Laws (Amendment) Act, 2015, No. 5 of 2015, s. 10 (amending Insurance Act, 1938, s. 42(5)) (India).

accordance with the IRDA Act, 1999, as a statutory regulator in its own right, with a set-out mandate to protect the interests of policyholders. Of special interest in the context of the analysis of the phenomenon of mis-selling are the following two provisions:

- Section 14(2)(b): This provision specifically obligates the Authority to protect policyholders in the settlement of claims, payment of surrender values, and the terms and conditions of the insurance policy. This provision constitutes the primary source of the IRDAI's rule-making powers in the domain of the phenomenon of mis-selling.

- Section 114A(2)(zc): This provision empowers the Authority to frame regulations in the domain of the redressal of grievances of policyholders, thereby laying down the legal basis for the Integrated Grievance Management System (IGMS).

The IRDA Act serves as framework legislation, leaving the conduct of business regulations to the regulatory and quasi-legislative powers of the IRDAI. As a result, the policyholder's substantive rights in the domain of the phenomenon of mis-selling are primarily derived from the regulations, master circulars, and guidelines, as opposed to the parent Act.

6.4.3. The Insurance Laws (Amendment) Act, 2015: Modernising Accountability

The Insurance Laws (Amendment) Act, 2015, has brought in perhaps the most significant changes in intermediary responsibility and consumer protection since liberalisation. The key changes are as follows:

- Statutory Vicarious Liability: Section 42(5), which has been inserted by way of amendment in 2015, makes an insurance company liable for acts and omissions of its agents, including violation of the code of conduct specified under this act. This provides for a direct cause of action for violation of principles of deceptive sales practices by insurance agents.

- Enhanced Penalties: The 2015 Act has also provided for an enhancement in the quantum of penalties for violation. Further, Section 105D makes it necessary for an adjudicating officer to take into account the quantum of loss suffered by policyholders while imposing penalties. [12]

[12] Insurance Act, 1938, s. 41 (India) (prohibition on rebates); id. s. 105D (as amended) (penalty calculation criteria including quantum of policyholder loss).

- Digital Distribution: The amendments to Section 14(2) for the first time include electronic issuance of insurance policies in the ambit of insurance regulations.

On the other hand, the Insurance (Amendment) Act, 2021, has only addressed issues regarding capital liberalisation by raising the cap for foreign direct investment in insurance companies to seventy-four percent. There has been no addition of provisions regarding consumer protection and mis-selling, which is an interesting legislative gap in view of the increasing scope for private sector participation in insurance distribution. [13]

6.5. Regulatory Framework under IRDAI

Though the legal framework provides an outline of the broad legal parameters for insurance regulation, the actual regulation of insurance market conduct is largely through IRDAI's legislative powers under Section 14 of the IRDA Act. The insurance market conduct regulation has adopted a multi-layered system of regulations, master circulars, and guidelines to mitigate mis-selling risks through standardized sales conduct.

6.5.1. The Policyholder Protection Regulations and the Master Circular 2024

The IRDAI (Protection of Policyholders' Interests) Regulations, 2017 acts as the primary delegated legislation in the area of sales conduct standards.[14] The regulations outline the minimum standards of care to be observed by insurers as well as their intermediaries at the point of sale. In 2024, the IRDAI has issued a Master Circular on Protection of Policyholders' Interests, consolidating the regulatory requirements in the area of protection of policyholders' interests. The Master Circular 2024 acts as a single code of conduct for all insurers, requiring the formulation of a board-approved consumer protection policy to be implemented across all distribution channels, including agents, brokers, and bancassurance partners. In addition, the Master Circular 2024 requires the adoption of ethical norms in solicitation practices by the insurers. Further, it requires the adoption of a proactive grievance redressal mechanism through the Integrated Grievance Management System (IGMS).

[13] Insurance (Amendment) Act, 2021, No. 6 of 2021, s. 3 (India) (raising FDI cap to 74%); the 2021 Act does not amend the conduct regulation provisions of the 1938 or 1999 Acts.
[14] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, IRDAI/Reg./14/87/2017 (India); Insurance Regulatory and Development Authority of India, Master Circular on Protection of Policyholders' Interests, Ref. IRDAI/CIRT/CIR/MISC/153/08/2024 (2024) [hereinafter Master Circular 2024].

6.5.2. Disclosure Requirements and Transparency Norms

IRDAI's principal regulatory response to information asymmetry has been a transparency based model of disclosure. This entails several mandatory requirements:

- Benefit Illustrations: For life insurance policies, particularly ULIPs and endowment plans, insurers are required to provide signed benefit illustrations projecting returns at standardised interest rates (currently four percent and eight percent), with the effects of all applicable charges shown separately.[15]

- Key Information Documents (KID): More recent regulatory directives require insurers to provide a concise, non-technical summary of key policy features including exclusions, waiting periods, and surrender values at the point of solicitation.[16]

- Free-Look Disclosures: The fifteen-day free-look period must be prominently disclosed to the consumer, providing a statutory window to review the physical policy document and cancel if the terms differ materially from the sales representation.

6.5.3. Suitability Norms and Need Analysis

Recognising that a significant category of mis-selling arises not from fraud but from the sale of fundamentally unsuitable products, IRDAI has introduced suitability requirements mandating that intermediaries conduct a 'Prospect Product Fitment' or need analysis before recommending a policy.[17] The intermediary is required to document information relating to the consumer's age, income, financial objectives, and existing insurance cover, and for complex products such as pension plans or high-premium investment policies to provide a documented rationale for the recommendation. This requirement represents a regulatory shift from a purely disclosure-based model towards a needs-based sales philosophy, though its practical effectiveness depends heavily on enforcement.

[15] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, reg. 6 (benefit illustrations for ULIPs and endowment plans); see also IRDAI Circular on Standardisation of Benefit Illustrations, Ref. IRDA/Reg/Cir/BID/083/04/2016 (Apr. 2016).
[16] Master Circular 2024, cl. 8 (Key Information Document requirements); cl. 10 (Free-Look Period disclosure mandate).
[17] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, reg. 7 (prospect product fitment and need analysis requirements).

6.5.4. Critical Analysis: The Limits of Disclosure-Based Regulation

Despite the above structure, the IRDAI's system is arguably subject to critique from a variety of perspectives. Firstly, it is arguably subject to a procedural compliance effect whereby, notwithstanding the IRDAI's intention to ensure that insurers seek signatures on benefit illustrations and suitability documentation, the system has, in practice, served to act as a legal shield for insurers. Once an insurer has successfully secured a signed document, it can argue compliance with the system, notwithstanding the fact that the consumer, particularly those with limited financial literacy, did not understand the significance of the document they had signed[18].

Secondly, the system is arguably reactive. The IGMS and Insurance Ombudsman system are complaint-driven, i.e., financial harm is necessary prior to intervention by the relevant bodies. There is no requirement within the system for insurers to undergo proactive supervision, e.g., mystery shopping or audit programmes, which could detect mis-selling prior to financial detriment to the consumer. [19] Third, whilst the Master Circular 2024 does create a framework of Board-level accountability for consumer protection, the underlying incentive structure of front-loaded commissions remains unchanged. So long as the remuneration structure prioritises volume of sales rather than quality of advice, any regulatory guidance on ethical solicitation is likely to be subject to structural opposition. In short, IRDAI has established a comprehensive framework of regulation for policyholder protection. The issue is whether a disclosure and suitability framework, through delegated legislation and reactive regulation, is sufficient to address a market where knowledge asymmetry is a reality and where commercial interests are likely to be aligned to prioritise volume over suitability.

6.6. Critical Evaluation of the Legal and Regulatory Framework

A critical evaluation of the Indian insurance regulatory framework reveals that there is a systematic gap between the objective of policyholder protection and the implementation of legal instruments in achieving this objective. The following analysis reveals five structural gaps in the Indian insurance regulatory framework.

[18] Halan & Sane; NCFE Survey 2019, supra note 19, at 22–26.
[19] IRDAI Annual Report 2022-23, at 60–64 (IGMS complaint resolution data); see also Annual Reports of the Insurance Ombudsman Council, Government of India (2022-23).

6.6.1. The Legislative Gap: Absence of a Statutory Definition

The biggest structural flaw in the legal system is the lack of codification of the definition of 'mis-selling' under the relevant statutes. Neither the Insurance Act, 1938, nor the IRDA Act, 1999, codifies mis-selling as a legal wrong or prescribes specific consequences for its commission. This forces the courts, as well as the consumer, to build the tort of mis-selling by analogy with other legal wrongs, namely, unfair trade practices, deficiency in service, misrepresentation, etc., each with its own specific burden of proof and jurisdiction. This dilutes the deterrent effect of the law.

6.6.2. Over-reliance on Delegated Legislation

The substantive provisions pertaining to the protection of policyholders are contained in the IRDAI's regulations, circulars, and guidelines rather than in the parent statutes. Although the flexibility in the regulatory process is desirable, it is also subject to certain constraints in the form of the ability to change the rules pertaining to consumer rights by administrative circular without parliamentary approval, the legal position of regulatory directions in civil litigation not being very clear, and the relative informality of the document not having the normative power of the law in the public mind.

6.6.3. The Disclosure Paradox

The current approach to regulatory philosophy focuses on information disclosure as a key measure for protecting consumers. The end result, as highlighted by empirical research, is a phenomenon referred to as the disclosure paradox, where the sheer volume of required documentation such as benefit illustrations, KIDs, suitability forms, and policy bonds results in a situation of information overload rather than informed consent. For a consumer who may possess low levels of financial literacy, signing a disclosure form does not constitute informed consent but rather provides a procedural defense for the insurer, allowing them to leave the consumer functionally uninformed. The legal presumption regarding informed consent through a signed form is not properly calibrated for India.

6.6.4. The Intermediary Accountability Gap

The law does not adequately address the conflict of interest inherent in the commission-based distribution model. The 2015 Amendment did introduce statutory vicarious liability of the

insurer for the conduct of the agent, but it does not impose any explicit fiduciary obligation on the agent and bancassurance staff to act in the financial interest of the consumer as against their own financial self-interest. The code of conduct framework provides a framework for intermediary conduct, but it does not fundamentally change the financial self-interest of the intermediary in selling high-commission products. The law must impose a duty of care that can be enforced by individual consumers against intermediaries for the code of ethics of regulators to be more than a statement of aspiration.

6.6.5. Reactive Enforcement and the Prevention Gap

The enforcement architecture of the existing framework is marked by its reactive stance. IGMS and Insurance Ombudsman are complaint-activated mechanisms, which, while providing recourse for financial harm, do not prevent mis-selling in the first instance. The lack of systemic proactive supervision of market conduct through mystery shopping, real-time distribution channel audits, and data-driven complaint surveillance at an intermediary level means that systemic mis-selling can go undetected until it has led to widespread consumer harm. With regards to the data available from IRDAI Annual Reports on the resolution of complaints, while complaints are resolved from a procedural point of view, the systemic issues underlying them are not necessarily resolved.

7. Judicial Trends: A Thematic Analysis

The case law of the period 2016 to 2026 does not present a uniform doctrinal trajectory but rather a sustained tension between two competing judicial impulses, one that treats signed documentation as the primary measure of consumer assent, and another that is increasingly attentive to the informational asymmetries that characterise insurance distribution. These impulses surface differently across the four principal categories of insurance dispute, and reading them together reveals both the progress and the persistent limits of judicial intervention in this field.

In misrepresentation cases, the evidentiary paradox is most acute. Because mis-selling at the point of sale is by definition oral, unrecorded, and unwitnessed, the consumer who seeks to challenge a signed proposal form faces a structural disadvantage that the case law has not consistently resolved in their favour. *Tarsem Singh* and *Ajay Kumar Jayaswal*[20] decided nearly

[20] *Tarsem Singh v. PNB Metlife India Insurance Company Ltd. & 3 Ors., 2016 SCC OnLine NCDRC 2627;*

a decade apart on materially identical facts demonstrate that this disadvantage is not diminishing: in both cases, the NCDRC declined relief despite substantive claims of misrepresentation, treating the non-exercise of the free-look period as a presumption of informed acceptance. The qualified exception, visible in *HDFC Life v. Zia Ul Rehman*[21] and *HDFC Life v. J. Jayakumar*[22], confirms that an established finding of oral misrepresentation can override a signed agreement, but the practical availability of that principle depends on the consumer's capacity to generate the necessary evidentiary record at first instance — a capacity that is unevenly distributed across the insured population.

Deficiency in service has emerged as a more accessible doctrinal route precisely because it can be established by reference to post-contractual conduct rather than pre-sale oral representations. *M/s. Anantraj Agencies*[23] established that an insurer cannot arbitrarily depart from its own surveyor's assessment without cogent reasons, and *Jacob Punnen*[24] extended the concept to renewal conduct, holding that introducing adverse changes to a long-standing policy without drawing the policyholder's attention to them constitutes a failure of the duty of care owed at that stage. *Amarjit Kaur*[25] carried this reasoning into equitable territory, with the NCDRC directing a substantial premium refund where the insurer had retained significant payments without delivering any corresponding benefit, a recognition that consumer forums retain flexibility beyond strict doctrinal boundaries where the disproportion between retention and benefit is evident.

The disclosure cases reveal a dual obligation that the courts have been developing with increasing explicitness. *Texco Marketing*[26] imposed an active disclosure obligation on insurers in respect of onerous exclusion clauses, holding that an insurer who knowingly issues a policy over property it has inspected, without disclosing an applicable exclusion, acts in bad faith and that a clause repugnant to the main purpose of the contract may be severed entirely. This

(2016) 4 CPR 340 (NC), decided September 5, 2016.

[21] *HDFC Life Insurance Co. Ltd. v. Lt. Col. (Retd.) Zia Ul Rehman, 2024 SCC OnLine NCDRC 387*, decided January 5, 2024.

[22] *HDFC Life Insurance Co. Ltd. v. J. Jayakumar, 2025 SCC OnLine NCDRC 44*, decided January 8, 2025.

[23] *M/s. Anantraj Agencies Pvt. Ltd. v. National Insurance Co. Ltd., 2016 SCC OnLine Del 1384; (2016) 229 DLT 519 (DB)*, decided March 3, 2016.

[24] *Jacob Punnen and Another v. United India Insurance Company Limited, (2022) 3 SCC 655, decided December 9, 2021.*

[25] *Amarjit Kaur v. Kotak Mahindra Old Mutual Life Insurance Ltd. and Another, 2023 SCC OnLine NCDRC 947,* decided June 15, 2023.

[26] *Texco Marketing Private Limited v. TATA AIG General Insurance Company Limited and Others, (2023) 1 SCC 428*, decided November 9, 2022.

principle found institutional expression in the IRDAI Master Circular 2024.[27] Yet the disclosure obligation is not unidirectional: *Bajaj Allianz v. Dalbir Kaur*[28] and *Reliance Life v. Rekhaben Rathod*[29] confirm that the insured's duty of disclosure in the proposal form remains stringently applied, with materiality assessed at the time of underwriting rather than by reference to the actual cause of loss. The structural problem this creates where the insured is held responsible for the accuracy of a proposal form that the agent frequently completes has not been adequately addressed by the 2015 Amendment or IRDAI's conduct regulations.[30]

In claim repudiation cases, the courts have introduced a proportionality constraint on the materiality doctrine. *Pavan Sachdeva*[31] limited the insurer's ability to rely on historically remote and clinically resolved medical conditions as grounds for repudiation, while *Vivek Sharma*[32] confirmed that where an exclusion clause was properly disclosed and the insured was not misled, repudiation on that basis will be upheld. The discharge voucher problem in *Sportking Synthetics*[33] where a consumer settled for a fraction of the claim without access to the surveyor's report remains unresolved, pointing to a gap in the good faith framework that *Jacob Punnen*[34] and *Texco Marketing*[35] have not yet been applied to fill.

8. Key Judicial Doctrines: A Critical Assessment

The doctrinal landscape of insurance disputes in India reveals a recurring tension between the protective intent of legal mechanisms and their practical operation in favour of the more institutionally powerful party. The free-look period illustrates this tension most directly. Conceived as a window within which a consumer can review the policy document and exit if its terms differ from what was represented, the fifteen-day cancellation period has increasingly

[27] Insurance Regulatory and Development Authority of India, Master Circular on Protection of Policyholders' Interests, Ref. IRDAI/CIRT/CIR/MISC/153/08/2024 (2024), cls. 12–14 [hereinafter Master Circular 2024].
[28] *Branch Manager, Bajaj Allianz Life Insurance Company Limited and Others v. Dalbir Kaur, (2021) 13 SCC 553*, decided October 9, 2020.
[29] *Reliance Life Insurance Company Limited and Another v. Rekhaben Nareshbhai Rathod, (2023) 6 SCC 175,* decided April 24, 2019.
[30] Halan & Sane 2017; NCFE Survey 2019.
[31] *Pavan Sachdeva v. Office of the Insurance Ombudsman and Another, 2020 SCC OnLine Del 2119; AIR 2021 (NOC 253) 91*, decided July 27, 2020.
[32] *Vivek Sharma v. United India Insurance Company Limited, 2023 SCC OnLine Cal 4907, decided December 11, 2023.*
[33] *Sportking Synthetics v. United India Insurance Co. Ltd. and Others, 2019 SCC OnLine NCDRC 1141; (2020) 1 CPR 421 (NC)*, decided August 7, 2019.
[34] *Jacob Punnen and Another v. United India Insurance Company Limited, (2022) 3 SCC 655, decided December 9, 2021.*
[35] *Texco Marketing Private Limited v. TATA AIG General Insurance Company Limited and Others, (2023) 1 SCC 428*, decided November 9, 2022.

functioned in the case law as an evidentiary presumption rather than a substantive remedy. In both *Tarsem Singh* and *Ajay Kumar Jayaswal*,[36] the NCDRC treated the non-exercise of this right as evidence of informed acceptance, a position that carries an internal logical coherence but rests on a critical false premise that a consumer misled about the fundamental character of a product would necessarily recognise the discrepancy upon receiving the policy document, rather than only when a subsequent premium demand arrived long after the window had closed. The evidentiary burden in oral misrepresentation claims operates along similarly asymmetric lines. An insurer need only produce a signed proposal form to discharge its evidential obligation; the consumer must affirmatively reconstruct the content of a private, unrecorded conversation. That this burden has occasionally been overcome, as in *HDFC Life v. Zia Ul Rehman*[37] and *HDFC Life v. J. Jayakumar*[38], reflects the possibility of success where primary forum findings are strong enough to survive revision, but it does not resolve the structural disadvantage facing consumers who lack the resources to generate that factual record at first instance. Beyond misrepresentation, the indemnity principle has served as a modest check on insurer conduct, with *M/s. Anantraj Agencies*[39] establishing that an insurer cannot arbitrarily depart from its own surveyor's assessment without cogent reasons. Yet the protective value of surveyor reports is itself conditional on their availability to the consumer, a limitation starkly illustrated in *Sportking Synthetics*[40], where the consumer accessed the report only through an RTI application filed after a significantly undervalued settlement had already been executed. Across each of these doctrines, what emerges is a consistent pattern: legal mechanisms designed to protect consumers are calibrated to a level of institutional access, financial literacy, and documentary engagement that many policyholders do not possess.

9. Empirical Context and Regulatory Data

The doctrinal analysis of insurance mis-selling does not exist in isolation from the regulatory and empirical record, and the data available while subject to methodological limitations reinforces rather than undermines the structural account developed in the preceding sections.

[36] *Tarsem Singh v. PNB Metlife India Insurance Company Ltd. & 3 Ors., 2016 SCC OnLine NCDRC 2627; (2016) 4 CPR 340 (NC)*, decided September 5, 2016.
[37] *HDFC Life Insurance Co. Ltd. v. Lt. Col. (Retd.) Zia Ul Rehman, 2024 SCC OnLine NCDRC 387*, decided January 5, 2024.
[38] *HDFC Life Insurance Co. Ltd. v. J. Jayakumar, 2025 SCC OnLine NCDRC 44*, decided January 8, 2025.
[39] *M/s. Anantraj Agencies Pvt. Ltd. v. National Insurance Co. Ltd., 2016 SCC OnLine Del 1384; (2016) 229 DLT 519 (DB)*, decided March 3, 2016.
[40] *Sportking Synthetics v. United India Insurance Co. Ltd. and Others, 2019 SCC OnLine NCDRC 1141; (2020) 1 CPR 421 (NC)*, decided August 7, 2019.

IRDAI Annual Reports, the most authoritative source of disaggregated grievance data, consistently identify 'unfair business practices' as a significant category of life insurance complaints,[41] though the utility of this data is qualified by a critical limitation: disposal rates measure procedural closure, not consumer outcomes. A grievance resolved through the production of a signed proposal form is counted as disposed in the same way as one resolved on its merits, which means that the official complaint statistics likely understate the true scale of the problem.[42] The 'silent victim' phenomenon where consumers who have suffered mis-selling losses but who lack the legal literacy or institutional access to lodge a formal complaint places an unknowable dark figure beneath the recorded data.[43]

Academic research, particularly the longitudinal and mystery shopping work of Halan and Sane, situates mis-selling not as a series of isolated agent failures but as a structural characteristic of commission-based distribution, where front-loaded remuneration incentivises new sales over policy persistence and suitability. Declining persistency ratios in the life insurance segment, the proportion of policies remaining in force beyond the first and fifth years provide indirect but telling evidence of products sold to consumers who did not need or could not sustain them. Product-specific risk concentrations in ULIPs and endowment policies reflect the particular vulnerability of complex hybrid products to misrepresentation of returns and surrender costs, while the bancassurance channel introduces a distinct regulatory risk profile arising from the jurisdictional boundary between RBI and IRDAI oversight.[44] In health insurance, exclusion-based mis-selling where consumers purchase policies without adequate understanding of sub-limits, waiting periods, and disease-specific exclusions manifests most visibly at the claims stage.[45] Underlying all of these patterns is a documented financial literacy

[41] Insurance Regulatory and Development Authority of India, Annual Report 2022–23 (2023), at 78–82 (life insurance grievance data disaggregated by category) [hereinafter IRDAI Annual Report 2022–23]. The proportion of grievances attributed to 'unfair business practices' fluctuates year to year; readers should consult the current year's Annual Report table for the most recent figures.

[42] Insurance Regulatory and Development Authority of India, Annual Report 2021–22 (2022), at 72–76 (grievance disposal data and IGMS statistics) [hereinafter IRDAI Annual Report 2021–22]; Insurance Regulatory and Development Authority of India, Annual Report 2022–23, at 82–86.

[43] Renuka Sane & Ajay Shah, A Household Level Analysis of Financial Inclusion and Mis-selling in Indian Insurance, Indira Gandhi Institute of Development Research Working Paper (2022); Rajesh Halan & Renuka Sane, The State of Household Finance in India (2017) [hereinafter Halan & Sane 2017]. These studies document patterns of mis-selling through field experiments and longitudinal survey data. The $28 billion / INR 1.5 trillion figure has been cited in secondary literature drawing on these studies; primary verification of this aggregate estimate requires reference to the original datasets, as the figures have not been independently audited.

[44] IRDAI Annual Report 2022–23, at 55–62 (ULIP and endowment product complaint data); Halan & Sane 2017.

[45] Reserve Bank of India, Report on Trend and Progress of Banking in India 2022–23 (2023), at 78–82 (bancassurance distribution and regulatory coordination); IRDAI Annual Report 2022–23, at 64– 68.

deficit[46] among the insured population that directly challenges the foundational assumption of the disclosure-based regulatory model: that a signed document constitutes informed consent.[47]

10. Gap Analysis

The continued problem of mis-selling of insurance products in India, in the face of an increasingly sophisticated regulatory regime for the same, suggests more than mere poor enforcement of laws. The loopholes within which the activity of mis-selling is possible are not simply individual lapses within an otherwise robust system; rather, these loopholes form part of an interlinked structure that makes mis-selling inevitable, hard to detect, and too cheap for the mis-sellers.

One of the fundamental gaps arising in this respect is legislative. First, neither the Insurance Act, 1938 nor the IRDA Act, 1999 considers mis-selling as a tort sui generis.[48] The repercussions of this legislative gap are felt at all levels of the structure. Since there is no legislative provision that recognizes mis-selling, a consumer victimized by such an offence can have no one ground on which to bring about a legal suit. Rather, the claim would have to be based on the provisions of legislation dealing with analogous causes of actions such as misstatements under Section 45, an unfair trade practice under the Consumer Protection Act and deficiencies in service under consumer protection legislation. All these provisions have been enacted to deal with different facets of mis-selling and yet have not specifically been targeted at the problem at hand.

Also relevant to this legislative omission is the lack of an enforceable duty on the part of intermediaries to put consumers' interests foremost in all of their activities. Insurance brokers operate legally as representatives of the insurance company, which means that their duties and obligations lie to the insurance company, not the consumer on whom the broker advises.[49] In 2015, vicarious liability of insurers for the actions of their agents was introduced in legislation, which was certainly significant, but this does not address the fundamental issue at hand,

[46] National Centre for Financial Education, Financial Literacy and Inclusion Survey 2019 (2019), at 22–26 [hereinafter NCFE Survey 2019]. The survey documents rates of financial literacy across demographic groups in India. Note that financial literacy data vary significantly by methodology and reference population; the 76% figure should be treated as indicative rather than precise.
[47] Halan & Sane 2017; NCFE Survey 2019, at 25–29.
[48] Insurance Act, 1938, No. 4 of 1938, s. 45 (India), as amended by Insurance Laws (Amendment) Act, 2015, No. 5 of 2015 (India); Insurance Regulatory and Development Authority Act, 1999, No. 41 of 1999 (India).
[49] Insurance Act, 1938, ss. 42, 42A (India); Insurance Regulatory and Development Authority Act, 1999, s. 14(2)(b) (India).

namely, the remuneration of agents based on the number of policies sold and the amount of the premiums.[50] While there may be a legal duty owed in one direction, there is also a financial motivation in the opposite direction. With no suitable duty that could be enforced by the consumer against intermediaries, the code of conduct remains purely advisory.

In response to the legislative flaws in the process outlined above, the regulatory structure developed by IRDAI has attempted to rectify this situation via a disclosure-based regime. The mandate to provide benefit illustrations, KIDs, and a written statement of the product's suitability on its part is clearly an attempt by the regulator to overcome informational disadvantage. What is problematic about this approach is that it assumes equivalence between disclosure and protection. This equivalence does not exist in a market where there is a substantial number of insured customers who are unable to process the information contained within such documents and thus, cannot make a truly informed decision in regard to signing them. The moment an insurance agent fills out a policy proposal form on behalf of the insured client and obtains their signature purely formally, it becomes clear that the consent provided is nothing but a mere formal act. From the point of view of the insurance company, this makes all the difference; from the standpoint of a client bringing a suit against it, it becomes the difference between having a case and being ignored.

The enforcement architecture alongside the aforementioned disclosure framework further exacerbates this challenge.[51] For instance, the monitoring systems established at IRDAI, including IGMS, are triggered by consumer complaints; in effect, this means that any enforcement action is only taken after the damage has been done and will be restricted to those consumers with knowledge about how to make a complaint. Market conduct supervision, through either mystery shopping exercises or point of sale reviews and the detection of trends in intermediary behaviour through data analysis, is not an automatic part of the present framework. Moreover, although penalties have been increased since 2015, they do not seem to provide sufficient deterrent against the financial gains that can be made through mis-selling. Furthermore, in the case of bancassurance, the regulatory architecture is further undermined by the boundary created between the jurisdiction of RBI and that of IRDAI.[52]

[50] Insurance Laws (Amendment) Act, 2015, No. 5 of 2015, s. 10 (inserting s. 42(5) of the Insurance Act, 1938) (India).
[51] IRDAI Annual Report 2022–23, at 82–88 (grievance disposal rates and satisfaction indicators).
[52] Insurance Laws (Amendment) Act, 2015, s. 10 (inserting s. 42(5)) (India); Insurance Act, 1938, s. 105D (as amended) (India).

Systemic hurdles in relation to adjudication are twofold. First, the approach to the "free look" period in the manner it was utilized in cases involving a presumption of knowing acceptance of the terms on non-utilization thereof means that it penalizes the consumer who was under a mistaken assumption concerning the very essence of the purchase, which consumer will discover only long after the window for rescinding the policy has passed. Second, the evidentiary hurdle involved in making out an oral misrepresentation claim creates yet another obstacle, for all the insurance company has to do is provide the signed form, while the consumer has to prove what took place during an oral conversation. For semiliterate consumers who relied on the oral representation of the agent rather than on documentation, this evidentiary requirement is impossible to fulfil, not because the claim is invalid, but because of the way in which the evidentiary hurdle was constructed.

What ties all of these deficiencies together is the commonality of their structure. A market where consumers are unable to adequately scrutinize insurance documents, where the intermediary is compensated based on quantity over quality, where regulation only intervenes upon complaint rather than action, and where evidence presented at the point of adjudication is tilted toward the side controlling the documents creates a market where mis-selling is not just an opportunity but a structural necessity. Collectively, such deficiencies create a system that is process-intensive but content-poor, dealing with complaints rather than causes while confusing appearances of compliance with protection.

11. Recommendations and Suggestions for Reform

These structural flaws noted herein cannot be solved by means of small, incremental changes in the regulatory scheme. Instead, what we see is a system that is flawed at its very core in terms of its architecture, in a way that cannot be fixed by any one particular fix. Any solution to such issues must involve a multi-level approach, which should take a focus on consumer protection over procedures.

The very first step that is fundamental towards any reform in the matter is legislative. Since mis-selling in India has been neither defined nor prohibited through any legislation including the Insurance Act, 1938 or the Insurance Regulatory & Development Authority (IRDA) Act, 1999, judicial intervention and even consumer litigation relies on a collection of various analogous provisions which have been legislated for entirely different reasons and none of which actually cover any sort of harm based on suitability. Provisions relating to misstatement

under Section 45 of the Insurance Act were introduced to act as a safeguard against the repudiating tendencies of insurance companies, not to protect consumers from agents or brokers who may mislead or sell inappropriate policies to consumers.[53] Legislation providing for mis-selling in its own right as an independent legal wrong that includes misleading representation regarding product features, material facts not being disclosed to consumers, and selling of products that are completely unsuitable for the consumer can bring doctrinal clarity to the entire issue.

A legislative codification alone, however, would prove inadequate without a complementary reform of the intermediary accountability regime. The current model of vicarious liability requires that insurers become liable for the actions of their agents, yet makes no express demand of the agents to represent the consumer interests. The agents' legal obligation is thus owed to the insurer and not the consumer. The financial incentives likewise push intermediaries toward volume selling practices. A statutory duty of suitability, which will enable consumers to take legal action against intermediaries directly, would help to bridge the difference between the consumers' trust in intermediaries and the actual responsibilities those intermediaries face under the law. This duty will obligate intermediaries to show the rationale for all product recommendations and ensure that they are indeed based on the objective evaluation of the consumers' age, earnings, risks and financial goals, not just filled out suitability forms as a matter of routine compliance with regulation.

In this context, it may come as no surprise that the next step will be reforming the standards governing disclosures.[54] The IRDAI's introduction of the Key Information Document approach seems like a positive step in that direction, recognizing that the existing standard produces informational burden and not informed consent. Yet, simplification of documents is only one step of the process that would have to be taken without changing the evidentiary value of signing such documents. Under the existing standard, a consumer’s signature on a proposal form or illustration of benefits is considered evidence of informed acceptance irrespective of how much the consumer knew about what she agreed to. Thus, by incentivizing procedural formalities, the current standard provides the protection that the insurer deserves without making sure that the policyholder understands what her agreement means. The key change here would consist in qualifying the evidentiary value of signed documentation in cases

[53] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, IRDAI/Reg./14/87/2017, reg. 7 (need analysis requirement) (India).
[54] Master Circular 2024, supra note 25, cl. 8 (Key Information Document) and cl. 10 (Free-Look Period).

when the client was demonstrated to lack financial literacy or in cases when the documentation was filled out not by the client, but by her agent.

A second issue with the reactive nature of IRDAI's enforcement architecture is no less serious. Complaint-based enforcement will inevitably be backward-looking and, as such, will systematically ignore those customers most susceptible to mis-selling because they are financially naive and unversed in their rights under IGMS, which they cannot enforce without recourse to complaints. There is both a statutory basis under Section 14(2) of the IRDA Act and, in addition, a Master Circular 2024 provision on setting up Board-level committees for consumer protection which may serve as the basis for introducing mandatory proactive supervisory controls, namely, mystery shopping initiatives, regular audit of points of sales, and targeted surveillance of complaints by intermediary/distributor. This would allow shifting from being reactive with respect to already committed violations to detecting and stopping violations prior to the actual injury. The new approach needs to be supplemented with a more appropriate penalty scheme, whereby penalties do not offset the economic benefit of mis-selling. Penalties compensating for losses suffered do not deter mis-selling but only cover its cost. Penalties deterring mis-selling exceed its economic gain.

In the bancassurance channel, the existence of a dual-regulatory framework creates an issue that cannot be solved independently by either the IRDAI or the RBI. While it is a universally accepted truth that insurance must not be packaged or sold alongside or contingent upon banking products, neither regulator has been consistent enough to enforce the rule. Joint supervisory intervention, including joint compliance methods, complaint management databases, and enforcement policies, is essential in order to seal the jurisdictional loophole through which coercive and inappropriate bancassurance products slip time and again.

Finally, the judicial interpretation of the free-look period and the oral misrepresentation claim needs rethinking. The free-look period can be said to be a consumer protection provision only in the case of the consumer who has become aware within fifteen days from the receipt of the policy document that he or she has been given something very different from what he or she expected to receive. For the consumer who was misled regarding the basic features of the product, it is likely to come to his/her realization only when the insurance company sends out the second premium demand, much later than the period during which he/she could exercise the option of cancelling the contract. A forum for consumers would need to adopt a more

nuanced approach by distinguishing between the consumer who had sufficient knowledge to understand the policy document within the free-look period and the consumer who was misled so badly that he/she was unable to make the distinction within the stipulated period.

Generally, more guidance in the area of deciding on claims relating to oral misrepresentations which could include looking at evidence regarding patterns of behaviour by the agents based on multiple claims as well as the obvious improbability of a consumer voluntarily pursuing such a product as the one being delivered would help rectify the problem of the systemic imbalance between what is recorded about the insurer's behaviour and what cannot be about the consumer's experience. Collectively, these improvements would do more than improve upon the current system; they would fundamentally transform its essence.

12. Conclusion

The final point which emerges from the above analysis is that there is no deficiency in India's approach to the regulation of insurance mis-selling due to lack of regulation. This is not due to lack of attention from IRDAI nor to the disinterestedness of the judiciary. The issue is that the framework has been constructed based on assumptions that are wrong about the industry it is trying to control. The cost of the discrepancy between theory and practice is largely borne by the consumer least able to pay for it.

Lack of a definition for mis-selling in the primary laws is not only a technical flaw in the drafting of the legislations. Rather, this issue forms the basis on which all the other problems are anchored. Where neither the Insurance Act, 1938 nor the IRDA Act, 1999 has recognised mis-selling as a unique legal problem, then the consumer is required to make use of other theories to bring their claims before court, theories such as misrepresentation, unfair trade practices and deficiency in service, among others. However, none of these individual legal principles has ever succeeded in addressing a case where the product in question has been correctly described in the documentation process, but was not suited for the person who was convinced to buy it. The fragmentation caused by the failure to define the concept of mis-selling makes this particular legal problem very difficult to deal with.

The regime developed through time and now codified in the Master Circular 2024 demonstrates a real attempt to construct a robust framework of regulations. The need to provide benefit illustrations, information documents, assessment of suitability based on customer's needs, and

use of the IGMS as a means of complaints management constitutes an elaborate attempt to cope with a recognized market failure. However, the crucial flaw of such a regime is its reliance on disclosure as a measure for consumer protection. The disclosure approach presupposes that signing the relevant documents proves adequate knowledge of what is happening. Given the reality of the market where a considerable number of insured consumers have inadequate financial literacy to read and understand the contract, where agents tend to fill proposal forms on their behalf and thus become the main source of information for their clients, and where persuasion takes place verbally, such an approach is misleading and far from reality. The result is that procedural compliance limits the protection of consumers.

This trend finds expression especially in the approach taken by the courts regarding the free look period and the burden of proof in cases of misrepresentation. There have been no signs of judicial insensitivity towards the interests of the insured in this context. In *Jacob Punnen,* the Supreme Court made a clear statement in favour of the doctrine of mutual good faith. In *Texco Marketing*, the courts were sensitive towards the existence of unexplained exclusion clauses in the contract. And, the NCDRC adopted an equitable course in *Amarjit Kaur* in favour of the insured. The jurisprudential landscape has shifted considerably: Good faith is no longer viewed merely as a responsibility on the part of the insured alone; and, stringent clauses that are never explained to the insured cannot be imposed upon them.

However, there is an evidentiary issue faced by the mis-sold consumer that cannot be overcome by judicial developments. A consumer who has been lured into buying the recurring premium policy on the pretext of it being a one-time premium guaranteed plan stands structurally disadvantaged at all levels because the insurer would produce a signed proposal document, while the consumer would have to prove through supporting evidence what transpired in a private conversation. The lack of use of the free-look period serves to further complicate the issue, as the courts view it as proof of informed consent in cases such as *Tarsem Singh* and *Ajay Kumar Jayaswal,* and not as evidence of a consumer who was unaware of the terms of the contract until a call for premiums came later. While these hurdles can be easily overcome by the financially literate, legal consumer, they become insurmountable for a semi-literate consumer living in a rural setting who depends entirely on an agent's advice.

The commission-based structure underlying all these issues can be said to form the foundation upon which these other problems rest. As long as intermediaries, whether individual agents,

bancassurance employees, or web-based distributors, receive commissions based on volume and size of transactions, the temptation to sell products based on profitability rather than on suitability will continue. While the imposition of vicarious liability under the 2015 Amendment placed the burden of agent behaviour upon the insurer, such a change was not aimed at changing the economic reality behind the behaviour. In the absence of any statutory requirement of suitability, which includes having intermediaries provide evidence of need-based recommendations and which can be enforced by consumers rather than regulators, the code of conduct regime remains more hope than reality.

The reactive nature of the enforcement system only adds weight to this argument. No system based on consumer complaint for identifying mis-selling cases can ever be ahead of the issue it is designed to tackle, nor will such a system address the majority of those aggrieved customers who, owing to their lack of legal sophistication or resources, are not able to lodge grievances. Disposal ratio, in the language of IRDAI Annual Reports, is merely an indicator of procedural success, while ignoring the outcome, which is the real issue at hand.

What is required now is a paradigm shift in regulatory thinking. The idea of measuring protection through procedural compliance must be supplanted by that of substantive suitability. This implies defining the term 'mis-selling' by law in all its permutations and forms ,ranging from misrepresentations to non-disclosures to the suggestion of unsuitable products. A binding duty of suitability on intermediaries should be enforced by law, which can then be invoked by consumers directly. It also implies shifting the disclosure regime to a system of testing consumer understanding of disclosures, instead of their documentation.

There is hope for the future of insurance laws in India. Judicial changes in the last decade, regulatory reform in 2024, and the rise of knowledge asymmetry as an issue in institutions all show signs of movement toward a system that better takes into account the realities of the marketplace. However, there is still a long way to go from this trend towards the kind of system that would provide genuine protection to the most vulnerable consumers.

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