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THE STRUCTURAL DEFICIT IN INDIAN POLICYHOLDER PROTECTION: JUDICIAL GAINS, INSTITUTIONAL FAILURES, AND THE REFORM IMPERATIVE

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ABSTRACT

The structure of policyholder protection in India can thus be considered a contradiction that warrants greater scrutiny in academic scholarship than it has been afforded to date. On the one hand, over the last thirty years, both the Supreme Court of India and the National Consumer Disputes Redressal Commission have built up an insurance jurisprudence that can truly be considered progressive: it ensures the imposition of fair dealing upon insurers, strict adherence to the principle of contra proferentem in favor of policyholders, and even the constitutional basis for the insurer's duty to settle claims expeditiously. However, the mechanisms through which such rights must be exercised in practice are severely under-resourced, fragmented, and systematically skewed against the policyholder, especially in areas such as rural areas, lower-income populations, and health insurance markets. In this paper, I contend that policyholder protection in India suffers from a structural deficit: there exists a significant gap between rights that exist on paper and those that are enforceable in practice. Those failures are: the chronically underfunded and jurisdictionally limited Insurance Ombudsman scheme; the absence of any class action or representative complaint mechanism for systemic insurance wrongs; the structural conflict of interest embedded in bancassurance mis-selling that regulatory disclosure obligations have failed to neutralise; and the regulatory vacuum created by the Digital Personal Data Protection Act, 2023 in the absence of insurance-sector-specific implementation guidance. The reform measures suggested in the paper are limited and constitutionally modest. These include amending the cap on the penalty through Section 102 of the Insurance Act, creating an efficient complaints mechanism, enforcing DPDP guidelines by IRDAI, and restructuring the bancassurance commission structure.

Keywords: Policyholder Protection, Insurance Ombudsman, Doctrine of Contra Proferentem,

Consumer Protection Act 2019, IRDAI, DPDP Act 2023, Mis-selling, Insurance Act 1938, Bancassurance, Health Insurance Disputes.

I. INTRODUCTION

The Indian insurance industry finds itself at a unique crossroad. While India is home to the world's fastest growing insurance market, it is also amongst the least penetrated countries in terms of insurance globally. Penetration levels in India remained at 3.7 per cent of GDP in 2023-24, which is significantly lower than the global average of around 7 per cent, a level which has not seen much improvement even after two decades of market liberalization.¹

However, the answer to this continuing disparity does not lie in the inadequacy of supply: there are currently twenty-four life insurers and thirty-four non-life insurers in India, among which are large international players, who can utilize the bancassurance route, microfinance firms, and the IRDAI-recognized Common Services Centers Network to distribute their products. The issue lies in the fact that consumers do not fully trust insurers. Consumers who do not believe their claims will be honoured, who have experienced or know someone who has experienced arbitrary repudiation or indefinite delay, or who have been sold products that bore no relationship to their actual needs, are rational in their reluctance to purchase insurance.

This trust deficit is not a product of any single failure. It is the accumulated consequence of four decades of regulatory evolution that has consistently prioritised market expansion over consumer protection, institutional architecture that has been chronically under-resourced relative to its mandate, and enforcement patterns that have imposed negligible costs on insurers who violate their consumer protection obligations. Partial solutions to these structural deficiencies have been found in the form of a strong and consumer-friendly judicial doctrine that the Supreme Court and the consumer courts have developed. However, judicial doctrine cannot be a panacea for lack of institutional framework since an individual in rural Maharashtra whose health insurance claim has unjustly been denied will find no means of reaching the Supreme Court.

Today, we face new problems in addition to the old ones. Digitalization of insurance distribution and settlement processes is changing the informational imbalances between insurer and insured, which existing regulations cannot handle. Algorithmic underwriting, AI-based claim settlement, and telematic behavioural pricing are practices used widely by Indian insurers. The Digital Personal Data Protection Act, 2023 creates a new legal architecture for

¹IRDAI, Annual Report 2023-24 (IRDAI, Hyderabad, 2024) at 12; Swiss Re Institute, World Insurance: The Great Pivot to Resilience, Sigma No. 4/2023, at 8.

data rights that intersects with insurance practice in ways that neither IRDAI nor the industry has adequately mapped.

This paper's central thesis is that India's policyholder protection framework exhibits a structural deficit in the precise sense: the failure to deliver effective protection is not attributable to isolated failures of enforcement or adjudication, but to design features of the institutional architecture itself that systematically disadvantage policyholders. The paper proceeds as follows. Section II examines the methodology. Section III provides a literature review. Section IV analyses the statutory framework. Section V examines IRDAI's regulatory obligations. Section VI undertakes a comprehensive analysis of judicial doctrine. Section VII critically examines the institutional mechanisms. Section VIII identifies the structural failures and emerging challenges. Section IX sets out targeted reform recommendations. Section X concludes.

II. RESEARCH METHODOLOGY

This research uses an analytical method that is multi-levelled in its approach to the examination of the legal framework relating to the rights of policyholders in India. The basic approach of analysis employed in this study is the doctrinal method; the paper identifies, analyses, and critically examines the principles of law in relation to the policyholders' rights in three levels of norms including the statutory level, regulatory level, and judicial level.

In analysing the case law, reliance has been made upon decisions of the Supreme Court of India, the National Consumer Disputes Redressal Commission, and State Consumer Commissions; emphasis has been laid upon such decisions that have developed or contributed to the further development of the doctrines that have a wider applicability than merely resting on their facts alone. In selecting the cases, doctrinal significance has been taken into consideration, inasmuch as the intention is to highlight the evolution of the main doctrines pertaining to insurance.

Regulatory analysis involves studying the major pieces of legislation and the annual reports of IRDAI along with enforcement actions based on data from open sources regarding the difference between regulatory requirement and practical implementation. Secondary analysis will involve the secondary literature on the subject of the enforcement powers of IRDAI and the working papers of the National Institute of Public Finance and Policy. Law Commission reports, parliamentary committee remarks, and the data on complaints at IRDAI will also be included in the empirical study of what could have been a purely doctrinal exercise.

III. LITERATURE REVIEW

The academic work dealing with insurance regulation in India is fairly extensive but not well-connected, and the scholarly works analysing policyholder protection as a systematic issue as opposed to an area of law falling within the scope of contract law doctrine are few. The most methodologically robust contribution in this field can be attributed to a working paper written by Renuka Sane, which analyses the IRDAI's record in enforcing insurance regulations in India and provides valuable quantitative data on penalty enforcement and the levels of those penalties, which become the empirical backbone for the institutional critique presented here.²

The study of mis-selling by Shail Bhagat in the field of life insurance is the best theoretical study available for bancassurance issues, covering types of mis-selling and the effectiveness of measures taken against it. Several relevant studies have been carried out in the IIMB Management Review in the context of insurance market development and consumer behaviour in India. These studies tend to concentrate more on problems on the demand side of market expansion than on supply-side issues.³

The body of consumer law has also paid greater attention to the rights of the policyholders. The book authored by Avtar Singh on consumer protection laws in India forms the backbone of the discussion on Consumer Protection Act, 2019 in the context of insurance disputes.⁴

International comparative studies have contributed significant research into the development of insurance ombudsman arrangements as well as insurance law governance mechanisms. The works of Peter Cartwright on the topic of consumer protection in financial services contribute to a theoretical model for analysing the interaction of information asymmetries, contractual inequalities, and consumer protection regulations that could apply to the Indian insurance system. Malcolm Clarke's treatise on insurance law contributes to the common law doctrine by which Indian judgments are to be analysed.⁵

The main research gap that this paper intends to bridge is that no analysis has been carried out in respect of the structural aspect of policyholder protection failures in India. While the current literature recognizes the various shortcomings – failures of implementation, ombudsman mechanism, mis-selling, etc., as distinct issues that need to be separately handled, the author

²Renuka Sane, Consumer Protection in Indian Insurance: An Assessment of IRDAI's Enforcement Record, NIPFP Working Paper No. 301 (2020) at 18-20.

³Shail Bhagat, 'Mis-Selling in Life Insurance in India: Regulatory Responses and Remaining Challenges' (2021) 16 IIMB Management Review 112, 118-120.

⁴Avtar Singh, Consumer Protection Law in India (5th edn, Eastern Book Company, Lucknow, 2021) ch 8.

⁵Peter Cartwright, Consumer Protection and the Criminal Law (Cambridge University Press, Cambridge, 2001) ch 2; Malcolm Clarke, The Law of Insurance Contracts (6th edn, Informa Law, London, 2009).

feels that these are all linked to a structural issue, which should be recognized first for effective handling.

IV. THE STATUTORY FRAMEWORK

A. The Insurance Act, 1938

The Insurance Act of 1938 came into force in a time when India was still under colonial rule and was intended to bring some semblance of regulation to the insurance industry, which had existed in India for more than a hundred years with minimal regulation. The consumer protections in the act were quite progressive at the time it was created. Three provisions deserve particular attention.

Under Section 45 of the Insurance Act, there is a two-year incontestability clause, meaning that an insurance company cannot refuse to pay out claims for more than two years unless they can prove that the proposer gave false information through their proposal form. This clause was inserted into the statute specifically because of the practice of insurance companies refusing to pay claims based on trivial non-disclosures in the proposal forms. The Supreme Court of India clarified this clause in *Satwant Kaur Sandhu vs. New India Assurance Co. Ltd.* and later cases that, in order to repudiate, the company needs to show both the importance of the non-disclosed fact and the proposer's knowledge of it.⁶

Section 39 of the Act provides for the nomination of beneficiaries by life insurance policyholders, a clause that carries more weight than mere legality. In a legal system in which the succession rights of married women and joint family members are governed by complex personal law rules, the ability to designate a nominee who receives direct payment outside the succession framework provides a practically important protection for policyholders seeking to ensure that the insurance benefit reaches its intended recipient.

Section 64VB prohibits the assumption of risk before premium payment, providing a structural protection against coverage disputes on payment grounds. The Act's enforcement provisions, concentrated in Sections 102 and 103, are however the critical structural weakness: the penalty ceiling of Rs. 25 lakh per violation, unchanged since the Act's original enactment, is today negligible relative to the premium income of major insurers and creates no meaningful deterrent against non-compliance.⁷

B. The Consumer Protection Act, 2019

⁶*Satwant Kaur Sandhu v. New India Assurance Co. Ltd.*, (2009) 8 SCC 316.

⁷Insurance Act, 1938, s. 102; Sane (n 2) at 22.

The Consumer Protection Act, 2019 is the second statutory support of the policyholder protection regime, and in several ways, the more significant one for individual policyholders. By classifying insurance service deficiencies as actionable 'deficiency in service' within the meaning of Section 2(11) of the Act, the legislation brought insurance disputes within the jurisdiction of a forum hierarchy District Commissions, State Commissions, and the National Commission that is nominally accessible to all consumers without the cost barriers of civil litigation.⁸

The 2019 Act introduced several significant enhancements over its predecessor. The establishment of the Central Consumer Protection Authority created an administrative body with powers to issue safety notices and directions applicable to entire product categories, including insurance products, without the need for individual adjudication. The CCPA's investigative powers, which include the authority to conduct inquiries into systemic unfair trade practices, represent a potentially powerful tool for addressing the kind of industry-wide conduct that individual policyholder litigation cannot effectively remedy. As of the date of writing, however, the CCPA has not issued a single sector-wide direction to insurance companies or taken any *Suo motu* cognisance of systemic insurance mis-selling, a gap that represents a significant institutional underutilisation of a powerful statutory tool.

The practical limitations of the consumer forum system for insurance disputes are well documented. Average disposal times at the National Commission have consistently exceeded three years, a period that imposes severe financial hardship on claimants whose insurance proceeds represent the primary source of recovery from a health crisis or property loss. Most significantly, the absence of any class action or representative complaint mechanism means that systemic wrongs affecting large numbers of policyholders must be litigated individually, generating no deterrent proportionate to the scale of the underlying conduct.

V. IRDAI'S REGULATORY FRAMEWORK FOR CONSUMER PROTECTION

The Insurance Regulatory and Development Authority of India (IRDAI) came into existence as the independent regulator for the insurance industry as per the Insurance Regulatory and Development Authority Act, 1999, and had its scope defined by an explicit inclusion of the protection of policyholder's interest within the statute. The most exhaustive set of regulations related to this protection are the IRDAI (Protection of Policyholders' Interest and Allied Matters

⁸Consumer Protection Act, 2019, ss. 2(11), 34, 47, 58.

of Insurers) Regulations, 2017.⁹

The 2017 Regulations impose a series of pre-contract obligations designed to address the information asymmetry between insurer and policyholder at the point of sale. Insurers have an obligation to produce a Key Features Document in clear English prior to issuing any proposal letter, which would highlight all the material details contained in the policy, as well as situations where the claim could be rejected and the proposer's rights. The policyholder is entitled to a "free-look period" of fifteen days, or thirty days when it comes to policies issued via distance marketing, during which the policy can be cancelled without penalties. Studies of insurance consumer behaviour in India consistently indicate that the Key Features Document, though formally provided, is rarely read or understood by policyholders who are in the middle of a sales interaction and are relying on the intermediary's representations.¹⁰

IRDAI's enforcement record on consumer protection obligations reveals a structural pattern of regulatory forbearance that cannot be explained solely by resource constraints. IRDAI has the legal authority to impose penalties up to the Section 102 ceiling, to cancel or suspend licences, and to issue directions requiring immediate remediation. Its actual enforcement actions, as Sanne's analysis demonstrates, are concentrated in licensing and solvency violations, while substantive consumer protection failures generate only low-penalty advisory actions. The consequence is a regulatory dynamic in which the cost of non-compliance with consumer protection obligations is below the cost of compliance for commercially motivated insurers.¹¹

VI. THE JUDICIAL FRAMEWORK

A. The Supreme Court's Insurance Jurisprudence

The Supreme Court's Insurance Doctrines

In terms of the Supreme Court's role in protecting the policyholders' interests, it can be stated that not only is this role doctrinal but it has also proved to be the most effective instrument for realizing individual rights in the Indian legal system. For more than three decades now, the Supreme Court of India has established a well-defined body of jurisprudence on the subject comprising of three key principles, namely, the *contra proferentem* doctrine, the utmost good faith principle, and the reasonable expectation doctrine. The importance of the Supreme Court's contribution to insurance law cannot be stressed enough since there was hardly any other

⁹IRDAI (Protection of Policyholders' Interests and Allied Matters of Insurers) Regulations, 2017.

¹⁰IRDAI, Annual Report 2022-23 (IRDAI, Hyderabad, 2023) at 67-72; Suresh Sadagopan, 'Insurance Mis-Selling: A Study of Consumer Awareness' (2019) 12 Indian Journal of Finance 35.

¹¹Sane (n 2) at 15-18.

recourse open to policyholders.

The case of LIC of India v. Consumer Education and Research Centre marked the first time that the Supreme Court laid out its fullest exposition of insurance as a public utility service with constitutional overtones in which the obligation on the part of the insurer to act with fairness and promptitude had to be based on Article 21 of the Constitution when it involved insurance in relation to life or health. The NCDRC and consumer forums have used this reasoning to justify more expansive readings of insurer obligations and more substantial awards of compensation for breach.¹²

The issue of duty of utmost good faith, in particular the duty to disclose before contract, was particularly handled in Satwant Kaur Sandhu vs New India Assurance Co. Ltd. The case dealt with the repudiation of a Mediclaim policy on the grounds of non-disclosure of the fact that the proposer suffered from renal problems prior to applying for the policy. Through the Court's judgment, a general rule was laid down; utmost good faith includes disclosing facts known by the proposer but it is the responsibility of the insurer to prove that such a fact is material and known by the proposer at the time of proposal. Such a burden of proof assumption carries particular significance for health policies, especially because proposers do not know about their medical problems before clinical diagnosis.¹³

The doctrine of contra proferentem has been most vigorously enforced in the context of insurance contracts. As held by the Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, an insurance company is not entitled to enforce the exclusion clause in order to exclude liability unless it has expressly brought the clause to the notice of the insured party at the time of the transaction. This decision establishes a positive requirement of communication on the part of the insurance company, which is much stronger than simply ensuring that the exclusion clause is included in the terms of the contract.¹⁴

The case of Modern Insulators Ltd. v. Oriental Insurance Co. Ltd. further developed this principle for application in industrial insurance policies such that not only did the application extend to consumer contracts but also that the sophistication of the insured was irrelevant if the insurance policy in question was a standard-form contract drafted by the insurer.¹⁵

The doctrine of reasonable expectations took shape in India through the decision in the case United India Insurance Co. Ltd. v. M.K.J. Corporation, where the court held that exclusion clauses, which would amount to defeating the very purpose of buying insurance, shall not have

¹²LIC of India v. Consumer Education and Research Centre, (1995) 5 SCC 482.

¹³Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316.

¹⁴Skandia Insurance Co. Ltd. v. Kokila Ben Chandravadan, (1987) 2 SCC 654.

¹⁵Modern Insulators Ltd. v. Oriental Insurance Co. Ltd., (2000) 2 SCC 734.

effect in a literal sense. This is an important doctrine in itself, and under this, even clear exclusion clauses will not operate to make insurance contracts illusory.¹⁶

The Supreme Court in *Om Prakash v. Reliance General Insurance Co. Ltd.* opined that the act of delay itself constitutes a distinct tortious act, irrespective of the compensation for which claim has been made being paid or not. In *National Insurance Co. Ltd. v. Pranay Sethi*, the Constitution Bench clarified the lingering question regarding the calculation of compensation in motor accident third party cases, paving the way for a standardized and policyholder-friendly method of calculating compensation that was otherwise plagued with forum-specific inconsistencies.¹⁷

B. NCDRC Jurisprudence

The National Consumer Disputes Redressal Commission has developed the most detailed body of insurance consumer protection adjudication in India. In *LIC of India v. Smt. Chanchal Sharma*, the Commission held that the repudiation of a death claim on suicide grounds within the statutory incontestability period, without establishing fraud, constitutes per se deficiency in service for which the insurer is liable to pay the full sum assured with interest. This decision directly addresses a common insurer practice of characterising ambiguous deaths as suicides in order to rely on the suicide exclusion.¹⁸

In addition, the Commission has started developing a jurisdiction for what may be termed systemic remedies, requiring insurers, in particular cases, to introduce a systemic mechanism for refunds for an entire product line or engage in systemic contact with all affected customers as a result of systemic mis-selling. This ingenious attempt on the part of the judiciary cannot be deemed sufficient compensation for the lack of a procedural device for class actions because it relies purely on chance that there will be a well-endowed individual case illuminating a systemic injustice, and its remedies have no binding effect for the other customers affected.

VII. INSTITUTIONAL MECHANISMS

A. The Insurance Ombudsman Scheme

Insurance Ombudsman Scheme, which is regulated by the Insurance Ombudsman Rules, 2017 amended in 2021, constitutes the key alternative dispute resolution mechanism for insurance customers. The 2021 amendments were made to correct some of the most criticized drawbacks

¹⁶*United India Insurance Co. Ltd. v. M.K.J. Corporation*, (1996) 6 SCC 428.

¹⁷*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680.

¹⁸*LIC of India v. Smt. Chanchal Sharma*, Revision Petition No. 1098 of 2010 (NCDRC, decided 2014).

in the scheme, such as increasing the monetary cap from Rs. 30 lakhs to Rs. 50 lakhs, and the scheme was extended to group insurance policyholders who had previously been entirely excluded despite being among the most frequent victims of insurance mis-conduct.¹⁹

However, the scheme's structural inadequacies remain severe. The network of seventeen Ombudsman offices serving a country of 1.4 billion people with 600 million insurance policyholders is self-evidently inadequate. The offices are perennially undermanned, and their pendency ratios have been increasing annually as per IRDAI Annual Reports, while the average time taken for disposal is way above the regulatory standard.²⁰

The exclusion from the ambit of disputes concerning insurance intermediaries, corporate agents, online portals, and insurance marketers results in a structural weakness that gains in relevance as the share of insurance products sold via intermediation increases. In cases where an insured person faces mis-selling of an insurance product by a relationship manager in a bank who operates as a corporate agent, the Ombudsman can exercise authority only regarding the claims process and cannot adjudicate upon the conduct of mis-selling. This structural flaw in the system, identified by Srivastava in her assessment of the mechanism, still remains unresolved.²¹

B. The Consumer Forum Hierarchy

The consumer forum system provides the alternative institutional pathway, nominally accessible to all policyholders with no monetary ceiling at the National Commission level. Its theoretical advantages over the Ombudsman scheme are real: binding remedies, punitive damages, and no cap on compensation. Its practical limitations are equally real. Average disposal times at the National Commission have consistently exceeded three years. The absence of any class action or representative complaint mechanism, despite the Law Commission's recommendation for such a mechanism in its 253rd Report, means that the consumer forum system cannot address systemic wrongs at a systemic level.²²

Whereas an insurer practices delay in settling claims from health insurance policies in order to create float gain through the duration of the settlement process, or where the bancassurance company teaches its relationship managers to mislead customers on the features of ULIPs, such

¹⁹IRDAI (Insurance Ombudsman) Rules, 2017, as amended by the Insurance Ombudsman (Amendment) Rules, 2021.

²⁰IRDAI, Annual Report 2023-24 (n 1) at 89-94 (ombudsman pendency data).

²¹A. Srivastava, 'The Insurance Ombudsman Scheme in India: An Evaluation' (2013) 48 Indian Journal of Public Administration 323, 329-332.

²²Law Commission of India, Report on Class Action Suits (Report No. 253, 2015).

loss is dispersed among thousands of individuals, each of whom does not consider the amount of damages sustained sufficient to warrant going to court.

VIII. STRUCTURAL FAILURES AND EMERGING CHALLENGES

A. The Enforcement Deficit

The most fundamental structural failure in India's policyholder protection framework is the inadequacy of IRDAI's enforcement machinery, and in particular the extraordinary mismatch between the penalty ceiling under Section 102 of the Insurance Act, 1938 and the commercial reality of the insurance sector it purports to regulate. The ceiling of Rs. 25 lakh per violation is a relic of the original Act's enactment in 1938. In the contemporary market, where the premium income of major life insurers exceeds Rs. 50,000 crores annually, a maximum penalty of Rs. 25 lakh is approximately equivalent to forty-five minutes of a major insurer's premium income. Regulatory enforcement theory is unambiguous on the consequence: where the expected cost of non-compliance is negligible, commercially motivated actors will systematically non-comply.²³

Sane's study of the enforcement activities of IRDAI finds that not only does the average penalty significantly lag behind this already insufficient ceiling but that the composition of enforcement measures focuses more on the minor issues of procedural compliance and licensing breaches as compared to the major problems of consumer exploitation, delayed insurance claims, mis-selling practices, and arbitrary rejection of claims which affect the policyholder base the most. This enforcement gap, therefore, indicates the nature of regulatory culture, which has historically placed emphasis on the growth of the market above all else.

B. Mis-Selling and the Bancassurance Problem

The bancassurance channel, through which insurance products are sold to bank customers through the bank's branch network and relationship management infrastructure, has become the dominant distribution channel for life insurance products in urban India. The fundamental conflict of interest arises from the commission structure that governs bank employees' remuneration for insurance sales. First-year commissions on life insurance products, particularly unit-linked insurance plans and traditional endowment products, typically represent 20 to 40 per cent of the first-year premium. This creates an incentive to sell the highest-commission product rather than the most suitable one, and to sell to customers who

²³Sane (n 2); IRDAI, Annual Report 2022-23 (n 10) at enforcement chapter.

may not need or understand the product but who are susceptible to the social and commercial pressure implicit in a recommendation from their relationship manager at their primary bank.²⁴ The rural insurance context amplifies these problems considerably. Insurance products sold through rural banking infrastructure are frequently sold to consumers who are financially unsophisticated, have limited prior experience of insurance, and face significant barriers to post-sale redress. The IRDAI Regulations' disclosure obligations, designed for an urban, literate consumer who can read and process a Key Features Document, are largely ineffective in this population. The consequence is a persistent pattern of rural policyholder harm that is under-documented in the academic literature and receives inadequate attention in IRDAI's enforcement priorities.

C. Health Insurance Disputes: A Growing Crisis

Health insurance has become the single largest and fastest-growing source of policyholder disputes in India, a trend accelerated sharply by the COVID-19 pandemic and the associated expansion of insurance claims under both individual and group health policies. Pre-existing disease repudiation remains the single largest category of health insurance complaint. Despite the Supreme Court's clear guidance in *Satwant Kaur Sandhu* on the burden of proof applicable to repudiation on non-disclosure grounds, insurers continue to repudiate claims on the basis that the policyholder failed to disclose conditions that had not been clinically diagnosed at the time of proposal or that were not subjectively material to the policyholder's decision to seek coverage. However, the IRDAI's standardisation norms on pre-existing disease in 2020 are a step in the right direction, even though there have been inconsistencies in its execution.²⁵

The cashless claims facility, intended to alleviate policyholders of any payment for hospitalization before filing for a reimbursement, inadvertently gives rise to yet another kind of systemic flaw in form of pre-authorization denial that takes place right from the time of hospitalization and is not resolvable via the complaint system. Here, it becomes pertinent to note that the third party administration in such cases results in further accountability diffusion.

D. The DPDP Act, 2023: A New Regulatory Frontier

The Digital Personal Data Protection Act, 2023 introduces a comprehensive framework for the governance of personal data that has significant, and as yet inadequately mapped, implications

²⁴RBI, Report of the Committee on Customer Service in Banks (RBI, Mumbai, 2011); Bhagat (n 3) at 118-121.

²⁵IRDAI, Standardisation in Health Insurance (Circular No. IRDAI/HLT/REG/CIR/194/09/2020, September 2020).

for insurance practice. Insurance firms belong to the most data-hungry firms in the world. They have access to personal data, such as medical history, financial status, past claims data, driving behavior data collected via telematics, and behavioral data generated by wearable technology. The DPDP Act's consent requirements create immediate tensions with standard insurance practice. Under Section 6 of the Act, consent for personal data processing must be free, specific, informed, unconditional, and unambiguous, requirements that are difficult to reconcile with the comprehensive data collection practices embedded in insurance proposal forms.²⁶

The use of algorithmic underwriting and artificial intelligence in claims processing raises distinct regulatory questions under the DPDP Act framework. When insurers employ an algorithm to analyse claims for fraudulent behaviour or to determine the premium for health policies using predictive algorithms based on health data from the population, the insured will have to undergo automated decision-making processes that fall under the scope of the Act and therefore need to be explained and disputed. There has been no insurance-specific guidance from IRDAI on how to apply the provisions of the Act.

E. Comparative Perspectives

Comparative study of policyholder protection models in similar jurisdictions will help us identify not only those particular elements of design that cause structural deficiency in India but also possible solutions to this problem. For instance, a duty of care for consumers introduced by UK Financial Conduct Authority (FCA) in 2022 demands that companies give their retail customers, who can include policyholders, good results while also carrying out the obligation of taking actions that can be seen as preventive of any potential harm in the absence of such a requirement. A track record of enforcement by the FCA, involving huge penalties for claims management, adds credibility to the concept missing in IRDAI's model.²⁷

UK Financial Ombudsman Service, which receives about 250,000 insurance claims each year and issues comprehensive decisions by the ombudsman, sets up an example of accessible, transparent, and operationally efficient insurance dispute resolution, unlike India's Ombudsman scheme, which differs from the former in terms of geographical coverage, manpower and publication policies. The publication of decisions by the FOS results in an open library of insurance adjudication where the parties are able to comprehend the standards set for them; this is something that cannot be achieved in India owing to the nature of insurance

²⁶Digital Personal Data Protection Act, 2023, ss. 4, 6, 7, 16; IAIS Application Paper on the Regulation and Supervision of Insurers' Use of Big Data Analytics (IAIS, Basel, 2022).

²⁷Financial Ombudsman Service (UK), Annual Review 2022-23 (FOS, London, 2023); FCA, Consumer Duty (PS22/9, July 2022).

ombudsman's decision.

Australia's unfair contract terms regime, extended to insurance contracts following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, provides a useful comparative reference for the reform of India's approach to exclusion clauses and standard terms. The Australian regime enables a court to declare an unfair term void even if it does not trigger any specific regulatory prohibition, providing a more flexible and responsive framework than India's doctrinal approach, which relies on the courts' case-by-case application of the *contra proferentem* principle and the reasonable expectations doctrine.

IX. REFORM RECOMMENDATIONS

A. Amendment of the Penalty Ceiling under Section 102

The most urgent and achievable reform is the amendment of Section 102 of the Insurance Act, 1938 to raise the maximum penalty per violation from Rs. 25 lakh to a minimum of Rs. 25 crore, with an additional provision for disgorgement of profits derived from the violation where they exceed the penalty ceiling. The magnitude of this increase may appear dramatic, but it is the minimum necessary to create a penalty that is commercially material relative to the premium income of major insurers. The amendment should also provide for index-linking of the ceiling to prevent future erosion through inflation and market growth.²⁸

The deterrent effect of this amendment would be substantially enhanced by a parallel reform of IRDAI's enforcement culture to direct enforcement resources toward substantive consumer protection failures rather than technical violations. This cultural reorientation can be encouraged by a legislative mandate to publish an annual enforcement report setting out the number, nature, and quantum of enforcement actions taken, with specific disclosure of actions relating to claim settlement delays, mis-selling, and data protection violations.

B. Introduction of a Representative Complaint Mechanism

A legislative amendment to the Consumer Protection Act, 2019 introducing a representative complaint mechanism for insurance disputes would address the class action vacuum that is the single most significant structural gap in the Indian policyholder protection framework. The mechanism should enable the Central Consumer Protection Authority, recognised consumer associations, or a group of ten or more similarly situated policyholders to bring a representative complaint before the National Commission on behalf of all policyholders affected by a

²⁸Insurance Act, 1938, s. 102 (as amended); Sane (n 2) at 22-24.

common insurance practice.²⁹

The mechanism should include provisions for opt-out class certification, binding remedies that require the insurer to provide relief to all members of the class including those who did not personally participate in the proceedings, and cost-neutral participation for individual class members. The Law Commission's 253rd Report on class action mechanisms provides a detailed legislative framework that could be adapted for this purpose.

C. IRDAI Insurance-Sector-Specific DPDP Guidance

The IRDAI should be mandated to provide detailed sector-specific guidance on the provisions of the Digital Personal Data Protection Act, 2023, ninety days after the Act's implementation regulations come into effect. This must cover, but not limited to, the following issues: what forms of consent would be allowed for collection of insurance-related personal data; conditions under which sensitive data on the health of applicants can be processed in underwriting; rights to explanation in relation to decision-making based on algorithms regarding coverage and premiums; and limits of international data transfers as related to insurance companies participating in multinational business groups.³⁰

D. Structural Reform of the Bancassurance Commission Regime

The most structurally significant reform of the mis-selling problem in the bancassurance channel requires the separation of insurance advice from product distribution, modelled on the principles of the UK Retail Distribution Review. The bank personnel who advise customers about the insurance products must be mandatorily required to have separate insurance advisory qualifications. Also, their pay for selling insurance products must be made independent of the first-year commission system, and a fee-based or trail-commission model must replace it so as to not have incentives for pushing high-commission insurance products over better-suited ones.³¹

In the interim period, until structural change occurs, IRDAI must ensure that the bancassurance partners adopt needs-based selling practices wherein their clients' financial needs, risk profiles, and coverage are determined before an insurance product recommendation is made. This record of the same must be maintained by the bancassurance partner for at least ten years.

²⁹Consumer Protection Act, 2019, s. 35(1)(c); Law Commission of India, Report on Class Action Suits (Report No. 253, 2015).

³⁰Digital Personal Data Protection Act, 2023 (n 27); Insurance Regulatory and Development Authority Act, 1999, s. 14.

³¹FCA, Retail Distribution Review: Post-Implementation Review (FCA, London, 2014); Bhagat (n 3) at 122-124.

X. CONCLUSION

India's policyholder protection framework presents, at the doctrinal level, an increasingly coherent and sophisticated body of insurance law. The Supreme Court's jurisprudence on contra proferentem, the duty of utmost good faith, and the constitutional dimensions of the insurer's duty of fair dealing would, if effectively enforced through accessible institutional mechanisms, provide substantial protection to individual policyholders. The problem is precisely that it is not effectively enforced through accessible institutional mechanisms, and this paper has argued that the failure is structural rather than incidental.

The structural deficit has four principal dimensions. IRDAI's enforcement machinery lacks the deterrent potency to make consumer protection compliance the commercially rational strategy for profit-maximising insurers. The absence of a class action mechanism ensures that systemic wrongs generate no systemic remedy, allowing insurers to calculate that the aggregate cost of individual complaints will always be less than the aggregate benefit of a non-compliant practice. The bancassurance commission structure creates incentives that disclosure-based regulation is inherently inadequate to neutralise. And the DPDP Act, 2023, by creating a new category of policyholder rights in the data governance domain without corresponding insurance-sector-specific guidance, has added a new dimension to the structural deficit at precisely the moment when data-intensive insurance practices are expanding most rapidly.

The reforms proposed in this paper are constitutionally modest and institutionally achievable. They require legislative amendment to the Insurance Act, the Consumer Protection Act, and the IRDAI Act all of which are ordinary parliamentary legislation. They require regulatory action by IRDAI, which has the statutory authority to issue the guidance and require the disclosures proposed. What they require above all else is the political recognition that India's ambition to achieve 'Insurance for All by 2047' cannot be realised in a market that policyholders do not trust, and that restoring that trust requires not merely expanding distribution but ensuring that the contracts policyholders buy are honoured, the premiums they pay are not extracted by pressure selling, and the data they share is protected. The structural deficit in policyholder protection is not merely a consumer rights problem. It is an obstacle to the development of the Indian insurance market itself, and addressing it is a matter of national economic policy as much as consumer justice.

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