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The Insurance Regulatory and Development Authority (IRDA)

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Abstract
The researcher in this research paper will highlight the overview of The Insurance Regulatory and Development Authority (IRDA), which is a statutory body set up for the purpose of protecting the interests of the policy-holder and regulating, promoting and ensuring orderly growth of the insurance industry in India. The research will also show the evolution of IRDA along with taking the hypothesis as The Insurance Regulatory and Development Authority (IRDA) which has been serving as an independent regulatory authority for ensuring orderly growth of the insurance industry in India must sometimes act pro-actively like other market regulators such as SEBI so as to instill confidence among the policy-holders in the financial viability of the insurance companies.

Keywords: *Regulators, Policy-holder, Authority, Insurance*

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INTRODUCTION
The Insurance Regulatory and Development Authority (IRDA), is a statutory body set up for the purpose of:
- Protecting the interests of the policy-holder; and
- Regulating, promoting and ensuring orderly growth of the insurance industry in India [1].

EVOLUTION OF IRDA
In the last decade of the 21st century, there was a wave of liberalization in all economic sectors of the country, including the insurance sector. By that time, insurance was in the public sector and there was recommendation for certain changes in the insurance sector [2].

Time Line for Development of IRDA
1991: Government of India began the economic reforms program and financial sector reforms. It introduced the theory of 'economic liberalization', and put a closure to the theory of 'license raj', whereby the private companies were allowed to invest in India and hence India was turning its economy into privatization [3].

1993: A committee on reforms in the insurance sector, under the Chairmanship of Sri RN Malhotra, ex-governor of the Reserve Bank of India was set up to recommend reforms in the insurance sector [4].

1994: On 7th January 1994, the Malhotra Committee submitted its report to the then Union Finance Minister recommending changes, including privatization. The Committee also recommended reforms after studying the insurance sector and taking inputs from all the stakeholders. The key recommendations made by the Malhotra Committee were [5]:
- Private sector companies should be allowed to promote insurance companies.
- Foreign promoters should also be allowed to invest in the Indian market.
- Government to vest its regulatory powers on an independent regulatory body which would be answerable to the Parliament [6].

1996: In 1996, there was the setting up of an interim body called the Insurance Regulatory Authority [7].
1999: In 1999, there was enactment of the Insurance Regulatory and Development Authority (IRDA) Act, 1999.
2000: Formation of the IRDA as an autonomous regulatory authority which started

functioning on and from 19th April 2000 [8].
Since the year 2000, IRDA has been serving as an independent regulatory authority for the insurance industry, and to instill confidence among the policy-holders in the financial viability of the insurance companies. IRDA has been playing a pivotal role in the insurance sector with a fundamental commitment to discharge its mandate for orderly growth of the insurance sector [9].

IRDA has played a very important role in the growth and development of the sector by protecting policy-holders' interests, registering and regulating insurance companies, licensing and establishing norms for insurance intermediaries, regulating and overseeing premium rates and terms of non-life insurance covers, specifying financial reporting norms, regulating investment of policy-holders' funds and ensuring the maintenance of solvency margin by insurance companies, ensuring insurance coverage in rural areas and of vulnerable section of society, promoting professional organizations connected with insurance, and all other allied and development functions [10].

RESEARCH QUESTIONS

The research questions framed for this research are:

- What is the composition, tenure and procedure for removal of the members of IRDA and their duties, powers and functions as prescribed under the Act?
- What is the impact of IRDA in different sectors of insurance business in India?
- What are the comparisons and distinctions that can be drawn among IRDA and other market regulators?
- Whether a unified financial regulatory agency is sufficient to control and regulate the entire financial sector?

HYPOTHESIS

The Insurance Regulatory and Development Authority (IRDA), which has been serving as an independent regulatory authority for ensuring orderly growth of the insurance industry in India, must sometimes act pro-actively like other market regulators such as SEBI so as to instill confidence among the policy-holders in the financial viability of the insurance companies.

RESEARCH METHODOLOGY

For this work, the researcher has adopted a doctrinal research which is analytical. The researcher has referred to both primary sources and secondary sources like statutes, text books, articles, etc., for the purpose of his research.

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Establishment of the Authority

Section 3 of the Insurance Regulatory and Development Authority Act, 1999, states the Central Government may by notification appoint and establish an Authority to be called as the "Insurance Regulatory and Development Authority". The Authority shall be a body corporate having perpetual succession and a common seal with a power to acquire, hold, and dispose of property. It shall have power to enter into a contract and can sue or be sued by the said name [11].

Composition of IRDA

The Authority shall consist of the following members:

- A chairperson;
- Not more than five whole-time members; and
- Not more than four part-time members [12], appointed by the Central Government from amongst the persons of ability, integrity, and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, or any other discipline which is useful for the membership of the Authority [13].

Tenure of Office

The chairperson and every other whole-time member shall hold office for a tenure of five years from the date on which he enters upon his office, provided that no person shall hold office as a chairperson after he has attained the age of sixty-five years. A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office. However, the chairperson and the whole-time members are eligible for re-appointment after their tenure has expired [14].

Removal from Office

The Central Government may remove any member from office who:

- Has been adjudged as an insolvent;
- Has become physically or mentally incapable of acting as a member;
- Has been convicted of an offence which in the opinion of the Central Government involves moral turpitude;
- Has acquired any financial or other interest which is prejudicially likely to affect his function as a member;
- Has abused his position so as to render his continuation in office detrimental to the public interest [15].

Duties, Powers and Functions of the Authority

Duties of the Authority

Section 14(1) of the Insurance Development and Regulatory Authority Act, 1999, states the duties of the Regulatory Authority:

The Authority shall have the duty to regulate, promote and ensure orderly growth of insurance and re-insurance business within the territory of India [16].

Powers and Functions of the Authority

Section 14(2) of the IRDA Act, 1999, deals with the powers and functions of the Regulatory Authority. The powers and functions of the Regulatory Authority are as follows:

- To issue certificate of registration to the applicants; the authority also possesses power to certify, modify renew and cancel such certificate of registration [17]
- To protect the interests of the policy-holders in matters concerning assignment of the policy, nomination of the policy-holder, settlement of the insurance claim, surrender value of the policy, and other terms and conditions of the insurance contract [18]
- To specify the code of conduct, requisite qualification and practical training required by an insurance intermediary and an agent [19]
- To specify the code of conduct for surveyors and loss-assessors [20]
- To promote efficiency in the conduct of insurance business [21]
- To promote and regulate professional organization connected with the insurance and re-insurance business
- To levy fees and other charges for carrying out the purpose of this business
- To call for information from respective undertakings and to conduct enquiries and investigation including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with this business [22]
- To specify manner in which the books of accounts shall be maintained, and the statement of account shall be rendered by insurers and other insurance intermediaries [23]
- To regulate investments of funds by the insurance companies
- To regulate maintenance of margin of insolvency
- To supervise the functioning of the Tariff Advisory Committee
- To specify the percentage of premium income of the insurer to finance scheme for promoting and regulating professional organizations
- To specify the percentage of life-insurance and general-insurance business to be undertaken by the insurer in the rural and the social sectors
- To exercise other functions as may be prescribed [24]

IMPACT OF IRDA ON DIFFERENT SECTORS

A statutory authority as an autonomous body was established under the provisions of the IRDA Act, 1999, by the Government of India with the objective of regulating, directing and controlling the insurance sector for ensuring smooth functioning of insurance sector in India. The authority is called as 'Insurance Regulatory and Development Authority' which came into existence with effect from 1st April 2000. The IRDA being a national agency of the Government of India, there are numerous arrangements for taking corrective steps as to incorporate the emerging requirements of the insurance sector in India [25].

The impact of IRDA has been tremendous in the entire insurance arena. It has been cast with the duty to protect the interests of the policy-holders so that they can get their due claim after the policy matures. The impact of IRDA has been in several areas and in manifold activities:

Impact over Policy-Holders Interests

The core objective of IRDA is to protect the interests of the policy-holders. It tries to protect the interests of the policy-holders in several ways:

- IRDA is not only emphasizing over the introduction of different rules and regulations in the insurance sector but it is also trying to make activities of the insurance sector transparent and taking steps to increase awareness of the society to insurance schemes [26].
- IRDA is attempting to make all the significant and materials information associated with the insurance products available to the public and it has also made mandatory for the insurers to disclose all secret information to the customers.
- One significant impact of IRDA is over the development of the insurance products. IRDA has brought revolution in direction of the development of the insurance products. The development of ULIPS is the outcome of privatization of the insurance sector [27].
- The IRDA is responsible for addressing complaints filed by policy-holders; complaints against life and non-life insurers are handled separately [28]. This cell plays a facilitative role by taking up complaints with the respective insurers. Policy-holders who have complaints against insurers are required to first approach the grievance redressal cell of the concerned insurer. If a policy-holder after a certain period of time does not receive any response or is dissatisfied with the response of the company, the policy-holder in such a case can address to the grievance cell of the IRDA. Only cases of delay/non-response regarding matters relating to policies and claims are taken up by the cell with the insurer for speedy disposal. If the grievance is not redressed, the insured is advised to approach the insurance ombudsman. Only the complaints from the policy-holders or the claimants shall be entertained. The cell shall not entertain complaints written on behalf of the policy-holders by advocates or agents or any third parties. In cases where the claimant is not satisfied with the decision of the ombudsmen, an appeal can be filed in the appropriate judicial forum like civil courts or even in the consumer forum [29].

Impact over the Small and Marginal Farmers and Vulnerable Sectors of the Society

IRDA has created a special category of insurance policies called the micro-insurance policies to promote insurance coverage of economically vulnerable sector of the society. A micro-insurance policy is either a general or life insurance policy with a sum assured of Rs. 50,000 or less [30].

A general micro-insurance product is any:

- Health insurance contract
- Any contract covering belonging, such as
- Hut, livestock, tools or instruments or any personal accident contract; they can be on individual or group basis [31].

A life micro-insurance product is:

- A term insurance contract with or without return of premium
- Any endowment insurance contract
- A health insurance contract
- They can be with or without an accident benefit rider; and
- Either on individual or group basis [32]

There is flexibility in the regulations for insurers to offer composite covers or package products that include life and general insurance covers together.

The IRDA has also come up with certain regulations whereby the insurance companies must actually invest certain percentage of their business in rural and among vulnerable sectors of the society. There are also two regulations under IRDA which provide guidance to the insurers as to how to engage themselves in rural areas, Insurance Regulatory and Development Authority (Obligation of Insurers to Rural Social Sectors) Regulations, 2002, and the IRDA (Micro-Insurance) Regulations, 2005 [33].

Impact over Competition in the Insurance Sector

There was no competition in the insurance sector prior to the introduction of private players in the life insurance and general insurance sectors. But, since the introduction of private players in the insurance sector, the insurance business has become diversified, dynamic, and competitive [34].

Impact over Expenses of the Insurers

There was nothing like competition in the insurance market before the introduction of the private companies in the life insurance sector and as a result there was no need to expend huge money over different activities related to the insurance except over some fixed activities. Thus, competition has brought a great change in the expenditure size of the insurers [35].

Impact over the Applied Technology in the Insurance Sector

Present age is the age of technology, and hence normal usage of technology in different activities of the insurance sector has obviously become a very natural introduction [36].

Impact over the Number of Insurers

As a result of the introduction of IRDA in the insurance sector, private players got an opportunity to deal with insurance products in the insurance market. India is one of the largest markets of the world but the number of the insured persons is very nominal [37]. Thus, there are numerous opportunities for development for the private insurers in the Indian market and hence the numbers of insurance companies are increasing day by day.

Impact over Organization Structure of Insurers

After the enactment of IRDA, there has been growth of private players in the insurance sector and secondly it has imposed certain restrictions and obligations over the insurers to make changes in their organizational structure in order to carry out their obligations.

In India, the number of people who have insurance cover is meager and there is a huge potential for the growth of the insurance sector, and we can see how constantly the population of our country is growing and hence assuming that at least every citizen of the country needs a policy, the future of insurance business is already bright. Hence keeping in mind all these activities, IRDA has created a new set of guidelines, which are required for the growth of insurance business [38].

COMPARISON OF IRDA WITH OTHER MARKET REGULATORS

Financial Regulatory Bodies in India

The financial system in India is regulated by independent regulators in the field of banking, insurance, capital market, commodities market, and pension funds. However, the government of our country has played a significant role in controlling the financial system in India and influences the roles of such regulators to some extent [39].

The following are the five major financial regulatory authorities in India:

A) Statutory Bodies via Parliamentary Enactments

- Reserve Bank of India: The RBI was established on April 1, 1935, in accordance with the provisions of the Reserve Bank of India Act, 1934. It acts as the apex monetary authority of the country [40].
- Securities and Exchange Board of India: SEBI was first established in the year 1988 as a non-statutory body regulating the securities market. It became an autonomous body in 1992 and more powers were given to it through an ordinance. Since then, it regulates the market through its independent powers [41].
- Insurance Regulatory and Development Authority: IRDA was established by the IRDA Act, 1999. It started its function as an autonomous body from 19th April 2000. It is an autonomous body in the field of insurance and its fundamental objective is to protect the interests of the policy-holders and ensure orderly growth of the insurance business in the insurance industry [42].

B) Part of the Ministries of the Government of India

- Forward Market Commission of India: FMC is a statutory body set up in the year 1953 under the Forward Contracts (Regulation) Act, 1952. The main purpose of this authority is that it deals with commodity training [43].
- Pension Fund Regulatory and Development Authority: PFRDA was established by the Government of India on 23rd August 2003. The mandate of PFRDA is development and regulation of the pension sector in India [44].

Prior to the 1990s, the Indian economy was guided by a sole financial regulator Reserve Bank of India (RBI), but after the Harshad Shantilal Mehta Scam in 1992 where Mehta was found engaged in a massive stock manipulation and he was convicted by the Bombay High Court and the Supreme Court of India for his part in a financial scandal valued at Rs.49.99 billion (US $ 780 million), the scandal exposed the loopholes in the Bombay Stock Exchange (BSE) transaction system and a market regulator like SEBI was needed to cover up those loopholes by introducing certain rules and regulations.

Comparison of IRDA with SEBI as a Regulator

SEBI is considered to be more vibrant than IRDA because it has a strong mandate to punish the companies and individuals behind them who do not follow the basic principles and norms of corporate governance.

IRDA on the other hand in some instances has failed to live up to the expectations as it was desired of it. Even after the establishment of IRDA there are instances of:

- Manipulation of the policy-holder.
- Instances of fraud and cheating in respect of the policy-holder.
- Insured are sometimes deprived of money, after the policy matures.
- Insurance company sometimes refuses to provide for the surrender value to the insured.
- The policy-holders are most of the times misguided by certain advertisements put up by the insurance companies.

IMPACT OF MARKET REGULATORS

Impact of SEBI (Case Study)

Sahara India Pariwar investors fraud case: On 26th February 2014, the Supreme Court of India ordered the arrest of Subrata Roy, Chairman & Founder of Sahara India Pariwar, for failing to appear with the Rs 24,000 crore deposits his company had not refunded to its investors. He was eventually arrested on 28th February 2014 by Uttar Pradesh police on a Supreme Court's warrant, in a dispute with market regulator SEBI. However, he was granted interim bail by the Supreme Court of India on condition of depositing Rs 10,000 crore with market regulator SEBI. Since May 2016, Mr. Roy is still in jail and is trying to raise money by selling some of his hotel properties.

Impact of IRDA (Case Study)

The Insurance Regulatory and Development Authority (IRDA) has also slapped a fine of Rs 3.10 crore on Bajaj Allianz Life for violating various norms including those of early death claims and group insurance.

Powers of Market Regulators

Powers of SEBI

The major role of SEBI as a market regulator is to protect the interests of the investors in securities and promote the development and regulations of the securities market. SEBI as an autonomous body, which regulates the capital market has been vested with crucial powers like conducting investigation, and also the power to search and seize documents.

Under Sec 11 C of the SEBI Act, 1992, where the Board has reasonable ground to believe that the transaction in securities are being held in a manner which is detrimental to the investors or the securities market and if any intermediary or any person associated with securities market has violated any provision of the Act or regulations directed by the Board, the Board may at that time appoint any person as an investigating authority and direct investigation of such person [45].

The Act also provides a right to search and seize documents of any public listed and a public company not being the intermediaries as specified under Section 12. The investigating authority in such case can search and seize with the prior approval of a magistrate.

Powers of IRDA

IRDA is an autonomous body established for the regulation of insurance business in India. The Act has vested IRDA with autonomous powers to issue certificate of registration to the insurance company; it has also prescribed powers to protect the interests of the policy-holders regarding matters like nomination and assignment of the policy. It has also been provided certain code of conduct for insurance agents and intermediaries; it has also been given the power to ascertain certain percentage of life insurance and general insurance business in the rural and social sectors. But if seen closely, it does not have the power to conduct search and seizure like SEBI; hence certain powers must be provided to IRDA so that it has the actual force to prevent misuse and manipulation of the policy-holder.

IS A UNIFIED FINANCIAL REGULATOR A GOOD IDEA?

The Financial Sector Legislative Reforms Commission (FSLRC), which was appointed under the Chairmanship of Sri BN Shrikrishna published its report in the year 2013, opting for a single or super regulator to replace those in equity, commodities, pensions, and insurance sectors. The idea is to move from sectoral regulations to a broader framework of rules and principles. There is a proposal that all the sectoral regulators like SEBI, FMC, IRDA, and PFRDA would be clubbed and there shall be a creation of super financial market regulator [46].

A multiplicity of regulatory agencies has created scope for regulatory arbitrage, apart from making difficult to protect the consumers' interests. It has been observed that certain market players try to take advantage of multiple regulators by operating in grey areas which are not covered by regulations [47].

Hence, the Committee has proposed for a Unified Financial Regulatory Authority (UFRA) which will subsume SEBI, IRDA, PFRDA, and FMC. With the banks being unique and specialized financial entities, RBI has been kept out of the purview of UFRA. While the Reserve Bank of India has evolved as a mature regulator, the same cannot be said about other regulatory agencies [48].

The FSLRC has pointed out a number of benefits of the proposed UFRA; the benefits are as follows:

Firstly, by dealing with all financial transactions other than banking and payments, it would help in realizing regulatory economies of scale and scope [49].

Secondly, it would promote efficiency, by providing a common platform, as proposed, for organized financial trading in instruments, spanning equities, bonds, currencies and commodity futures [50].

Thirdly, where there is existence of multiple regulators there is a scope for regulatory arbitrage and apart from that there is also difficulty is protecting the interests of the consumers [51].

Fourthly, unification of regulation and supervision of financial firms such as mutual funds and insurance companies would yield consistency in consumer protection and micro-prudential regulations [52].

Finally, the need for a UFRA has been felt in the context of confusion over the jurisdiction of different regulatory agencies over different financial products. The spat between IRDA and SEBI on the jurisdiction over ULIP is a case in point [53].

The dispute between SEBI and IRDA had raised a hue and cry not only in the government but among all investors. The episode on Unit linked Insurance Plans (ULIPS) started on 9th April, 2010 when SEBI issued notice under section 11 of the Act to 14 insurance companies like ING Vysa, Kotak Mahindra, Max New Life, Met Life India, and Tata AIG Life banning them from selling ULIPS. ULIPS is actually a combination of investment in securities with the benefit of life insurance [54]. It constitutes 90% of the portfolios of the 14 insurance companies. Monthly, premium collected from ULIPS scheme is around Rs. 5000 to 7000 crore. The

IRDA chairman reacted on the ban that was imposed by the SEBI, stating that such a ban would disturb the financial stability of those insurance companies. IRDA has also refused to buy the argument given by SEBI that ULIPS have an element of investment which is the domain of SEBI, and hence SEBI has no right to interfere with the policies which are purely insurance-based [55]. The regulators must understand that the policies are finally related to public and hence because of their differences the interests of the consumers cannot be over-looked. It is, therefore, important for the government to work out a method for a win-win situation for the regulators and the policy-holders. Unless the interests of the policy-holders are protected there is bound to be turmoil in the financial market. Hence it is significant that the government should ensure clarity in the Acts governing the activities of the two regulators [56].

The UFRA is not proposed as a standalone creation, but as a part of an entirely new edifice where consumer protection has received due emphasis. The provision to create a Financial Redressal Agency (FRA) with presence in every district, where consumers of all financial products would be able to submit complaints, is a required intervention [57]. Consumers' interests deserve special attention as problems of moral hazards are acute in the financial industry. The desirability of the proposed UFRA should be seen along with the role of other financial regulatory agencies which address resolution of financial disputes and appeals against regulators, apart from protecting the consumers' interests [58].

CONCLUSION AND SUGGESTIONS

The Insurance Regulatory and Development Authority which is the sole regulator in the insurance sector in India had been given the powers and duties to look after the insurance business in the country. Its main aim is to protect the interests of the policy-holders and to provide them with adequate justice if they are denied so.

However, the researcher can draw the conclusion that even though the IRDA Act, 1999, has given the authority some key powers like registration, modification, and even cancellation of the certificate of registration, but still there are areas where IRDA is lagging much behind in comparison to other market regulators like SEBI.

The SEBI Act, 1992, provides that the Board has the power to appoint any investigating authority for search and seizure and can directly take steps if there is any violation of key regulations, such kind of powers are missing under the IRDA Act, whereby there is no expressive provisions regarding investigation, search and seizure are mentioned.

If we carefully look at the composition of IRDA, we can see that the chairman and other whole-time members are appointed by the central government, if such person has any knowledge and ability regarding subjects like life insurance, general insurance and actuarial science, where as if we look at the composition of SEBI, we can see that the Board comprises of a chairperson and two members who are amongst officials of ministry of the central government dealing with administration of the Companies Act and finance and one member who is a member of the Reserve Bank. So in this case, we can come to a conclusion that in the composition of IRDA, there must also be members who are connected with the ministry of the central government.

The Financial Sector Legislative Reforms Commission (FSLRC) which has stated that there should be creation of a super market regulator, which shall subsume the functions of all other financial regulators like SEBI, FMC, IRDA, PFRDA, which would help to protect the interests of the consumers on a wider basis. But having such a supreme market regulator can also be a bit troublesome. Problems like regulatory monopoly, lack of required skill sets for particular organization, lack of internal consistency, and many other problems can arise; hence decision would have to be taken very carefully.

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