

Life Insurance Under Bancassurance Channel – Need for a Better Regulatory Framework?

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Abstract.

Retail Banking or consumer banking, as it is more commonly referred to, as a subset of the banking industry has attained amazing proportions in the overall performance of the banking sector in India in recent years. With a population size of around 140 crores, it would be a disastrous business decision for any bank to ignore this side of the industry. When the Government of India allowed “Insurance” as a form of business that a banking company can undertake (both Life and Non-Life), it opened up a new dimension to the banks to add on to the “Other Income” kitty as reflecting in their P&L accounts. It is not just the mathematics behind selling life insurance under the Bancassurance Channel – both the commission and the trail commission included – that pushes the banks to lay the kind of emphasis that they do upon this sales channel. There are aspects like relationship management and relationship deepening that make the Bancassurance channel all the more important. However, an unwarranted natural fall out of this over emphasis by the banks in maximizing the generation of income from this channel – well, in some cases if not all – is the problem associated with transparency and mis-selling of life insurance products. Considering the fact that the banker, as a result of the very nature of his relationship with the customer, has a direct access to the financial standing of the customer, it is imperative that he be placed on a footing that is different from that of a non-banker broker selling life insurance. A lot of studies have been carried out dealing with the economic aspect of the Bancassurance Channel and its scope, but very few have been undertaken exploring the regulatory aspect governing it. This paper looks forward to bring to forth the regulatory issues and challenges governing the sale of life insurance products through bancassurance channel in India and the need to address them. The paper also suggests measures to plug in the gaps, in the best interest of all the functionaries involved there-in.

Introduction

The business lines that a Banks undertakes can be segregated in to different verticals like Retail, Corporate, Asset Management, Priority Sector, Institutional Lending, Financial and Securities Markets, Collections, Foreign Exchange, Merchant Banking etc. Retail Banking – also referred to as Consumer or Personal Banking - as understood in common parlance is a facet of the

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¹ The Banking Regulation Act No 10 of 1949, available at <https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/BANKI15122014.pdf>, last seen Apr. 01st 2022.

banking industry where a Bank caters to financial needs of individual customers as against business channels catering to corporate business. Broadly, under retail banking business, a Bank offers its individual customers products such as Asset Products - consisting of auto loans, personal loans, home loans, credit cards etc., Liability Products – consisting of savings, current, fixed deposit accounts etc., Portfolio Management Services – including direct equity investments, marketing of Third Party Products – consisting of mutual funds, insurance, government bonds etc.

In India, the businesses that a Bank can undertake is governed by the provisions of the Banking Regulations Act, 1949.¹ Section 6(1)(a) to (o) of the Act mandates the forms of businesses that a Bank may engage in. Most importantly, Section 6(2) of the said Act expressly provides that a bank shall not engage in any form of business barring those stipulated in Section 6(1). Section 6(1)(o) empowers the Government at the Centre to notify in the official gazette any form of business that a bank will be allowed to engage in lawfully. Exercising this power, the Central Government, on the August 03rd 2000, notified “Insurance” as a business activity² that a bank may engage in, thus paving the way for banks to engage in insurance business. Once this was done by the Government, and was followed by the Reserve Bank of India inviting applications for Banks for their entry in to insurance business, the phrase bancassurance started gaining traction in India. . The phrase encompasses a business activity in which banks sell services and products usually sold by the insurance companies.³ The term conjoins two distinct terms - “Bank” and “Insurance”, and is an integral – and in some ways indispensable - part of the bouquet of the third party products offered for sale by the banks.

Over the period of time, various channels were brought to fore to pave the way for Banks to sell insurance. Amongst them were by way of becoming a corporate agent route, by way of referral arrangements (declared defunct since by the Insurance Regulatory and Development

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² Ministry of Finance, Notification Number 515 dated Aug. 03rd 2000, S.O. 724(E), available at https://egazette.nic.in/WriteReadData/2000/E_515_2013_022.pdf, last seen Apr. 01st 2022.

³ The Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/bancassurance>, last seen Apr. 01st 2022.

⁴ [Hereinafter IRDA.]

⁵ The Insurance Act No 4 of 1938, available at https://www.irdai.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo107&flag=1, last seen Apr. 01st 2022.

⁶ The Insurance Regulatory and Development Authority of India Act No 41 of 1999, available at https://www.irdai.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo108&flag=1, last seen Apr. 01st 2022.

⁷ Insurers – available at <https://www.irdai.gov.in>, last seen Apr, 01st 2022.

Authority of India⁴), banks acting as brokers, or way of joint ventures. Initially banks were allowed to sell products of only one life and one general insurance company. However, this resulted in the new entrants in the insurance arena facing difficulties to tie-up with Banks as Bancassurance partners to sell their insurance products as most of them already had an existing tie-up. In exercise of powers conferred upon it by the Insurance Act 1938⁵ under sections 42(D), 42(E) and 114A and under Sections 14 and 26 the IRDA Act 1999⁶, the IRDA made the Insurance Regulatory and Development Authority (Licensing of Banks as Brokers) Regulations 2013, paving the way for banks Bankers to act as brokers and have multiple tie-ups with life insurance and general insurance companies.

According to the published listings with the IRDA, there are a total of 69 registered insurer and re insurers in India. players in the insurance sector 25 life insurers, 25 General Insurers, and there is a sole reinsurer in India.⁷ Insurance Companies and Bank bancassurance tie-ups can either be only life tie-ups – where banks sell only life insurance products, only general tie-ups – where banks sell only general insurance or composite tie-ups – where banks sell both life and general insurance products. It is commonly argued the bancassurance channel is a win-win proposition for all the players involved in. The insurance company gets to exploit the existing customer base of the banks to its optimal, make best use of the bank's branch and distribution network. The bank, on the other hand, get an additional avenue to add to their bottom lines using their existing infrastructure at the least incremental costs, deepening of customer relationship, whereas the customer is benefited as he gets his financial needs satisfied under one roof with experts from both the insurance and the banking domains catering to his requirements.

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➤ **The Arithmetic of Bancassurance channel – the “pivot”:**

When it comes to the total premium collected by all insurance companies in India – as depicted in Table 1 - Life Insurance Corporation of India (LIC) is the undisputed leader. It has a first runners' advantage as it was set up in 1956 as against the current breed of private sector insurance companies which came into existence from the year 2000 onwards. Moreover, the fact that LIC is a government Company – gives it an additional flavor. Having said this, the private sector insurance companies raking in close to 36% of the total life insurance premium collected in 2021 – from a 'zero business' in 2000, is worth taking a note.

Table-1: Total Premium underwritten by life insurers:⁸

Market Share	FY 18 - 19	FY 19 - 20	FY 20 - 21
Private Sector	33.5	33.7	35.8
Life Insurance Corporation of India	66.4	66.2	64.1

*Figures in percentage.

⁸ Source - IRDA Annual Reports, available at https://www.irdai.gov.in/ADMINCMS/cms/frmGeneral_NoYearList.aspx?DF=AR&mid=11.1, last seen Apr, 01st 2022.

The more interesting aspect of the aforementioned premium collected is in the channel-wise bifurcation of the new business life insurance premiums collected by the private sector life insurers and the LIC. As depicted in Table 2 – a whopping 90% plus of the premium collected by LIC comes from individual agents. In comparison to this, a meagre 2% odd contributed by the banks seems like peanuts. Contrastingly, amidst the private sector life insurers, the Banks have undeviating contributed, over half the life insurance premium collected year after year, moving up slowly but steadily from 53.8% in 2019 to 54.5% in 2021.

As diverse as these findings are, it is a no brainer that bancassurance as a distribution channel that contributes this magnanimous proportions of life insurance premiums collected by the private players, stands to be of outmost importance.

Table–2: New Business Premium – IRDA - Distribution Channel – Life Insurance Business.⁹

Distribution Channel	FY - 2018-19			FY - 2019-20			FY - 2020-21		
	Individual Agents	Bancassurance	Others	Individual Agents	Bancassurance	Others	Individual Agents	Bancassurance	Others
Private Sector	25.5	53.8	20.6	24.6	52.7	22.6	23	54.5	22.3
Life Insurance Corporation of India	95.8	2.4	1.7	94.7	2.7	2.4	93.8	3.0	2.2

*Figures in percentages

➤ **The commission story and more:**

Schedule I of the IRDAI (Payment of Commission or Remuneration or reward to insurance agents and insurance intermediaries) Regulations, 2016,¹⁰ mandates the commission / reward / remuneration payable – as a percentage of premium - allowed for life insurance products offered by life insurers. The commission offered to the Banks can range between 2 to 40 percent of the premium of a life insurance policy – directly related to factors impacting the product that is being sold. There is also a “trail commission” that the banks stand to get on the renewal premium collected by them – which ranges from 2 to 10 percent of the renewal premium amount. This commissions form a sizeable proportion of the “ Non-Interest Income” of the Banks. Furthermore, the fact that the premium payment term of life insurance product is, in most cases, five years and above, and is a long-term commitment, the possibility of the customer switching his banking to competition is negated.

The reasons hereinabove mentioned, bring out authoritatively, the importance of the bancassurance channel in the larger scheme of things for the banks and their business.

➤ **The Regulatory Framework:**

Having understood the importance of the bancassurance channel in the retail banking sector, we shall now move to the regulatory framework governing it. In areas where the interests of customers are involved – especially financial interests - It is imperative that there be a regulatory framework governing it, which is adequate enough

to protect the interests of all functionaries involved there it. Every civilised society needs to have a mechanism where customers are provided with an avenue to voice their concerns and that of grievance redressal.

In India banks and insurance companies are regulated by distinct authorities. The regulatory authority as far as the Banks is concerned is the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA) has been entrusted with the responsibility of overseeing and regulating the insurance sector. Each one of them have been setup under statutory provisions having elaborate and descriptive rules, restrictions, and guidelines governing their area and scope of their statutory existence. Interestingly, a question worth asking here is that, which of these two regulators shall be governing the Bancassurance channel? This, considering its unique nature of existence – being the coming together of a bank and the insurance company.

For the purpose of this paper, I have limited the review of regulatory framework governing the sale of life insurance products under bancassurance channel, to the extent as established by these two authorities only.

➤ **Banking Ombudsman Scheme – 2006 - RBI.**

Exercising the powers conferred upon it by the Banking Regulation Act, the RBI first brought in the Banking Ombudsman Scheme in 1995. The primary object of the scheme “was s to enable resolution of complaints relating to provision of banking services and to facilitate the satisfaction, or settlement of such complaints.” Since then, the Ombudsman Scheme has

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undergone various amendments and structural changes. In its current avatar the Banking Ombudsman Scheme 2006¹¹ applies as amended by the RBI by way of a notification in June 2017.

Under Chapter IV of this scheme, Clause 8 lays down the grounds of complaints that can be made to the Ombudsman. Amongst those was the “non-adherence to Reserve Bank guidelines on para-banking activities like sale of insurance /mutual fund /other third-party investment products by banks.” Also included there in was unsuitable as well as improper sale of such products, lack of transparency in their sale and the existing complain resolution mechanism, any inordinate delay or refusal to provide ancillary after sale services.

The RBI in May 2016, issued the Master Direction- Reserve Bank of India (Financial Services provided by Banks) Directions, 2016¹² to apply to all scheduled commercial Banks. These master directions have since been amended in 2017. Clause 18(d) of the master directions, laid down conditions to be followed by Banks involved in corporate agency of insurance companies. This included, directions pertaining to fairness and honesty, segregation of products, not forcing customers to buy insurance policies, in house complaint redressal mechanism etc.

¹¹ The Banking Ombudsman Scheme 2006, As Amended Up To July 01st, 2017, available at https://rbidocs.rbi.org.in/rdocs/Content/PDFs/BOS2006_2302017.pdf, last seen Apr, 01st 2022.

¹² Master Directions, Reserve Bank of India(Financial Services provided by Banks)Directions,2016, available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/25MD260516EDAA7B1E214468EBE2D7CC406CA6648.PDF>,last seen Apr, 01st 2022.

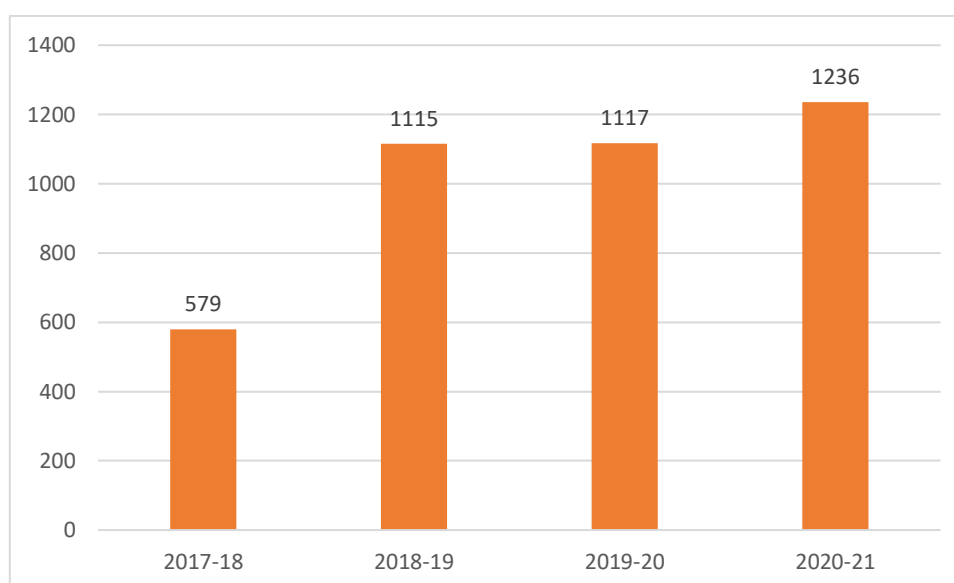
The aforementioned master directions read in conjunction with the Ombudsman Scheme 2006, brought the bancassurance channel under the gamut of the Banking Ombudsman.

➤ **Complaints Review – Banking Ombudsman Scheme – 2006**

On the back drop of escalating complaints, a new category of complaints received by the ombudsman – being - “Non-adherence to Reserve Bank guidelines on para-banking activities like sale of insurance / mutual fund / other third-party investment products by banks” – was

introduced in the Annual Report on the Banking Ombudsman Scheme. This category encompasses complains relating to bancassurance channel. The number of complaints received under this head for the FY 2020-2021¹³ is depicted in Table 3 hereunder, depicting a slow but steady growth.

Table 3: Category-wise distribution and share of complaints – Actual Numbers



The annual report for FY 2019-20¹⁴, had raised a major concern under the root cause analysis, being - “The mis-selling of para - banking and third-party products to consumers without considering product appropriateness for the consumer; lack of transparency on features of the insurance policy sold.” The report suggested sensitizing staff on appropriateness of products

and creating a Charter of Customer Rights, as a remedial measure for this issue. The emphasis, or shall we say the over emphasis, upon selling insurance products through this channel, for reasons as discussed hereinabove, is one of the important reasons for this mis-selling. Not withstand the fact that mis-selling was raised as a major concern, the complaint under this head with the Ombudsman are surprisingly low in numbers when compared to the other categories of complaints.

➤ **Insurance Ombudsman Rules 2017 - IRDA**

The Central Government notified the Insurance Ombudsman Rules, 2017¹⁵ in exercise of its power under the IRDA Act. The object of these Rules was to “resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises on the part of insurance companies

and their agents and intermediaries in a cost effective and impartial manner.” The said rules provided amongst other things the setting up of the Executive Council of Insurers, which in turn would put in place an Insurance Ombudsman for discharging the duties and functions prescribed under the said Rules. The Office of Insurance Ombudsman, is an alternate grievance redressal mechanism, put in place “with an aim to resolve grievances of aggrieved policyholders against insurance companies and its intermediaries or insurance brokers in a speedy and cost-effective manner”¹⁶. The Offices of Insurance Ombudsman are under the administrative control of Council for Insurance Ombudsmen

It is provided that these rules “shall apply to all insurers and their agents and intermediaries.” Since the bank is intermediary of the insurance company, the bancassurance channel comes under the gamut of the Insurance ombudsman as well. The Insurance Ombudsman has jurisdiction to receive and dispose complaints pertaining settlement of claims, false representations, of terms of the policy, servicing of the policy etc.

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These rules, were subsequently amended in 2021.¹⁷ The Executive Council of Insurers was rechristened as Council for Insurance Ombudsmen. “Insurance Broker” was included to the definitions clause, thereby bringing banks who operate as Insurance Brokers, under the ambit of these Rules.

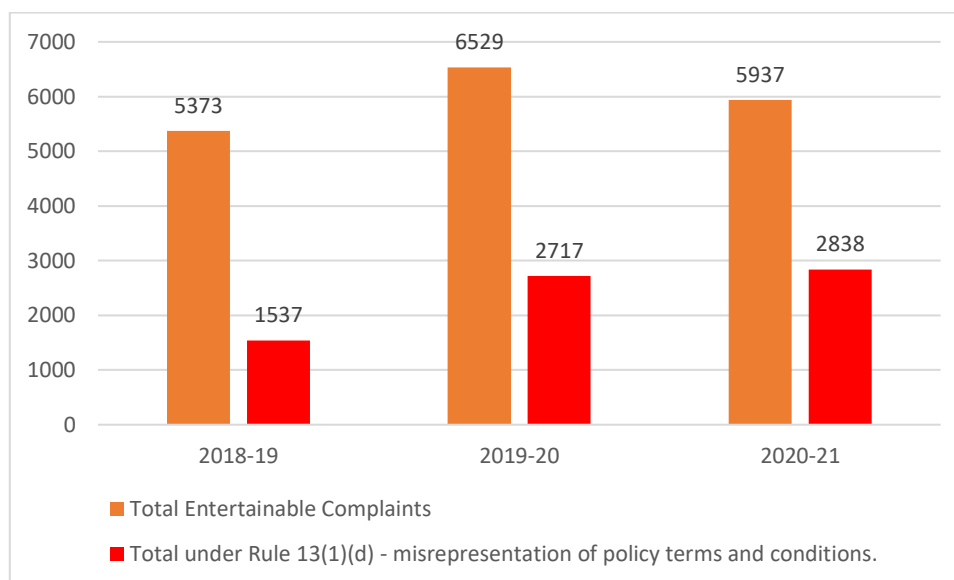
➤ **Complaints Review – Council of Ombudsman – Life Insurance:**

The annual reports of the Council of Ombudsmen, carries a detailed analysis of complaints received at the office of the Insurance Ombudsman. These complaints are categorised under different heads. One of those heads is Rule 13 (1)(d) which pertains to complaints received for “misrepresentation of policy terms and conditions at any time in the policy document or policy contract.” The rationale behind choosing this specific head for analysis is for the reason that under the Bancassurance channel, more often than not, the role of the Bank is limited to the sale of the insurance product through its distribution networks.

This analysis throws up some very interesting facts. The complaints received under this head shows a steady rise over a period of 3 years. The constituted 28 percent of the total entertainable complaints in 2018-19 to 47 percent in 2020-21. The Annual Report for 2020-21 categorically, in an unambiguous fashion, states that “the maximum complaints registered in the forum against Life Insurance Companies are pertaining to mis-selling, and maximum number of cases pertains to private insurers.”

¹⁷ The Insurance Ombudsman (Amendment) Rules, 2021, available at, <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/mar/doc20213301.pdf>, last seen Apr, 01st 2022.

Table 4: Complaints under Rule 13(1)(d) – Council of Ombudsmen:



I acknowledge that the complaints mentioned hereinunder are not exclusively of that of the bancassurance channel. To lay hands on a more precise information with respect to the bancassurance channel, I had logged an application under the Right to Information Act, 2005¹⁸ requesting for complaints received from customers under Rule 13(1)(d) for life insurance products sold through the bancassurance channels and their resolution status for the last 3 financial years. The application was however rejected citing the reason that “information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual”, under Section 8(1)(j) of the Act¹⁹.

➤ **Conclusion**

After having carried out a detailed review of the working model of bancassurance and the regulatory framework established by the RBI and the IRDA governing it, the following are some of the issues that come to light, with respect to the said regulatory framework:

Non-availability of data:

The data available in the public domain with these regulators, is inadequate to assess the extent of issues that are prevalent under the current regulatory framework governing bancassurance channel. The rejected RTI query mentioned hereinabove is testimony of the fact that there is dearth of data / information of piecemeal nature. Mis-selling of life insurance policies has been admitted even in the governmental circles²⁰ at different times²¹. But little seems to have been done to address these issues. The first step to resolve these issues is to admit that there exists one, and to establish its existence, authentic data is required, which isn't the case here.

➤ **Which forum to approach?:**

As discussed earlier, since the bancassurance channel is a combination of a bank and an insurance company, recourses for grievance redressal are available under both the Banking Ombudsman Scheme and the Insurance

Ombudsman Rules. As benevolent as it may sound, the big question that stares at the customer in his face is which authority to approach to resolve his grievance. Which is the forum that will give him better resolution to his issues? It is widely accepted that a certain thing might not be successful if too many people try to do it at the same time. Add to that the general awareness levels – or the lack of it - amongst customers of the very existence of these specialised forums, considering the educational and demographic mix of the Indian population

➤ Toying with the customer's trust

Customer relationship management is at the core of the success of the bancassurance channel. Furthermore, the premise that the banker, by the very nature of his work, would be having

expertise when it comes to financial dealing, pushes the customer to believe that the insurance product that is being sold to him is best suited for him with respect to his financial goals. Whether it is actually that way in practice is a question to be asked? After the customer signs up for the product, with will be might difficult for him to establish that he was taken for a ride. Judicial pronouncements by the Supreme Court have laid down that when a document is signed by a person, there is a presumption that he has understood the contents there in and has signed upon it. This makes things even worse for the customer.

➤ Absence of fixing responsibility:

A close look at some of the awards given by Insurance Ombudsman, throws up the fact that it does not ascribe responsibility to any person for any of their wrongdoings. The structure of the Ombudsman Scheme 2006 or the Insurance Ombudsman Rules 2017, do not provide for any such relief of reprimand. As a result, the bank blames the insurance company for the mis-endavours and the insurance companies return the favour by blaming the bank. The only person who is in distress is the customer. As a redress, at best, the premium collected is paid back to the customer, with interest and in some slender cases compensation for his suffering.

The following are some suggestive measures that may be employed to address the issues pointed out hereinabove:

➤ A one window grievance redressal mechanism:

Too many cooks spoil the broth is a well-established idiom. The same can be said about the parallel fora's setup under the Banking Ombudsman Scheme and the Insurance Ombudsman Rules. This can be addressed by establishing one single authority to address issues pertaining to the bancassurance channel. Such an authority should have representatives from the IRDA and the RBI to ensure that the problem is looked at from both sides addressing the issue

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²² Section 125, Investor Education and Protection Fund, The Companies Act, No 18 of 2013, available at <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, last seen Apr, 01st 2022.

²³ IRDA Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017, dated Jun. 22nd 2017, available at <https://www.policyholder.gov.in/uploads/CEDocuments/PPHI.pdf> , last seen Apr, 01st 2022.

wholistically. This would save the customer the dilemma of which forum to choose for resolution of his issues.

➤ Training and awareness:

Adequate training of the representatives of the bank / insurance company and creating awareness amongst customers in general, is the two-pronged strategy that should be employed for addressing the issue related to the bancassurance channel. Concentrated and measurable efforts is the need of the hour in both these areas. The penalties that would be collected from the erring players, should be credited to a fund that should be established on lines with the e Investor Education and Protection Fund (IEPF) that is created by the Central Government under The Companies Act, 2013²². This money then in-turn should be spread consumer awareness.

➤ Freelook Period:

Regulation 10 of the Insurance Advisory Committee, made the IRDA (Protection of Policyholders' Interests) Regulations, 2017²³ provides for a "Free Look Cancellation" of life insurance policies. It is mandated that the insurance company shall inform customers that they have a "free look period" of 15 days from the date of on which he has received the insurance policy document. The customer has the option to cancel the insurance policy and send it back to the insurer for cancellation, if he has legitimate reasons to do so. This information should be printed in bold either on the policy document of the cover enclosing it, in a conspicuous manner.

➤ Rebuttable Presumption – on the basis of the fiduciary relationship.

The fact that the bank is in a fiduciary relationship with the customer and is more resourceful and better equipped - financially or otherwise – than the customer, it should be assumed that banker is at fault and the onus of proving that he isn't should be upon the banker as against that on the customer to prove that the banker is at fault. Once the banker knows that statutorily he will be presumed guilty, he can be expected to take all necessary and prudent steps to ensure that complete procedural transparency is maintained throughout the process of selling of insurance policy through the bancassurance channel.

In conclusion, I would like to admit that it is difficult that any system of control, checks and balances, or regulations will be perfect and all encompassing. But to say that the same cannot be improved upon, basis experiences twill be a misnomer. The incorporation of these suggested measures, to address, what I feel are the shortcomings in the current regulatory framework governing the bancassurance channel, will ensure that interests of all functionaries therein are best protected.

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