

*A Critical look at
Grievance Redressal Mechanism in Indian Insurance Industry*

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PUBLISHED IN INSURANCE TIMES OCTOBER AND NOVEMBER 2007 ISSUE

God provided a great model for communication
when He gave us two ears and one mouth.

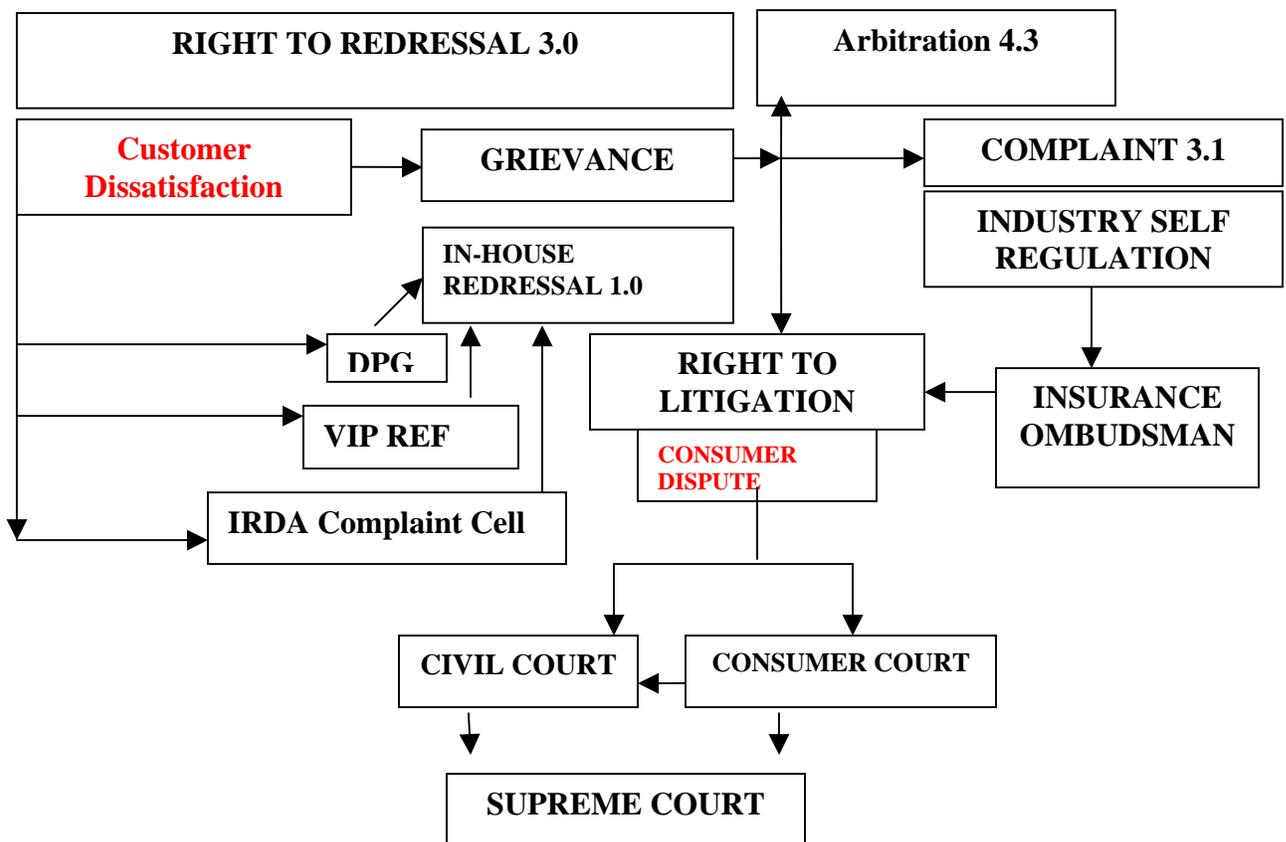
The paper attempts a comprehensive view of grievance redressal system currently in vogue, in General Insurance Industry. An effort has been made to vent the aspirations of Insurance Customer by recognising his right to be heard (separate from the right of redressal) for making the industry respond with greater care & concern in containing the dissatisfaction. This, the author suggests, may be attempted by using 'alternative dispute resolution' mechanisms, which is available, and being supported by legislation and judicial system. This will be, hopefully, a speedy, efficient and inexpensive mechanism. Further, the author has also reviewed the Law Commissions' recommendations and KPN Committee Report in regard to grievance redressal machinery. The paper also looks at the proposed mechanism vis- a- vis continuation of existing mechanism and need to have an independent redressal system, exclusively for the insurance industry.

Insurance industry is essentially a service industry where in the present context, the customer expectations are ever rising and dissatisfaction from the standard of services rendered is ever present. Despite there being continuous product innovation and significant improvement in the level of customer services with the use of modern technology, the industry suffers badly in terms of customer dissatisfaction and poor image. Alive to this situation the Government and the Regulator have taken a number of initiatives. These initiatives include institution of Insurance Ombudsman¹, in 1998 and Protection of Policy Holders Interests in 2002². In this context, it is worth noting that the KPN Committee in 2005 has recommended for continuation of the institution of Insurance Ombudsman³. However, the Law Commission has recommended for establishment of 'Grievance Redressal Authority' (GRA) by replacing the Insurance Ombudsman⁴ and transfer of all disputes pending with the Consumer Redressal Agencies⁵. The Law commission has further recommended that an 'Insurance Appellate

Tribunal’ (IAT) be constituted to hear the appeals against the decisions/ awards delivered by the Grievance Redressal Authority and the Insurance Adjudicators appointed by the Insurance Regulatory and Development Authority (IRDA) whose appeals will also be heard by IAT.

Despite the fact that insurance industry has got a lot of legislations, rules, regulations, for formal grievance redressal, the mechanism is not satisfactory and effective enough to cope up with ever increasing volume of grievances turning into complaints, and finally in fully blown up legal disputes. The flow chart I & II illustrate the existing redressal mechanism and suggested redressal mechanism for the insurance Industry.

CURRENT SYSTEM OF REDRESASAL

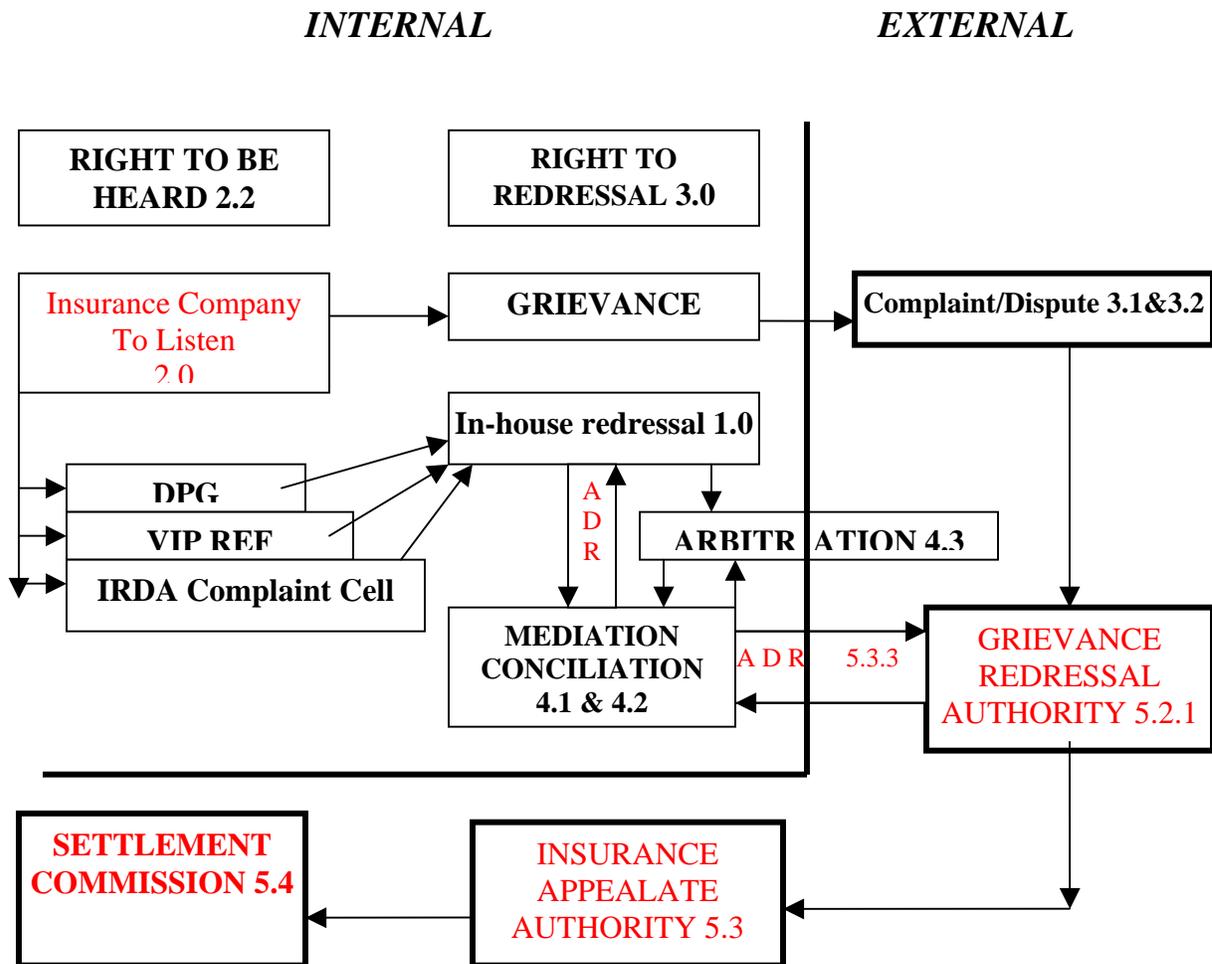


Flow chart no. I

1. Lack of credible ‘In-house grievance redressal machinery’

If the Central government is satisfied that an insurance company has already ‘grievance redressal machinery,’ which fulfills the requirements of the RPG rules, it may grant exemption to the Insurance Company from the notification⁶. (See Flow Chart II) It is really surprising that no Insurance Company has so far come forward to avail exemption, demonstrating their genuine concern for resolving grievances in cost effective, efficient and impartial manner even for individual insured⁷. The corporate insured, intermediaries or peer concerns have, in any case, been left to fend for themselves, even by the Regulator, The industry has left them at the mercy of courts, on a bizarre note that corporate world has the knowledge and can afford litigation.

SUGGESTED SYSTEM OF REDRESASAL



Flow chart no. II

1.1 Difference of opinions

As a matter of fact, even before any difference of opinion between the insurer & insured graduates into grievances to be resolved by 'In-house Grievance Redressal Machinery', the organization is required to provide credible arrangement for expeditious hearing of such difference of opinion and address the issues through *negotiations* promptly and impartially.

The term 'difference' means 'dissimilarity; a contention or quarrel'. Senior Officers may have mandate, to take *rational commercial decision*, in order to reiterate their commitment to listening the voice of their customers with due care and concern.

2. Are we listening organisation?

As soon as a '*difference*' of opinion arises with the insured due to a decision taken by any authority, will it not be fair that the very first assurance of redressal must come from the insurer it self? The insurers must be concerned about their customers and be ready to look into their genuine problems. At this point, the intention of the Insured is to amicably negotiate with the insurer to sort out its differences. Any attempt by insurer to perceive him as complainant is the first step towards straining the relationship of insured and insurer.

The listening organisation must have, at its heart, following vital beliefs⁸:

2.1.1 Respect: Being basically financial service providers, *the insurers must recognise and respect the opinions and aspirations of their customers*, rather than pushing them into the category of *Complainants* or *Aggrieved person* or *Respondents*. The insurer must deal with them on the basis of an *adult-to-adult relationship*, not talking down to them, as has been the case so far.

2.1.2 Trust: The insurers that cannot gain or retain the trust of customers cannot hope to win and retain them as loyal customer. The loyalty of the customer is fundamental to any insurance company.

2.1.3 Mutuality: The Insurers who balance their needs with those of their customers will succeed when the knowledge and information based insurance service has strengthened their customer service mechanism including customers concerns.

2.1.4 Personalisation/ Contextualization: Personalised approach must exist and increase gradually whether it is core products or the need across the customer's lifecycle. There must be proper contextualisation in the insurers approach.

This is a moment of opportunity, when an insurer can convey to its insured that they protect their legal '*right to be heard*' and that they are concerned about it.

2.2 Right to be heard

The right to be heard includes the *right to be assured* that consumer interests will receive due consideration at appropriate forum. The Insurance Company has genuine concern for its Customer's opinions and aspirations. The Company wishes the insured to remain its Customer and not to be alienated as *an aggrieved person* or *a complainant* or a *respondent*.

The insurer must develop innovative ways of delivering the right mixture of policy, product and claims servicing. The Insurers, who *truly put the Customer-first in their vision of service*, are bound to benefit themselves in the long run.

'The insurers must allay customers' anxieties first...'⁹ aptly describes the concept of making insurance companies a listening organisation, which is fundamental to customer satisfaction.

3. Right to seek grievance redressal

*The right to seek redressal includes right to be protected from the unfair trade practices or unscrupulous exploitation of consumers¹⁰. Once an insurer has not agreed to accept the insured's contentions, the Insured may be given another opportunity to approach independent 'In-house Grievance Redressal Machinery' of the insurer to resolve the grievance without classifying it as a complaint. **The 'complaint' may be defined as a grievance, which could be resolved internally within the organisation.***

"The word complaint is used loosely as a grievance connotes 'the conflict of interest, between two parties, to be resolved with the assistance of a third party out side the organisation'. The moment the out side the organisation resolution is carried out legally it is termed as dispute to be resolved with the sanction of law". (See flow chart no. II)

Therefore, it is incumbent on insurers on continuous basis to place independent & transparent 'In-house Grievance Redressal Machinery' to resolve 'grievance' in conformity with Redressal of Public Grievances Rules.

If in-house grievance redressal mechanism fails to resolve the 'grievance' amicably or fails to respond to the insured within 30 days, the aggrieved insured has a right to make **complaint** for amicable resolution at industry level through 'Insurance Ombudsman' so as to get rid of 'conflict of interest' between insured & insurer.

3.1 Complaint of "Conflict of Interest"

The Insurance Ombudsman acts as a mediator (by sending recommendations to both the parties) or acts as conciliator (providing alternate solutions for the resolution of conflict) by passing a speaking award with detailed reasoning, which he thinks fair, in view of the facts and circumstances of a claim¹¹. The

insured has been permitted option to accept or reject such decision/award of 'Insurance Ombudsman' ¹².

3.2 Consumer Dispute

The insured may also concurrently seek legal recourse in Civil Courts for dissatisfaction in respect of contractual agreement or he may approach Consumer Redressal Agencies for bad faith repudiation or arbitrary handling of insurance related matters. But the customers may decide all these things when he is left dissatisfied with in-house grievance redressal machinery. With this process the number of complaints going to formal courts will reduce substantially.

When a conflict becomes a *dispute* it enters into courtrooms. The insured has discretion to avail Arbitration process as provided in the general condition in all Policies. This is to avoid alienation of the customer due to non-acceptance of the award of the Insurance Ombudsman, pushing the insured to invoke ultimate legal step towards resolution of the *dispute*.

In order to save both parties from expensive & time-consuming litigation the idea of *alternatives to litigation* is constantly gaining ground. ADR is to be perceived as an important machinery, to be used before going for full-scale litigation. Legislatures and Courts have reinforced the idea from time to time.

4. Alternate Redressal Machinery an alternatives to litigation

The Alternate Dispute Resolution is a speedy mechanism, in terms of time taken, economical one in terms of costs involved and still, in a way it is an in camera mechanism where the apprehensions and misunderstanding of either party are kept close. The alternative dispute resolution enables the Insurance Companies to retain the relationship with the Insured and save its public image. The ADR

has emerged in India in the middle of nineties as a response to inordinate delays in disposal of cases resulting in docket explosion. The most commonly used methods of ADR are negotiation, mediation, conciliation and arbitration. The ADR methods are non-litigative dispute resolution strategies for resolving disputes outside the usual court process.

4.1 Mediation an appropriate redressal technique

Mediation is voluntary but structured negotiation process. It presupposes the willingness of both sides to resolve its differences. The mediation is used for resolving difference of opinion in order to facilitate either party to see reason, in the presence of mediator who is generally an expert from the same business fully conversant with the nuances of the trade. Mediation focuses on long-term interest, shows parties' weaknesses, not just the strength of their case and makes them examine their alternatives to a negotiated settlement. The mediator is not an advisor, as his role is to assist the sides for a mutually acceptable solution. The mediation may not work in cases involving moral turpitude or where criminal law is invoked. According to section 35 of the Arbitration & Conciliation Act, 1996, the agreement becomes final and binding, when both sides along with the mediator sign the agreement for resolution. The mediation agreement can be enforced under Civil Procedure Code, 1908 as if it were a decree of the court, and the same can be challenged too. The mediation is flagship of the ADR movement, which is not merely an alternative but appropriate dispute resolution mechanism (see flow chart no. II).

The aggrieved person may also explore quasi-judicial forum of Conciliation within the ambit of provisions of the Act, which has the force of award and may be questioned only in case of fraud or malafide intentions or where legal points are to be adjudicated¹³.

4.2 Conciliation

‘Conciliation’ is a process similar to ‘mediation’ but often it is not a voluntary process. Conciliation process is initiated by consent of both parties, as per section 52 of ‘Arbitration and Conciliation Act, 1996, but sec 89(2) d of Civil Procedure code, 1908 permits the courts to refer a dispute for conciliation even when parties do not consent, provided the court thinks that the case is fit for conciliation. Conciliation is a system where disputes are settled by mutual concession of the parties through good offices of conciliator (see flow chart no. II). The conciliator may request each party to submit him a brief written statement describing the general nature of dispute and the points at issue and supplementary statements if any. As per sec 67(4)¹⁴ the conciliator may at any stage, make proposals for settlement of a dispute without giving any statement of reason. Conciliator can formulate terms of a possible settlement and re formulate the terms after receiving observations of the parties under sec 73(1)¹⁵. Under our law and the United Nations Commission on International Trade Law (UNCITRAL) model law, the role of mediator is not proactive and somewhat less than the role of a conciliator. The role of conciliator is guided as per sec 67 (2)¹⁶ by the principles of objectivity, fairness and justice, giving consideration, among other things, to the rights & obligations of the parties, the usage of trade concerned and the circumstances surrounding dispute, including any previous business practices between the parties.

4.3 Arbitration

Arbitration is also a consensual forum. Section 30 in Part 1 of ‘Arbitration and Conciliation Act, 1996 provides that an arbitral tribunal may try to have the conflict settled by use of ‘mediation’ or ‘conciliation’ for the purpose of reaching settlement. Sec 89 of the Civil Procedure code 1908 and Order 10 Rules 1A, 1B, 1C also speak of ‘conciliation’ and ‘mediation’ as different concepts. Today arbitration is more popular method of alternative dispute resolution and mediation/ conciliation is limited to disputes between governmental agencies and undertakings and to labour disputes.

The Civil Procedure Code casts duty upon courts to make efforts for settlements on suits, against Government and Public Offices¹⁷ (See flow chart no. II). In case of Motor Vehicles accidents, the court sends the cases to concerned insurance companies for comments. The insurance company is required to study the claim and intimate Motor Accident Claims Tribunals the amount offered. The MACT hears both parties and tries to bring out an amicable settlement through such consensual adjudication.

4.4 Consensual Adjudication

Where litigation is pending in a court and parties try to resolve their disputes parallel to court proceedings, the contesting parties may record their settlement agreement by alternate dispute resolution mechanism as an award or order in court proceedings. Even if no proceedings are pending in court, it may be in some circumstances possible for parties for his purpose of settlement negotiations, to initiate proceedings so that their agreement can be made an order of the court by consent.

5. New Initiatives and suggestions

The Arbitration process is very sparingly used in the Insurance industry while mediation & conciliation mechanisms have been hardly used. The ‘Insurance Ombudsman’ has shown little impact on the working of insurers, despite mandated to make annual review of the quality of services rendered by insurer and make recommendations to improve these services¹⁸. The provision of allowing total discretion to aggrieved person for acceptance of award, lack of binding force in the awards of Insurance Ombudsman and narrow jurisdiction limited to complaints of personal lines only, have also undermined the efficacy of the system.

5.1 The KPN Committees reports Para 7.19 (i) provides that “*it is not established in statistical terms that consumer courts are so overburdened that they can not handle the additional burden imposed by the insured approaching them for grievance redressal’and ‘issues relating to access to the dispute redressal mechanism’*”¹⁹...

needs to be re-looked but this contention of the committee for effective & speedy mechanism of Grievance Redressal due to following reasons:

5.1.1 The Consumer Dispute Redressal Mechanism under Consumer Protection Act, 1986 appears not to be effective, in its avowed aim of delivering quick and inexpensive justice to common man given the large number of cases, as the cases are pending for decision for 3 to 5 years instead of the prescribed time limit of 90 days for the forums. Further, the contention of KPN committee of overburdening consumer courts cannot be accepted, as it is found in several cases that Forums are not equipped with infrastructure to deal with complexities of cases including quantum and administration²⁰. These are strictly redressal forums in respect of wrongs done only.

5.1.2 The Consumer Protection Act 1986 does not consider generally the scope of Insurance Contracts for the purpose of assessing adequate quantum nor goes into the aspect of determining liability in terms of insurance Contracts. The Forums orders are passed on 'efficiency in performance of service' and are not in tune with Policy contract. The awards are not governed by the basic principles of insurance & Law of contract. The decisions on disputes are generally based on prima-facie evidence of deficiency of service, instead of legality of performance of Insurance contract. Thereby, Consumer Protection Act indirectly provides extension of legal guarantee for the performance of insurers, without caring for the terms and conditions of Insurance contracts.

5.1.3 Further the suggestion of KPN Committee "to induct an additional member in the Consumer Redressal Agency (7.20) who is well versed with insurance matters, as a measure to hasten the process of disposal and to provide expert counsel to such Forums"²¹ is going to make little impact since Consumer Redressal Agencies have limited jurisdiction to adjudicate only *deficiency in quality, nature and manner of performance of service; loss or damage suffered by or restrictive unfair trade practices adopted*²². It is not authorised to adjudicate complex cases and matters having an element of fraud besides it has no machinery to assess and decide quantum of loss and admissibility under the insurance Policy contract.

5.2 The suggestion to continue with the system of Ombudsman is also fraught with serious ambiguities.

5.2.1 The Insurance Ombudsman permits the aggrieved party to accept or reject the verdict of Ombudsman though the Insurer is barred to appeal against the award renders the Insurance Ombudsman's decisions contrary to the principles of natural justice and equity. Further the institution does not envisage any contrary judgment for frivolous and vexatious complaints and thus serves as adversarial to insurers in some cases.

The scope of institution of Ombudsman is restricted in view of financial constraints and lack of review mechanism for insureds and also lack of provision for binding award.

Therefore, it is essential to establish a statutory, comprehensive, effective, independent quasi-judicial ***Grievance Redressal Authority***, which can provide justice to all the Insured's, Insurers' and Intermediaries of Insurance Industry. GRA may be given comprehensive jurisdiction to cover complaints from all type of insured regardless of any financial limit and not only individual customer.)

5.3 Insurance Grievance Redressal Authority' & Insurance Appellate Tribunal

The proposal of Law Commission in the consultation paper for establishment of 'Grievance Redressal Authority' & 'Insurance Appellate Tribunal' is most appropriate and will go a long way in strengthening the insurance Industries credentials as caring, concerned and consumer friendly organisation. This setup will enhance credibility of Insurance Industry & its various stake holders by insulating the industry from the unnecessary public gaze and provide justifiable decisions in the mutual interest of customer & service providers.

5.3.1 Need for comprehensive scope of GRA

The scope of ‘Grievance Redressal Authority’ [Law Commission Recommendations Chapter 4.3.8 (IV)] to adjudicate ‘only personal lines disputes’ lacks logic. The complaints of all stake holders irregardless of any specific segment of Insured’s, (not only the existing insured customer but prospective customers) insurer’s, and intermediaries need be brought under the ambit of the IGRA to make it truly **Insurance Grievance Redressal Authority**’ (See flow chart no. II).

5.3.2 Separate representation for life & non-life

The Authority must have atleast two Technical Members each, from Life & non-Life streams, while there may be only one Judicial Member.

5.3.3 Directives for mandatory use of alternative dispute resolution

At present the insured can avail any of the three alternatives namely, the Insurance Ombudsman, Consumer Redressal Agencies and the Civil Courts without resorting to the process of Mediation, Conciliation or Arbitration already existing as alternative dispute resolution machinery. The introduction of IGRA will replace three mechanisms with limited scope of each by one Comprehensive mechanism.

The Insurance Grievance Redressal Authority may be asked to explore both complainant and respondent to make sincere and serious efforts through ***In-house grievance redressal machinery*** and other available alternative dispute resolution mechanism for resolving their complaints before invoking the jurisdiction of Insurance Grievance Redressal Authority.

The Insurance Companies may also be advised by IRDA to make use of alternative dispute redressal mechanism viz. Mediation, Conciliation or Arbitration before taking the dispute to any statutory mechanism. It is heartening to note that the IRDA has constituted a ‘Grievance Committee’ in 2006 to review grievance redressal system in Insurance Industry. This committee may be asked to consider the legislature’s intentions clarified **u/s 89 of Civil Procedure Code** and **Supreme Court’s directives in Salem Bar Association vs. Union of India** directing the High Courts to make use of ADR’s consciously by framing necessary rules & procedures as making reference to mediation, conciliation and arbitration are mandatory for Courts.

The Law commission may think of legally empowering ‘Insurance Grievance Redressal Authority’, by including a provision to explore Mediation, Conciliation & Arbitration process (See flow chart no. II).

Further as per Sec 77 of Arbitration & Conciliation Act 1996 once Conciliation is in progress Insurance Grievance Redressal Authority must also provide for barring the parties to approach Arbitration or any other additional redressal machinery.

5.3.4 Settlement Commission

The idea of replacing the institution of ‘Insurance Ombudsman’ and transfer of all pending cases in Consumer Courts to a statutory mechanism provided for in the insurance Act 1938 itself. Taking a step further, the appeals emanating from IAT must go to a Settlement Commission instead of resting with Supreme Court, which has again limitations of monetary limits and disputes on legal points only meeting the Supreme Courts Jurisdiction. This system is akin to Central Board of Direct Taxes where the finality of decision rests with the Settlement commission being manned by the officers of the department with judicial background (See flow chart no. II).

5.4 Consumers’ Pre Grievance Help Bench

The suggestion of IRDA Chairman, for a dispersed non-judicial mechanism administered as ***Consumers’ Pre Grievance Help Bench***, akin to establishing a Call Centre, is a positive step to improve the image of the industry as a responsive industry. The pre grievance help bench can be constituted in the form of AVRU (audio visual response unit) viz. interactive voice response system or establishing kiosks or direct reply from regulator towards ***frequently asked questions*** by the insured to avail services. (See flow chart no. II)

6. Some more Suggestions to protect the interest of Policyholder

IRDA (Protection of Policy Holders Interests) Regulations 2002 are prescriptive in nature in regard to procedures to be followed by various stakeholders of industry. The stipulation for initiating action has not been put forward in the form of penalties leaving the regulations merely advisory. The Adjudicating Officers proposed by Law Commission for IRDA to

enforce Act provisions, rules, regulations, may include guidelines for penal action to induce transparency in working of the regulator.

Clause 9 relating to Claim Procedures in respect of General Insurance Policies of the IRDA's Regulations on (Protection of Policy Holders Interest) 2002 may be given a place in regulations for 'file & use'.

The insured cannot be held responsible for non-compliance of regulations given under IRDA (Protection of Policy Holders Interest) Regulations 2002. He is under an obligation to comply Policy terms and conditions forming part of the insurance contract only.

As regard to prescription given for Policyholders in Regulations ²¹ IRDA may direct Insurance Companies to include the provisions of the clause 9 (2 & 3) in the Policy Contract to create obligation on the part of insured to comply.

Similarly Clause 7 in respect of matters to be stated in General Insurance Policy may be made part of "file and use" system for its proper implementation by Insurers²².

6.1 Creating awareness for the redressal machinery

As regards to creating awareness about various redressal machinery by communication of information, the provision must be made on the face of the policy for additional dispute resolution machinery available for review /in-house redressal/mediation/conciliation & arbitration with explicit specification of time limits.

6.2 Need for promulgation of Insurance Business Laws

As the setting up of ***Insurance Grievance Redressal Authority*** would entail amendment to various supplementary Laws, the 'Grievance Review Committee' formed by IRDA must also suggest for enacting "***Insurance Business Laws***" which will reduce ambiguity in understanding insurance contracts, rules & regulations, definitions by clarifying application of insurance principles evolved over past two centuries of judicial interpretations in addition to Law of contract. This step will reduce customer dissatisfaction and will make the insurance business more transparent.

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