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Consequences of Non-Disclosure in the Contract of Insurance

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Abstract: *All contracts of insurance are contracts of utmost good faith, so both the insurer and insured are under a positive duty to make full disclosure of all material facts and not to make any sort of misrepresentations or mis-descriptions during the negotiations for obtaining the policy. This duty of utmost good faith applies equally to both the insurer and the insured. The duty to observe utmost good faith is ensured by requiring the insurer or the proposer to declare that the statements in the proposal form are true, and that he agrees that they shall be the basis of the contract and that any incorrect or false statements shall avoid the policy. The questions in the proposal form shall be so framed so as to get all information which is material to the insurer to know in order to assess the risk and fix the premium. The insurer gathers all material facts in prescribed proposal forms which the proposer fills up and signs adding a declaration that the answers are true. If the assured or the insured fails to make any disclosure, the insurer may avoid the contract. And if any false representation is done by the insured, then the insurer may repudiate the contract or if he desires, affirm the contract, that is waive the breach of utmost good faith committed by the assured or the insured. He must make the choice within a reasonable time after he comes to know about the breach. Otherwise he will be deemed to have waived the breach.*

The researcher in the following paper first takes the initiative to define the term 'Non-Disclosure'. She then analyzed the legal provisions of non-disclosure. Further she discussed the insurer's duty to disclose and the insurer's duty to discloser. She also lays at length the criminal liability on the part of the insurer and the insured for failure to disclose any facts associated with the policy. Finally a conclusion is drawn on the effects of non-disclosure in the contract of insurance.

I. Introduction

Insurance is a contract between two parties whereby one party agrees to undertake the risk of another in exchange for consideration known as the premium and promises to pay affixed sum of money to the other party on happening of some uncertain future event (death) or after the expiry of a certain period in the case of life insurance or to indemnify the other party on happening of some uncertain event in the case of general insurance. The primary function of insurance is the equitable distribution of the financial losses of insured, in other words, compensating the few who have lost from the fund built up by the contribution of all the members. The insured member's contribution to the fund is in proportion to the risk from which he is protected and it is the special function of the insurer to calculate and charge this contribution or premium. It is also his function to manage the fund up and pay compensation to the insured who have suffered losses. This benefits both the insurer and the insured. The insured feels secure that he will be protected from the insurance fund and this gives him freedom from anxiety. The insurer benefits from investing the fund. The party bearing the risk is known as the '**insurer'** or the **'assurer'** and the party whose risk is covered is known as the **'insured'** or the **'assured'.** Thus, it can be said that Insurance is one of those rare species of contract where two parties are involved i.e. the insured and the insurer. They are expressed by law to be contracts of utmost good faith[1] and both are under a mutual duty to share and disclose all material facts relevant with the contract. This utmost good faith is one of the basic and general principles of insurance and is also termed in Latin as "**uberrimae fidei".** This means that each party is entitled to rely on the representations of the other and each party should have a reasonable expectation that the other is acting in good faith without attempts to conceal or deceive.

Insurance has also been defined as the promise of compensation for specific potential future losses in exchange for a periodic payment. Insurance is designed to protect the financial well-being of an individual, company or other entity in the case of unexpected loss. Some forms of insurance are required by law, while others are optional. Agreeing to the terms and conditions of an insurance policy creates a contract between the insured and the insurer. The concept behind insurance is that a group of people exposed to similar risk come together and make contributions towards formation of a pool (a pool is created through contributions made by persons seeking to protect themselves from common risk) of the funds. In a case a person actually suffers a loss on account of such risk; he is compensated out of the same pool of funds.

[1] Beatson & D. Friedman, "Classical to Modern Contract Law, in Good Faith in Contract Law" 3, 4(1995)

The insured must disclose all material facts which are within his actual or presumed knowledge, as the risk involved and falsification of information by the assured can be valid grounds to vitiate the contract. This rule was stated clearly by Lord Mansfield (who is remembered as the Father of English Commercial and Insurance Law) since 1766, in a famous landmark English contract case **Carter vs. Boehm**[2]**,** in which Lord Mansfield established the duty of utmost faith and also said that insurance is a contract upon speculation. Breach of this duty renders the insurance contract voidable. But it should be noted here that, if he had the means of discovering the truth with ordinary diligence, the agreement cannot be avoided. Usually these duties are modified by the terms of the contract. The burden of proving that there has been a breach of those duties lies entirely on the insurers. Consequently non-disclosure on the part of the insured will entitle the insurer to avoid the contract ab initio (from the beginning) notwithstanding the absence of any fraudulent intent. Contract of Insurance must be in the form of a written agreement, signed and dated by both the parties. For an insurance of contract to be effective, the acceptance of the proposal by the insurer must be communicated or delivered to the insured. Insurance Contract are governed by the Common Law and certain aspects are also modified by the Statutes such as **Section 30 of the Indian Contract Act, 1872**, the **Indian Marine Insurance Act, 1963** and **Chapter VII of the Motor Vehicle Act, 1939**

There is another concept which looms large in any discussion on insurance of contract law. The concept is **"mispresentation",** which is covered in any course of general contract law. Mispresentations are used to describe situations where any wrong or misleading statements/answers have been given to questions posed of the applicant for insurance. It is concerned with the insured's duty to accurately answer questions raised by the insurer which are generally contended in the proposal's form. Both these topics i.e. non-disclosure and misrepresentation pose major danger areas for the proposer when seeking insurance cover whether he is a consumer, businessman or insured seeking reinsurance. Though both the concepts of misrepresentation and non-disclosure seem almost the same, yet there is a thin line of demarcation which distinguishes both of them.

But the researcher will focus here only on the **effects/consequences of non-disclosure in the contract of insurance.** The researcher has primarily used the **doctrinal method of research**. The Legal Text books on the Insurance Law are the primary sources. While relevant text, articles, case laws, as well as internet are the secondary sources.

Before delving deep into the issue of effects of non-disclosure in the contract of insurance, it is first advisable to know the actual meaning of non-disclosure which is stated below in the next part.

II. Definition Of "Non-Disclosure"

'Non-Disclosure' refers to that situation where a customer fails to reveal a relevant fact when applying for or renewing an insurance contract. It is concerned with the insured's duty to volunteer material facts. In law, a person applying for or renewing a policy of insurance is obliged to disclose all material facts. A material fact is one which would have an effect not necessarily decisive – on the mind of the prudent insurer in assessing the risk. If a person fails to disclose material facts, and that failure induces the policy i.e. causes the insurer to offer cover, or to offer cover on terms which would otherwise be available – the insurer may, when it becomes aware of non-disclosure, set the policy aside from outset. Thus, it is the duty of the insured person to disclose all material circumstances actually known to them or which in the ordinary course of business ought to be known by, or to have been communicated to them, and he cannot escape the consequences of not disclosing them on the ground that he did not know them. The duty of disclosure has to be discharged whenever the insurer has to decide whether or not to accept the risk and, if so, on what terms. Thus it is to be noted here that the duty applies before any contractual relationship exists between the parties. The burden of proving that there has been a breach of duty on the part of the assured rests on the insurers.

It is to be noted here that, facts which would, in ordinary circumstances, be material, may become immaterial in the special circumstances of the case; and the assured is then under no obligation to disclose them. Some of them are as follows:-

- Facts which are known or reasonably presumed to be known to the insurers.
- Facts which they could have discovered by making inquiry.
- Facts as to which they waive information.
- Facts tending to lessen the risk.
- Facts the disclosure of which is unnecessary by reason of a condition.
- Facts concerning 'spent' convictions.

The questions which need to be disclosed may be asked in the following manner:-

- Orally (by telephone or in person),
- Via the internet, or

[2] (1758-1774) All Er. Rep 183 (a decision of 1766)

- In a written proposal.

It is important to note that a person's duty of disclosure applies whenever they:-

- First arrange,
- Renew,
- Extend,
- Vary, or Reinstate a policy of insurance.

As mentioned above in the famous case **Carter vs. Boehm,** it was pointed out that the special facts upon which the contingent chance is to be completed, lie more commonly in the knowledge to mislead the underwriter into a belief that the circumstances does not exist, and to induce him to estimate the risk as if it does not exist. The keeping back such circumstances is fraud and, therefore, the policy is void.[3] The facts of the case are briefly stated as below. A policy was affected against the loss of Fort Marlborough by its being captured by foreign enemy. The policy was for the benefit of George carter, the then Governor of the Fort. It was alleged that the weakness of the fort and its probability of being attacked was not disclosed, and hence the policy was void. It was held that it was the duty of the assured (the person who desires to benefit from the policy) to make full disclosure to the insurer because the underwriter did not know of such circumstances which was a material part of the contract.

Thus from the above discussion, it may be concluded that the fundamental principle of Insurance Law is based on the principle of utmost good faith and it must be religiously observed by both the contracting parties. Now, this duty of full disclosure continues throughout the period of negotiations and up to the time 'the contract is concluded.' If there is any alteration in the risk disclosed in the proposal during the negotiation stage, that must be brought to the notice of the insurer, as otherwise it will be presumed that the risk accepted is the risk disclosed in the proposal. This duty of disclosure is same as the maxim **'Caveat Emptor'** which means, **'let the buyer beware'**, applies. The duty, if at all, is negative in nature, namely, not to induce the other party to enter into the contract by fraud or misrepresentation whether innocent or otherwise of any facts. Thus, it can be said that a person seeking insurance is bound to disclose all material facts relating to the risk involved. False answers to the questions in the proposal form given by the assured related to the state of his health vitiate the contract of insurance.

At this point it is pertinent to mention the importance of the **"Proposal Forms"** which form a very important part of the disclosure procedure. A "proposal form" is a form which is furnished by the insurer to the insured, and the insured has to fill up before the insurer undertakes to insure the risk. In practice, it is the duty of the insured to observe utmost good faith by filling up this form in cases of non-marine insurance. This form is framed in such a way that all information can be filled up with all relevant information that may be necessary to the insurer. There is no hard and fast rule as to the question framing, yet the proposer must disclose all material facts that he knows or ought to know that are material to the risk that he proposes to insure. He is also required to warrant the truth of the statements made therein and that he has not misrepresented or concealed any material facts. This form is later incorporated in the policy.

The contractual duty so imposed is such that any suppression or inaccuracy in the statements in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable at the instance of the insurer, whether such statements was made innocently or fraudulently and whether it relates to material circumstances or not. Hence it must always be kept in mind that an insurance proposal form is not like any other forms, and great care must be taken by the proposer while filling up such forms. It is thus, preferable to reveal too much rather than too little in the proposal form.

Now, the part which is to be discussed is the provisions regarding non-disclosure in the Insurance of Contract which is explained in the next part.

III. Provisions Regarding Non-Disclosure: Legal Aspects

As discussed earlier, the principle of good faith or **'uberieme fidie'** imposes a duty on both the insured and insurer in a contract of Insurance. But a thing which needs a mention here is that, these duties cease to exist as soon as the contract of insurance is made. This clearly shows that the duty of disclosure does not arise from the contract of insurance. This duty is neither contractual nor tortious, fiduciary nor statutory in character, but its basis rests on the jurisdiction, which is originally exercised by the Courts of Equity to prevent imposition.

Explanation to Section 17 of the Indian Contract Act, 1872 provides that mere silence does not amount to fraud unless there is a duty to speak. So we can say that the legal duty as provided in the Explanation does not apply to cases where there is a positive case of active fraudulent misrepresentation. On the other hand, under **Section 20 of the Indian Marine Insurance Act, 1963,** the assured/insured is required to disclose all material facts/circumstances, in the ordinary course of business, which might be known to the assurer/insurer

[3] J. Birds, "Modern Insurance Law." (96-126) (2001)

before the contract is concluded. If the insured/assured fails to disclose, then the insurer/assurer avoid the contract. So, only in cases of fraud, the party defrauded can not only avoid the contract, but also can claim damages/compensation for it. But the vital thing that is to be kept in mind is that an insurer cannot avoid an insurance contract on grounds of non-disclosure of lapsed policy by the insured, which has no bearing on the risk undertaken by the insurer.

To conclude the legal basis of disclosure, Lord Atkin quoted in a landmark judgment in a famous case of **Bell vs. Lever Bros. Ltd.**[4] where he said that, **"there are certain contracts expressed by law to be contracts of the utmost faith where material facts should be disclosed. If not the contract is voidable. Apart from special fiduciary relationships, contracts for partnership and contracts of Insurance are leading instances. In such cases the duty does not arise out of the contract; the duty of the person proposing the insurance arises before the contract is made."**

It is to be mentioned here that, there is also a criminal penalty imposed on those who fail to disclose all material facts. The provisions for criminal liability are mentioned below.

Criminal Liability

Non-disclosure of any material facts also attracts penal action. By **Section 133(1) of the Financial Services Act, 1986,** any person who dishonestly conceals any material facts is guilty of an offence if he conceals the facts for the purpose of inducing, or is reckless as to whether it may induce another person (whether or not the person …from whom the facts are concealed) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a contract of insurance with an insurance company (not being an investment agreement) or to exercise or refrain from exercising, any rights conferred by such a contract. Commission of the offence may lead to seven months' imprisonment or a fine or both on conviction or indictment, or to six months' imprisonment or a fine not exceeding the statutory maximum or both on summary conviction. The words of this section seems designed to deter dishonest concealment on the part of the insurers or their agents only, and does not apparently apply to the assured or his agent, since they could not induce an insurer to contract with an insurance company, but it seems to apply to a re-assured and reinsurer where both are insurance companies.

IV. Insurer's Duty To Discloser And Insurer's Duty To Disclose

Let me discuss this point one by one. First the provisions are to be discussed regarding the **insurer's duty to discloser.**

Though there are certain provisions in the Indian Marine Insurance Act, 1963, which provides for the requirements which are needed for disclosure by a prudent insured, but it does not provide for the disclosure requirements of the insurer. Though such occasions of disclosure is very rare because such information is known to the proposed, but still such occasions may arise. If there is lack of guidance on this point, a principle is to be taken as established in SHADE LJ. According to him, "the duty falling on the insurer must at least extend to disclosing all the facts known to him which are material either i) to the nature of the risk sought to be covered, or ii) the recoverability of a claim under the policy which a prudent insured would take into account in deciding whether or not to place the risk for which he seeks cover with the insure."[5] It should also be taken into consideration that the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the prospectus, if any. The insurer must issue a policy to the insured in conformity with the terms mutually agreed and at the same time the insured is entitled to ask for a draft policy though he has already agreed to accept the same in the proposal form. This duty of disclosure on the part of the insurer was illustrated in a famous case in **L.I.C vs. Shakunthalabai**[6]**.** The facts of this case are stated below. The insured in this case i.e. Shakuntalabai, has failed to disclose that she suffered from indigestion for a few days, and took choornam from an Ayurvedic doctor. She died of jaundice within a year of doing the policy and the LIC; the insurer repudiated the claim and took shelter under the 'Basic' Clause in the contract of insurance. The insurer cannot rely on the insured's signature to the declaration as a substitute for his duty of utmost good faith. It also puts additional burden on the L.I.C. agents while procuring new business. The Honourable Court did not approve of the repudiation because the insurer could not establish 'by clean and cogent evidence that the question was properly explained to her and she was not told that illness included such casual disturbance of health.' Thus, it was held that the insurer must act "fairly and honourably to

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[4] 1931 All ER Rep (1^{st}) 32, 1932 A.C. 161 227

[5] Banque Financier vs. Westgate Ins. Co. (1989) All ER 952 at 990 CA, Approved on appeal in (1990) 2 All ER 947, 950 HL

[6] AIR 1975 AP 68

the insured explaining properly the implications of the declaration to be signed by the insured and the range and the amplitude of the questions required to be answered."

The next point is **the insurer's duty to disclose.**

Section 19, 20 and 21 of the Indian Marine Insurance Act, 1963, lays down the provisions as to the effect of non-observance of utmost good faith. These above mentioned sections provides for the facts that the assured or the insured compulsorily needs to disclose or need not disclose. It must also be noted that these may be taken as applying mutandis mutandis to all classes of insurance. Let if now discuss the above mentioned sections I the following paragraphs.

Section 19[7] of the Act is titled **'Insurance is 'uberrimae fidei'.** The essence of this section is that, insurance contracts are based on utmost good faith and if it is not observed by either party to the contract, then such a contract can be avoided by either of them.

Section 20[8] lays down the provisions for **'Disclosure by the assured'.** This section has five sub-sections. It provides the meaning of material circumstances and also provides that the assured should provide information as to all the material circumstances that may be present in a given risk intended to be insured. It further lays down that the insurer can avoid a contract if all the relevant material circumstances are not disclosed. It also states those materials that need not be disclosed in case there is no inquiry.

Section 21[9] of the Act lays down the provisions of **'Disclosure by Agent effecting Insurance.'** This part lays down the disclosure norms that need to be followed by an agent who is affecting the insurance. According to this section, the agent must disclose to the insurer every material circumstances which is known to him and at the same time every material circumstance which the assured is bound to disclose.

Before closing this part, it is advisable to know the meaning of **material facts/circumstance. Section 20(2) of the Indian Marine Insurance Act, 1963,** provides what are material circumstances. According to the provision, 'every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.' The wide ambit of this provision is due to the reason that the assured alone is deemed to know all the circumstances that may arise with the risk intended to be insured. It is his duty to disclose them fully to the insured whether or not the insurer has asked specific question as regards to the same. Sub-sectio234n (3) of the Act provides with the circumstances that needs to be disclosed even when there has been no inquiry of the same. The test of materiality as provided under the Act is the

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[7] Section 19: *Insurance is Uberrimae Fidei-*

A contract of marine insurance is a contract based upon utmost good faith, and if the utmost good faith, be observed by either party, the contract may be avoided by the other party.

[8] Section 20:*Disclosure by the assured-*

1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstances, which is known to the assured, and the assured is deemed to know every circumstances, which in the ordinary course of business ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.
2) Every circumstance is material which would influence the judgment of a prudent insurer I fixing the premium, or determining whether he will take the risk.
3) In the absence of inquiry, the following circumstances need not be disclosed namely-
    a) Any circumstances that determines the risk,
    b) Any circumstances which is presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of his business as such, ought to know.
    c) Any circumstances as to which information is waived by the insurer.
    d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.
4) Whether any particular circumstances which is disclosed be material or not, is in case a question of fact.
5) The term 'circumstance' includes any communication made to or information received by the assured.

[9] Section 21: *Disclosure by Agent Effecting Insurance.*

Subject to the provisions of the preceding section as to circumstances which need to be disclosed , where an insurer is effected for the assured by an agent, the agent must disclose to the insurer –

a) Every material circumstances which is known to him and an agent to insurer is deemed to know every circumstances which in the ordinary course of business ought to be known by , or to have been communicated to him, and
b) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

"**judgment of the prudent insurer."** It is not what material in the opinion of the reasonable assured is.[10] The test is whether the circumstances in question would influence the prudent insurer and not whether it might influence him. This test of materiality, though provided in the Indian Marine Insurance act, 1963, it is applied in other types of insurance also.

Thus, it might be pointed out that the question is whether any particular circumstance is in fact material and not whether the proposer believed it to be. Therefore, the obligation to disclose is on the proposer and upon the knowledge the proposer possesses.

Now, here one more vital question needs to be discussed. The question is **'what is the remedy for breach of duty of utmost good faith?'** The answer is as follows: - The important question whether the remedy for the breach of duty by a party to a contract of utmost good faith is avoidance of the contract or whether it gives rise to a claim for damages was considered in a landmark case of **Banque Financiere vs. Westgate Insurance.**[11]It was held in the light of section 17and 18 of the Marine Insurance Act, 1906, that the only remedy that the act provides was that the aggrieved party could avoid the contract. This decision was further confirmed in the Appellate stage, when Lord Templeman pronounced that the only remedy available to the injured party was to rescind the policy and recover the policy. In this case the injured party being the insured, he even had the right to recover the premium amount paid. Right to claim damages was dismissed.

V. Duty Of Utmost Good Faith

Insurance contracts are a special class of contracts, having distinctive features such as utmost good faith, insurable interest, indemnity, subrogation and contribution and doctrine of proximate cause which are more or less common to all branches of insurance. There are certain obligations in contract of insurance which makes it unique and due to its unique nature, an insurance contract is also known as **'contract of good faith'.** This requires that parties to it to act towards each other with utmost good faith. This means that each party is entitled to rely on the representations of the other and each party should have a reasonable expectation that the other is acting in good faith without attempts to conceal or deceive. In a contract of utmost good faith, the parties have an affirmative duty to each other to disclose all material facts related to the contract. That is not just a duty not to lie, but also a duty to speak up. So all, the material facts which are likely to influence the insurer in deciding the amount of premium payable by the insured must be disclosed by the insured. Failure to disclose material facts renders the contract voidable at the option of the insurer. Very often the insurer has to rely only on the description and details filled in the proposal form. The insurer has no way of verifying these details and after an insurance peril has operated, the subject matter of insurance may very well have gone in smoke or washed away. Therefore, any mis-description, misrepresentation or blatantly false declaration made by the assured would result in the insurer paying wrong claims. It is therefore an implied condition or principle of insurance that the assured be required to make a full disclosure of all material particulars within his knowledge about his risk. However today, especially with eminent privatization, it would be logical to expect that insurers would attempt to become increasingly more customer friendly and provide risk survey and assessment, appraisal, etc. services, either directly or through brokers, surveyors, etc. Whether these factors may dilute this principle and to what extent remains to be seen. The general opinion yet would be that the assured knows his business and risk best and whenever in doubt, must attempt to disclose that particular aspects. Romer LJ in **Seaton vs. Heath**[12] underlined the rationale for insurance contract as, **'Contracts of insurance are generally matters of speculation. Where the person desiring to be insured has the means of knowledge as to the risk, and the insurer has not the means or not the same means'.**[13]

This duty of utmost good faith is quite different from ordinary good faith, which requires honesty in providing information, but does not require disclosure of all one knows. It is different from the general fiduciary duty as between client and solicitor or between doctor and a patient. Lord Millett stated in **Bristol and West Building Society vs. Mathew** that, **"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence."**[14] In principle, the relationship between an insurer and an insured is equal and the duty of utmost good faith for the insurer does not require an insurer to act on the best interests of the insured and vice versa.

[10] Ivamy, "*General Principles of Insurance Law"* (1979), 142

[11] (1989) All ER Rep 952 at 990 CA Approved on appeal in (1990) 2 All ER Rep. 947. 950 HL

[12] (1899) 1 Q.B. 782

[13] Ibid at 793

[14] (1998) chap 1 at 18

Utmost good faith requires one party voluntarily to reveal all important information in its knowledge towards other party, even if not asked to do so. The information required to be disclosed by the parties to determine whether the contract is fair and equitable cannot be ascertained by common sense or reasonable enquiry. For this reason, Courts have decided that utmost good faith is the appropriate standard to apply to a contract of insurance. Yet in another case in **Bell vs. Lever Bros Ltd.,**[15]**Lord ATKIN** said **"……..there are certain contracts expressed by the law to be contracts of the utmost good faith where material facts must be disclosed : If not, the contract is voidable. Apart from special fiduciary relationships, contracts for partnership and contracts of insurance are the leading instances. In such cases the duty does not arise out of contract; the duty of a person proposing insurance arises before a contract is made…."**

Therefore, under the common law, the insured was under a duty of utmost good faith to disclose material facts and not to make material misstatements at the pre-contractual stage, i.e. before the formation of a policy. Any breach of that duty would entitle the insurer to void the policy ab initio at the first stage.

In addition, the insured was under a further and continuing duty of utmost good faith to disclose material facts and not to make material misrepresentation as long as the policy is valid.

VI. Conclusion

Thus, it is clear from the above discussion that the duty of disclosure imposed on an applicant for insurance should be modified, and those facts should be disclosed to the insurers by the applicant if it is material to the risk; if it is either known to the applicant or is one which he can be assumed to know; or it is one which a reasonable man with ordinary prudence, in the position of the applicant would disclose to his insurers, having regard to the nature and extent of the insurance cover which is sought and the circumstances in which it is sought. The Indian Marine Insurance Act, 1963, which is an authoritative statute governing these principles has also provided for the disclosure requirements that are required to be followed by a person who proposes for an insurance. The act also provides for what constitutes material fact. But while analyzing the provisions one can see that what constitutes material circumstance. It is very wide and favours the insurers which are often huge multinational corporations. But this definition is an exhaustive one as given in the act. This act also provides for only the disclosure requirements of the proposer and neglects the need of the insurer. Thus, it can be said that the act could have been balanced if these shortcomings are fulfilled.

Furthermore it can be said that, the legal remedy available in case of non-disclosure is to rescind the contract, the contract being void ab-initio. This single remedy has often been considered disproportionate depending upon the circumstances of the non -disclosure. Hence, a suggestion would be to change this scenario and to differentiate between fraudulent and innocent non-disclosure and work out a suitable remedy so that the parties can carry on its obligation and provide a proportionate remedy to the circumstances that gives rise to the disclosure.

The entire research work would be incomplete if the researcher does not jot down those circumstances which need not be disclosed. They are as follows: [Section 20 (3)]

a) Any circumstance which diminishes the risk;
b) Any circumstances as to which information is waived by the insurer;
c) Any circumstance which is known or presumed to be known to the insurer;
d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.

However, different consequences may flow from the deficiency of such facts or particulars in pleading.

VII. Critical Analysis

This research paper would be incomplete without the mention of some criticisms of the doctrine of non-disclosure. This questions the retention of an eighteenth-century rule of law which, it is said, is unduly harsh on the assured and unnecessarily favourable to the insurer under current insurance conditions. It is possible that an assured may display both care and complete good faith in completing a proposal form, and later find that this protection is in fact worthless because he has omitted to mention a fact which an experienced insurer would consider material to the risk. The question, therefore, arises whether the insurer needs such a high degree of protection. But one thing is to be noted that keeping back of any material fact prevents the **"meeting of minds"** which is most essential in the formation of contract.

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[15] (1931) All ER Rep (1st) 32 = (1932) A.C. 161 227

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