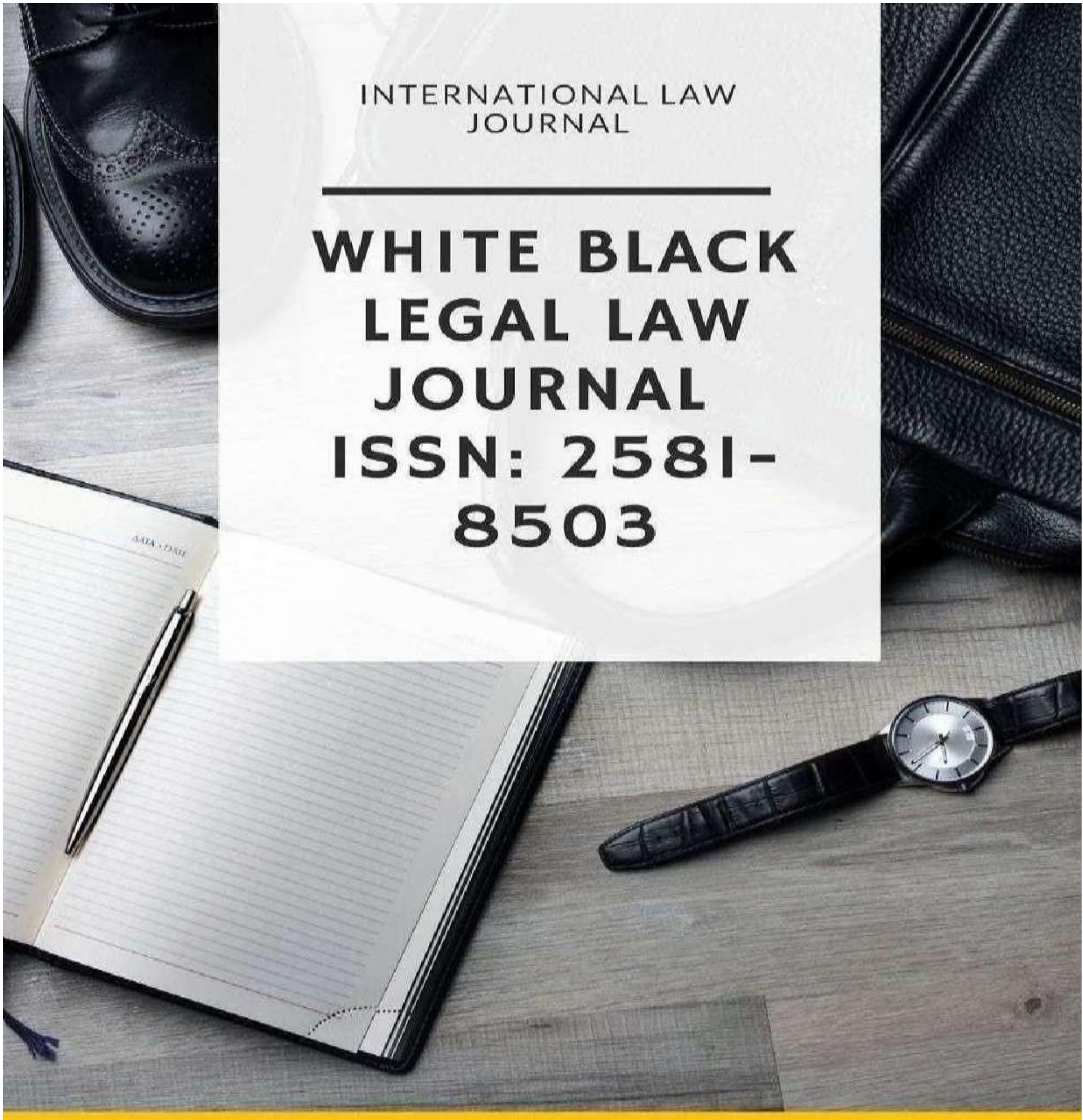

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MISSELLING OF INSURANCE BY BANKS

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1. INTRODUCTION

The banking industry is the economic backbone of any country. It maintains the financial flows within the country. In India banks are regulated by the Reserve Bank of India. While banks provide a lot of financial services to the society, such service is the bancassurance. Bancassurance is the term used to indicate the selling of insurance through banks.

Bancassurance is basically a tie up between a bank and an insurance company. This gives the insurance company free access to use the bank's distribution channels to gain more clients and sell products to a larger scale of people. In return for the access to the distribution channels the insurance company offers the banks a certain fee for its services.

The system is beneficial to both banks and insurance companies which inturn provides for efficient customer services. The banks receive an additional income which is purely risk free since the banks are only the intermediaries and do not have to indulge in any risk taking. This system of selling insurance and pension products through the banks channel has proved to be an effective method to reach out to a larger customer base in many countries.

In India, the concept of Bancassurance was first brought about through the Reserve bank of India, by releasing a notification in exercise of its power to release such notifications provided under the Banking Regulations Act, allowing the banks to indulge in the business of insurance. Following suit of the bank regulators, the regulator of the insurance sector, i.e. The Insurance Regulatory and Development Authority (IRDA) passed a notification in October 2002 called the "Corporate Agency" regulations permitting banks to act as agents of one life insurance and one general insurance company.

This paper aims to discuss the concept of bancassurance, the implementation of bancassurance in India, regulations pertaining to bancassurance in India and also analyse the mis-selling of insurance by banks.

2. BANCASSURANCE

The term bancassurance was introduced in France in the 1980's. But people believed that the banks which already has a strong hold on the financial sector of any economy, would gain too much control over the financial market and this can lead to a huge scam by was of misuse of authority. Therefore, this concept was restricted.

However, this did not stop other countries from giving it a short and trying to successfully implement bancassurance because they believed this practice will demonstrate notable growth in the economy. Europe was the most successful in implementing this practice[1].

This bancassurance, creates a bond between the insurance and the banks which strengthens the two sectors. The insurance company provides finances to the banks in return for the distribution channels being provided. The banks get to earn some finances from an extra source of income in return for providing a platform to the insurance company. The banks are given an opportunity to provide their customers with a wider scope of products and enhance their customer loyalty For banks, they can earn extra income by providing its platform to insurance companies. They can also get an opportunity to provide more products to customers. More-rounded services will help banks to enhance customer loyalty. As a result, they can become the center of financial products for the individual customer. Whereas, the insurance companies, become more accessible to the public gaining more customer.

The whole aim of bancassurance is to ensure customer satisfaction. To provide its customer with a one stop destination to fulfil all of their financial needs. Also, the fact that a well trusted bank is involved will provide the customers with assurance and will simplify the process of product reviewing and selection process.

What is bancassurance?

Banc plus assurance gives bancassurance, as the name suggest refers to the banks providing assurance i.e. insurance products to its customers. This a method of effectively using banks to provide multiple financial services seem to be a good alternative channel.

According to IRDA, 'bancassurance' refers to banks acting as corporate agents for insurers to

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[1] What is Bancassurance?, (1st April, 2021, 13:00), https://corporatefinanceinstitute.com/resources/knowledge/finance/bancassurance/

distribute insurance products. Bancassurance is basically an arrangement wherein a bank allows an insurance company to sell their product on the bank's platform, allowing them access to the banks clients. Simpler to any valid agreement, a bancassurance provides consideration for the both sides, while the banks gain additional source of earning revenue, the insurance company gains more clients along with saving them from paying commissions to agents or brokers.

It is necessary to understand that bancassurance does not refer to distribution alone but also includes features such as fiscal, legal, behavioral and cultural aspects which form an integral part of bancassurance.

Features of Bancassurance

Firstly, Bancassurance provides the customers/clients with a one stop destination for all their financial needs.

Secondly, its a cost-effective mode of distribution of insurance policy saving the insurance company from extra costs such as the commission payable to agents and brokers.

Further, it creates a helpful environment for the customers. When an insurance company pairs up with a trusted bank, it eases the minds of the clients by providing them with some assurance to give the new products a chance, successfully ensuring a protected environment to sell or bu the product.

The whole idea behind combining insurance with banks was to share marketing abilities and the selling-techniques of insurance companies with banks, while, the distribution network and customer base of the banks is provided to the insurance companies, in return, Bancassurance create a huge opportunities, to both banks and insurance companies along with a simpler financial management for its customers if implemented properly[2].

Bancassurance Models

Bancassurance was introduced to bring about an insurance distribution model to provide for the insurance companies to join hands with banks to make insurance policies accessible to the customers. Bancassurance models are the basis on the kind of partnership built between the bank and insurance companies. The whole aim of these bancassurance models were to increase the resources available to the insurance companies in terms of distribution, infrastructure, time and even

[2] Bancassurance Meaning & A Beginner's Guide to Bancassurance, (April 1st 2021, 13:00), https://www.aegonlife.com/insurance-investment-knowledge/what-is-bancassurance-a-beginners-overview/

manpower. The banks vast range of networks makes it the perfect platform to aid insurance business and hence bancassurance is an idea successful in theory.

Types of Bancassurance Model:

1. **Distribution Agreement**

Under this model of bancassurance the bank is obligated to only sell the insurance products of one insurance company, exclusively. This is either clubbed with any product of the bank or sold in standalone basis.

Features:

- The bank's infrastructure facilities are completely utilized by the insurance company for its benefit.
- Provides an opportunity for gaining an extra income by banks.
- The amalgamation levels are low.
- The banks will have more control over the selling of the products as compares to the insurance company.
- The bank's staff might not be well equipped to efficiently sell the insurance products.

2. **Strategic Alliance**

Under this model, importance is given to the development of the products, terms of service and management by the banks

Features:

- The infrastructure of the bank is being utilized by the insurance companies.
- Creates opportunity for an extra source of income for banks.
- Creates amalgamation in development of produced to cater to customer needs and management of channels, as required.
- Providing the insurance company with access to customer information by banks.
- Insurance company have limited control over the distribution of insurance products.
- Bank's employees might be a little reluctant to indulge in selling of insurance products.

3. **Joint Venture**

A Bancassurance is forming of a new partnership/corporation between the bank and the insurance company providing both with equal share holding right.

Features:

- Provides both, banks and insurance company, with the decision-making rights with respect to products and distribution strategies.

- Creation of high system integration between the insurance company and the banks who provide for the distribution channel.
- Allows insurance companies to make use of the infrastructure of the banks.
- Low expenses involved.
- Insurance company does not have much control over the distribution.
- Banks can achieve higher revenue and profitability by dealing with insurance products.

4. **Financial Services Group/ Wholly Owned insurer/ bank**

Under this model, the either the bank acquires the insurance company or vice-versa. In this model, the acquirer usually tries to create a company which provides multiple financial services, for example an insurance company and a bank.

Features:

- Creates high levels of relationship between the insurance company and the banks which act as the distribution channel.
- Cost efficient.
- Providing a one-stop destination for financial services by completely integrating the products.
- Insurance company does cannot exercise control over distribution.
- An opportunity for banks to increase revenue and profitability by sale of insurance products[3].

In Indian, only the first three models, i.e. distribution agreement, strategic alliance and joint venture models, are practiced. This is because the regulations in India do not permit banks or insurance to wholly own an insurance company or bank[4].

Challenges of Bancassurance

The banking sector and the insurance sector are both separate businesses regulated by different authorities. This makes it difficult to integrate the two businesses.

The insurance company loses absolute control over the sales of the insurance product which might affect the market strategies for the sale. Insurance companies are more equipped identify target customers and provide proper guidance; however, the employees of a bank are not trained for the sale of insurance products. The bank will need to educate their employees on insurance products

[3] Dua, P. and Sahay, Namita and Deol, 2019 05, Bancassurance model and its impact on Financial Inclusion: Review and Analysis

[4] Bhavna Verma & Shivank Chandra, THE BANCASSURANCE DILEMMA, (3rd April, 2021, 15:00), http://www.actuariesindia.org/ifs/19thifs/PRESENTATION/BancassuranceDilemma-BhavnaVerma.pdf

which will increase the workload, training and expenses on the banks.

When there exists a multiple bancassurance agreement it created a conflict of incentives among the bank's advisors. The chances of the higher sales of insurance product of the insurance company which pays higher over others out of self-interest is a threat.

In case of a dispute, its still unclear as to who is to be held legally responsible, whether it is the insurance company or bank.

The banks and insurance companies should firstly, align their objectives. Further, the insurance companies should provide training for the bank employees to improve sales. By implementing these they can reduce miscommunications and facilitate achieving mutual goal.

Further, the advent of digitalization has majorly affected the business model of bancassurance. Banks are attempting to take bancassurance on to the online platforms. However, what we need to understand is that the online platform creates a closer relationship between the customers and the insurance company, rendering the idea of bancassurance ineffective.

The entry of digitalization changes the whole perspective when it comes to bancassurance by challenging the banks and insurance companies to refiner their agreement and change together to satisfy the needs of the customers.

3. BANCASSURANCE IN INDIA

India has been gaining huge developments in the insurance sector. The concept of bancassurance came as an opportunity to boost India's financial sector. In India general insurance products are not as common as life insurance. Banks have a huge customer base, so it's the perfect opportunity to implement bancassurance.

Despite, bancassurance being a new trend it has rapidly grown in India. The regulators for the banking sector and the insurance sector in India are the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA). Therefore, both the regulators are involved in the regulation of bancassurance. Both, the RBI and the IRDA have given separate set of regulations to safe guard, monitor and regulate the business of bancassurance

The Reserve Bank of India

The RBI has released a notification called the entry of banks business[5] which provides conditions for bancassurance. The conditions are as follows:

a. Scheduled commercial banks can partake in insurance business as the agent of the insurance company in return for some consideration without any risk. This will allow the subsidiaries of the banks to participate in distribution of the insurance products, as well, on agency basis[6].

b. In case the banks want to set up a subsidiary or joint venture for the purpose of insurance business with risk, the banks should satisfy certain conditions such as[7]:

   i. Net worth of the bank: Not less than Rs. 1000 crores;

   ii. CRAR of the bank: Not led than 10%;

   iii. Net NPA's: not more than 3 %;

   iv. Net profit has been made for the last three continuous years by the bank;

   v. Satisfactory track record of the subsidiaries.

c. In case the banks want to undertake insurance broking or corporate agency through a subsidiary or joint venture, the following criteria need to be satisfied:

   i. RBI's prior approval is required.

   ii. Net worth- not less than Rs. 500 crores (after investing);

   iii. CRAR of the bank- not less than 10%;

   iv. Net NPA's- not more than 3 %;

   v. Should have made net profit for the past three years.

   vi. Satisfactory trade records.

However, it is to be notes that banks cannot indulge as brokers, since the insurance regulations require the brokers to be exclusively involved in only the insurance business. RBI does not provide for promotion of separate insurance broking outfits by the banks. MNC banks and the parent corporations are not leaning towards the broking subsidiaries in view of the FDI cap of 26 %. This has a negative impact on the brokers routes of banks and their subsidiaries.

The Insurance Regulatory and Development Authority

In accordance with the current framework released by the IRDA, the banks are permitted to play the role of corporate agents for only a single life insurance company and a single general insurance

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[5] Reserve Bank of India, Entry of Banks into Insurance Business, DBOD.No.FSC/BC.16/24.01.018/99-2000 (Notified on August 9,2000)

[6] Clause 1, Reserve Bank of India, Entry of Banks into Insurance Business, DBOD.No.FSC/BC.16/24.01.018/99-2000 (Notified on August 9,2000)

[7] Clause 4 (i), Reserve Bank of India, Entry of Banks into Insurance Business, DBR.No.FSD.BC.62/24.01.018/2014-15 (Notified on January 15, 2015)

company for adequate compensation. Banks are not entitled to any other payments but the commission paid as consideration. It goes without saying that banks need to follow a code of conduct to protect its customers and satisfy the insurance companies.

The RBI guidelines overcome the non-eligibility of banks to be corporate agents by adopting the referral model which states that the banks only provide the insurance company with their client database in return for a fixed fee. IRDA issued a guideline to regulate referral arrangements [8]for banks etc. The referral arrange provides the insurance company with access to the infrastructure, customer database and the permission to sell their products on the banks platform. However, a bank can only enter into a referral agreement with one insurance company. The whole purpose of the referral route is for the insurance company to use the banks database for sales and completion of its own transactions.

This referral framework did not seem to be the adequate way to execute bancassurance and hence the IRDA removed this system in 2010.

Advantages of bancassurance to:

1. **Banks and Insurance Companies**

a. Increase in business: The insurance company can effectively gain more customers and also sustain the existing customers by providing a wider range of financial services, i.e., both banking and insurance at one place.
b. Building customer relations: The banks encourage customers to indulge in insurance products which helps the banks to build customer relationships.
c. Offer new products: The insurance company can offer products which cannot sold on insurance channels. Bancassurance reduces premiums since the channels are created using banks channels making it more feasible.
d. Improve profitability: The bancassurance provides the insurance company with a chance to carry out administration by combining the bancassurance business and any other business of the insurance company. This will improve the profitability and create narrower margins for pricing of products in the future.
e. Opportunity to improve: The bancassurance provides the banks and the insurance companies an opportunity to learn the management skills of each other and grow their own business by implementing new business strategies.

[8] Insurance Regulatory and Development Authority, Circular No. 004/2003 Issued on February 14th, 2003)

2. **Customers**

a. Improve relationship with banks: Provides assurance to the customers of the banks to purchase insurance products improving the relationship between the customers and banks.

b. Create awareness: Banks are usually used by everyone, so those customers who are unaware of insurance policies will be able to understand and subsequently purchase insurance products. This is achieved by using the networks and marketing channels available with the banks.

c. Increase in competition: Bancassurance will increase the distributors of insurance policies increasing the competition in the market. This in turn provides thee customers with more options, better premium rates and also efficient services.

Disadvantages of Bancassurance:

a. Security: The fact that banks are sharing their customer data base with the insurance company exposes the customers details to data security threats which might lead to financial frauds.

b. Conflict of interest: The customers might get confused about where their money is being invested, i.e. there is a conflict of interest between all the bank products and insurance policies.

c. Chances of mismanagement: Though theoretically speaking the system seems picture perfect, when implemented there is no guarantee that the banks will provide the best customer services. Banks in India are known for their bad attitude towards customers. This might increase with the increase in responsibility on the employees of the banks[9].

4. MISSELLING OF INSURANCE BY BANKS

Mis-selling is the act of deliberately misrepresenting the product or services to mislead the customers about its suitability. This includes the purposeful omission of important information, or communication of wrongful advice or even sale of unsuitable products which are not at par with the needs of the customers. Mis-selling foes against ethics and implies negligence which can attract legal suits, penalty and more against the accused.

It has been defined by the United Kingdom's former Financial Services Authority as "a failure to deliver fair outcomes for consumers[10]."

[9] Lalat K Pani1 & Sukhamaya Swain, Bancassurance and Indian Banks, (2nd April, 2021, 15:00) http://www.irdindia.in/journal_ijrdmr/pdf/vol2_iss1/3.pdf

[10] WILL KENTON, Misselling, (1st April 2021, 12:00), https://www.investopedia.com/terms/m/misselling.asp

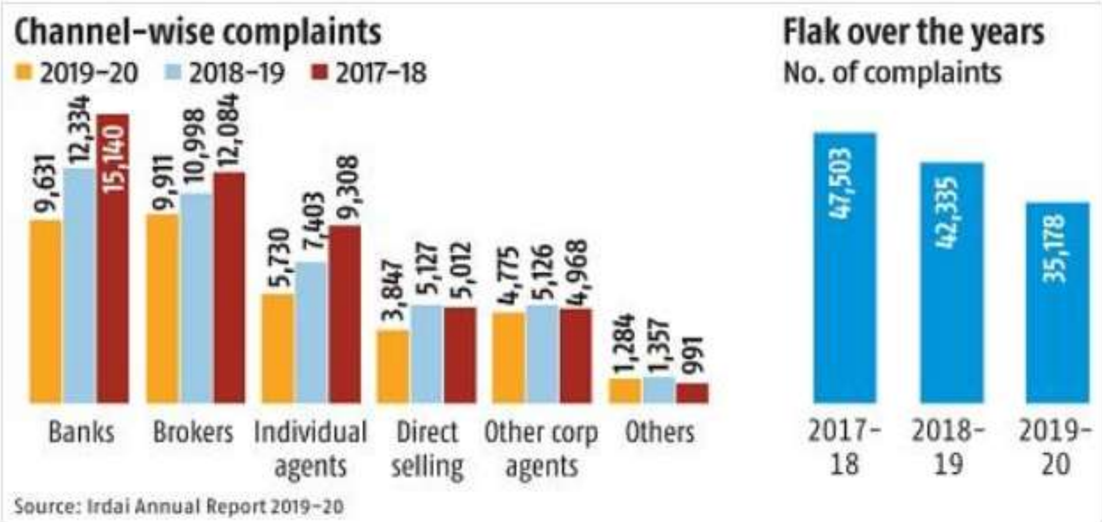
Mis-selling is usually found in the financial services sector and the regulators of such finances. Basically the intermediaries such as brokers, financial advisors, bank representatives and other persons who gain commissions or incentives out of sales of such investments or products makes them resort to mis-selling.

Mis-selling most commonly found in the sale of life insurance. Eg: A customer, a potential investor has a large amount of savings to invest but has no children or spouse to inherit them. They do not really require a life insurance, since they have no one who would benefit from it. In such a situation the salesperson would describe life insurance as a means to protect the assets and income at the event of his death.

MIS-SELLING IN CASE OF BANCASSURANCE

It has been observed that the complaints against Mis-selling of life insurance have gradually reduced over the years. Surprisingly it has been found that the mis-selling is mostly occurring when the life insurance is sold by banks or brokers rather than the traditional channels of distribution.

According to the data extracted from the Insurance Regulatory and Development Authority of India's annual report for the Financial Year 2020, stated that the IRDA has received almost 10,000 complaints of misselling complaints against banks and brokers; the complaints against banks were almost 12, 000 and brokers were 11,000 in the Financial Year 2019[11].



It is observed that the number of complained received against private life insurance companies have gradually reduced from 47, 503 in financial year 2018 to 35,178 in the financial year 2020

[11]Annual report 2019-20, (1st April, 2021, 13:00), https://www.irdai.gov.in/admincms/cms/uploadedfiles/annual%20reports/IRDAI%20Annual%20Report%202019-20_English.pdf

The common way of mis-selling observed is furnishing of wrong explanation of the product details, selling of policy to vulnerable customers. The reasons for this could be setting up of high sales target for the sales teams.

Furthermore, Irdai's annual report says the number of unfair business practices complaints received against life insurers has reduced 12.36 per cent to 43,444 in FY20, of which 3,994 were against Life Insurance Corporation of India and 39,450 against private insurers[12].

When tackling mis-selling, the victim should first gather all the information supporting his cause, starting from the written proof of the claims made and also the details of the complaint made immediately. Financial service providers should mandatorily have an internal grievance mechanism, which will provide support to the customers. Incase the decisions of the internal process is not satisfactory; the victim can very well go for an ombudsman. There regulators should be accessible for relief against such wrong doings. The victims should be able to make claims even if the company has gone out of business.

5. CONCLUSION

Bancassurance is a model set up with the aim to unify banks and insurance companies to provide the customers with top notch products and services. The idea behind this is to remove reduce the burden on insurance companies and the banks. The insurance sector of the country if a market with scope for growth which will lead to an exponential growth in the Indian economy. This system would provide innovative schemes with lowers premiums with minimal risks etc.

Bancassurance will create a reform providing the customers with a wide range of choices to the customers. Further analyzing the system, this bancassurances seem to work normally with no exceptional, per se. However, the supervisory aspect of the system is yet to be mastered, it could be better handled by establishing stronger coordination between the supervisors.

The employees of the banks have to be provided with proper training and incentives to motivate them to take up the off without any resistance
The only way to successfully implement bancassurance is to ensure that the banks have better

[12] Banks, brokers get most complaints for mis-selling insurance products, (1st April 2021, 13:30), https://www.business-standard.com/article/economy-policy/banks-brokers-get-most-complaints-for-mis-selling-insurance-products-121021200019_1.html#:~:text=According%20to%20the%20data%20from,complaints%3B%20brokers%20close%20to%2011%2C000.

customer services, because it is a well-known fact that banks in India do not have the best services. There is a dire need to establish a clear differentiation between the banking and insurance sector of the bancassurance business to ensure better regulation of the system.

In conclusion, it can be said that the bancassurance system is a great initiative which will benefit all the parties involved if implemented properly. However, the issues of the mis-selling of insurance needs to be curbed. This can be done by firstly creating an internal grievance mechanism which is unbiased and set up for the convenience of the customers. The regulators need to provide stricter laws against such mis-selling. In fact there is a dire need to bring is stronger laws pertaining to bancassurance since bancassurance is the new normal and will require the regulators to protect the victims of such an advance financial system when it comes to security and also against frauds.

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