INSURABLE INTEREST IN LIFE INSURANCE POLICY

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# Introduction

It is well said that “Life is full of risks. For property, there are fire risks, for shipment of goods, there are perils of sea, for human life, there is the risk of death or disability and so on and so forth”[[1]](#footnote-2)The concept of insurance is based on the notion that one’s life is surrounded by uncertainties and thus human being needs to be prepared for any eventualities of life. According to Maclean, “insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual”.[[2]](#footnote-3) Thus the idea of insurance seeks to propagate the practice among each individual to secure oneself, their immediate dependents and their property with sufficient means in case of any misfortune. In a way, concept of insurance assists in establishing a socialistic pattern of society. Further it also helps to stabilize the economic security of the policy holder as well as it supports growth of industry by providing necessary capital and various social security measures.[[3]](#footnote-4) Thus it serves the social purpose; it is a social device whereby uncertain risks of individuals may be combined in a group and thus made more certain; small periodic contributions by the individuals providing a fund out of which those who suffers losses may be reimbursed.[[4]](#footnote-5)

The type of insurance contract of depends on the nature of the risk that an individual sought to protect. In general practice of insurance, there are broadly three types of insurance contracts, namely, Life, fire and Marine. However, the aforesaid list is not exhaustive rather In view of increasing diversification of insurance law, several difference modes of insurance have emerged and one of them is liability insurance or third party insurance. Nevertheless, the aim of all such insurance is to enable provision against any kind of risk.[[5]](#footnote-6)

Life insurance contract is a contract whereby a person (insurer) agrees for a consideration (that is payment of a sum of money) or a periodical payment, called the premium to pay to another (insured or his estates) a stated sum of money on happening of an event dependent on human life.[[6]](#footnote-7) In simple terms it is an agreement in which one party pays or agrees to pay a specified sum of money upon the happening of contingent event.

In return of this amount, the person so insured agrees to pay a price as consideration. In the case of *Dalby v. India* and *London Life Assurance Company*[[7]](#footnote-8) it was explained that life insurance policy is not a contract of indemnity rather it is in the nature of contingent insurance. Even if the insured do not suffers any loss, it is necessary that the insurer pay the agreed amount.[[8]](#footnote-9)

This project deals with an exhaustive study and deliberation on the intricacies of a life insurance policy with special focus to insurable interest involved in such policies. The research work is divided into three segments. The first chapter gives a detailed explanation about the meaning of the term insurable interest with special emphasis on life insurance policies. The second part highlights on the need of insurable interest in insurance policies contracts. The last limb throws light on the role of insurable interest in life insurance contracts. At the end, the authors’ points out the fallacy of the concept and have also suggested certain measures that can adopted to improvise the same.

## meaning and scope of insurable interest

Insurable interest means an interest which can be or is protected by a contract of insurance. This interest is considered as a form of property in the contemplation of law. It is assimilated to an actionable claim transferable to the same extent and within the same limitations.[[9]](#footnote-10) In the landmark case of *Lucena v. Craufurd[[10]](#footnote-11)*, Justice Lawrence defined insurable interest as “having some relation to, or concern in, the subject of the insurance (life of a person), insurable interest is a financial or other interest in preservation of the thing insured and continuance of the life which has been insured”. It emphasises the benefit and detrimental aspects of the legal interest that the assured must necessarily possess to be a rightful party to take out a valid policy of insurance. Thus taking taking of an insurance policy does not protect the insured property from loss or damage, but protects the insured’s interest in the property.[[11]](#footnote-12)

Historically, the insurable interest was not a necessary requirement for the subsistence of a contract and Roche J. Observed that there is nothing in the common law of England which prohibits insurance even if no interest exists.[[12]](#footnote-13) The concept of insurable interest developed subsequently and it has a different meaning and role to play in this branch of law. However, now it is a settled position that court should attempt to find insurable interest in every case of insurance contracts. However, such finding should not go against the facts and circumstance of the case or should not stretch the law beyond the breaking point. It is not a desirable on the part of the insurer to take premium and then at a later stage deny the existence of any insurable interest when faced with a legitimate claim by the assured.[[13]](#footnote-14) Further, this rule has been developed to avoid incidents of wagering act in insurance contracts. Thus, the requirement of an insurable interest is the distinguishing element between a wagering contract and an insurance contract.[[14]](#footnote-15)

As already stated, insurable interest can be defined as any interest which the assured have or deemed to have in the insurance contract in the event of any loss or damage or any accident. It is recognised as an interest or has been approved as a right in order to preserve the thing or for continuance of life which has been insured. In the world of insurance law, insurable interest is interpreted or is given two meanings. Firstly, in indemnity insurance, unless there is some proprietary interest which is sought to be covered by the policy there is no loss suffered and in such types therefore the contract by it very nature requires some interest to be involved in the subject matter and this is called ‘contractual insurable interest’ and in other cases of insurance where loss is not necessary to be proved such an interest is also not a mandatory condition.

Thus it can deduce that there exist two types of insurable interests, namely Contractual and Statutory. The former as already explained needs a prior existence of an interest in the policy so insured. On the other hand, insurable interests mandated by legislations are termed as Statutory insurable interests. However it is noteworthy that Indian statutes related to insurance law like Insurance Act of 1938 or Life Insurance Corporation Act does not explicitly define the term insurable interest. However, section 48 of the new amended act of 1950 gives a passing reference to the phrase. Also, Marine Insurance Act of 1963 defines insurable interest as an interest who is interested in a marine adventure[[15]](#footnote-16), thus it can be observed that this definition is limited for the purpose the said Act and is not exhaustive to include other types of insurance contracts. Further section 8 of the same act explains that insurable interest must exist at the time of taking the policy.[[16]](#footnote-17) However, prior to *Daly* case, it was required that the interest should be present at the time of taking the policy as well as the time of risk. Thus it can be observed that there exists no concrete statutory definition of insurable interest and thus in absence of such explanation, courts take reference from foreign courts which are presumed to be in conformity with economic and social trend of the society.

# necessity of insurable interest in life insurance

Due to increased occurrence of accidents and greater risk to life, the need for insurance cover has grown over the years. Such perils were previously unknown to life and property. Insurance of life or property gives an assurance and safeguards from an unexpected detriment event. To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability.[[17]](#footnote-18) One of the peculiar features of insurable interest is that it must necessarily have a pecuniary value and should not be stated in abstract terms.[[18]](#footnote-19) In relation to life insurance contracts, it is important that such interest should exists at the time of commencement of the contract though at a later stage, existence of such a interest is not a mandatory criteria.

Insurable interest in life insurance contracts are mainly categorised into two, for people related by blood or affinity and for all other categories of relations having a substantial interest in the life of the assured.[[19]](#footnote-20) Thus in some way or the other it is inevitable that a interest must exists in a contract for life insurance and also in other form of insurance arrangements. The only distinguishing feature is that in each such group, insurable interest is placed in a distinct manner. However in this article the scope of research is restricted to role of insurable interest in insurance contract for life.[[20]](#footnote-21) It is an established fact that insurable interest is a sine qua non to any contract of insurance. It is one the element that helps differentiating between a contract for insurance and a wagering contract. Insurable interest is ubiquitous in every contract of insurance and absence of same can render such contract as void.[[21]](#footnote-22) Thus insurable interest is a decisive factor to decide upon the validity of an insurance contract. In order to test existence of insurable interest in a contract, one need to determine if in case of any damage to life the assured will suffer any pecuniary loss.[[22]](#footnote-23) Even a person with limited interest can also have a valid insurance agreement.[[23]](#footnote-24) Thus the extent of insurable interest is not a relevant factor but existence of the same is significant here.

# insurable interest and life policies

It is a basic principle that without an insurable interest, there can be no life insurance policy.[[24]](#footnote-25) It is the understanding that beneficiary of the policy will be more interested in the continuity of the person’s life that is insured than the money received from such policy.

India’s Insurance Act, 1938 has no provision that explains the term insurable interest. Because of lack of statutory definition or an explanation, the court has to take into consideration the English and the American decisions that have been laid down taking the current social, economic as well as religious thinking of the society into mind. Therefore, the situation that prevails in India is that apart from the blood relationships, spouses, close relatives, other persons can also have a legal right to derive an insurable interest in another person’s life and can take insurance policy on the life of such person without showing any proof of how they derive an insurable interest. Under the insurance law, few persons have been recognised as having insurable interest that can be categorized into two main heads: a) Blood relationships and b) Contractual Relationship.

### A. Blood Relationship

This can be elaborated under the below mentioned heads:

1. ***Interest in one’s own life****:* It is a presumption that every person will have an insurable interest in one’s own life because of the reason that the loss suffered can never be mentioned in monetary terms. Thus, every person is given power to get the sum assured may it for the lifetime or for any short period and in case if he dies then his nominees or the dependants will receive the amount.[[25]](#footnote-26) Furthermore, nothing can prevent a person from insuring his own life having a bonafide reason to do so.[[26]](#footnote-27)

2. ***By Spouse of a person whose life is insured****:* It is always presumed that husband and wife have interest in each other’s life and there is no need to provide a proof to establish such existence.[[27]](#footnote-28) In the case of *Reed v. Royal Exchange Assurance Company,[[28]](#footnote-29)* it was established that a no formal proof is necessary to prove that husband or wife have interest against each other as husband has a legal obligation to support wife and wife has been considered to be dependent on husband and thus both have insurable interest against each other’s life. Since the loss of the person’s life cannot be measured, thus it is considered that there is an unlimited insurable interest.

3. ***Parent and Child:*** Parent child relationship has always been considered as the strongest blood relations among all.[[29]](#footnote-30) This bond is so strong that it is enough to presume that such both parent and child will have interest in each other’s life.[[30]](#footnote-31) In India, mere emotional interest is enough to raise a presumption that there is an existence of any insurable interest. However, in England it is refuted saying that mere love as well as affection cannot be considered as sufficient to make it a presumption that a person has insurable interest and some pecuniary interest in life of each other has to be proved.[[31]](#footnote-32) Thus if it can be proved that there is a pecuniary interest in the life of child, the parent can take the life insurance policy, though it is assumed that since child is dependent on the parent to support him, thus he/she shall always have an insurable interest on the life of the parent.

4. ***Other Relation:***  If it can be proved that a person has an actual dependence on life of the person then it can reasonably be expected that a person will have a benefit on the continued existence of him and hence is so related to the person that such insurable interest s maintainable.[[32]](#footnote-33)

### B. Contractual Relationship

Apart from blood relationship there can be other contractual relationships where it can be seen that a person has an insurable interest over the life of the other person. Some of them are:

1. ***Debtor and Creditor Relationship***: A creditor is considered to have an insurable interest in the debtor’s life, though it is limited to the amount of the value of the debt the debtor has taken from the creditor.[[33]](#footnote-34) It is of no use to see whether the debt is a secured debt or an unsecured debt. Creditor is considered to have interest in the debtor’s life as the probability of receiving payments will materially depend upon the continuity of the life the debtor possess. Thus most of the courts have declared that a creditor can insure the life of the debtor if it can be proved that he has an insurable interest in his/her life.

**2**. ***Partners of the firm****:* Though in a common parlance it cannot be considered that a partner has an interest over the other partner’s life, however if the partner is indebted to the firm or to the person claiming to have insurable interest personally, then it can be considered that he/she has insurable interest provided it is proved that indebtedness is so high that he has an interest in the life of the partner.[[34]](#footnote-35) However, it is not an unlimited insurable interest but limited to the extent of the money contributed in the partnership firm.

3. ***Other economic relationships****:* Other relationships like principal agent, master servant or trustee and co- trustee can also be considered to have insurable interest towards the life of one another. Other business and economic interests that are based upon some contract wherein the death of an individual can substantially cause loss to another person in fulfilment of such contractual obligation, then it can be termed as a person having an insurable interest provided they can prove or provide a quantification of the alleged economic benefit or the loss suffered.[[35]](#footnote-36)

Thus, any contractual relation apart from blood relations or relations arising out of blood and affection has to show substantial economic interest in the continuity of the life of the person insured or else the contract will be considered as null and void by way of constituting it as a wagering contract.

# Conclusion

In the new era, there have been many new forms of insurance that has been brought forth, however most famous form of insurance has always been the life insurance. Insurable interest is the most basic principle that is required to be followed for having a valid life insurance contract. It is an interest incorporated for the safety of the subject matter of the insurance policy. It arose out of the relationship having economic interest which exists between the person holding the insurance policy and the person whose life is assured so that the person holding the policy incurs a loss on the death of the person insured or is having some gain because of the continuous existence of the person insured.

In the case of family relationships or close relatives like parent child relationship etc, it is a presumption that the insurable interest exists however in business or the contractual relationship it has to be proved that there exist an insurable interest because of financial relationship which on the death of the insured will lead to the loss to the policy holder. However in England, even mere love and affection does not suffice and a pecuniary relationship has to be shown for making it a valid insurable interest claim. The contract of life insurance without an insurable interest is void.

Though the basic presumption is that every person possess an unlimited insurable interest in one’s own life and can nominate any beneficiary who will receive that amount on his/ her death, however if such nominee intentionally harms the insured then life insurance policy cannot be covered. The requirement of insurable interest for life insurance policy is mainly based on the principle of public policy which mainly requires a person to possess a valid insurable interest in the life of insured so that they can prevent the persons to enter into wagering contract or induce the person to intentionally take the life of the insured to get an insurance claim.

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4. Edwin W. Patterson, “*Essentials of Law of Insurance”*(2d ed. 1957) 109 [↑](#footnote-ref-5)
5. Baker, “*Insurance Law and Policy: Cases, Materials and Problems”*, (2nd ed. 2008) 353 [↑](#footnote-ref-6)
6. M N Mishra, “*Law of Insurance*” (8th edn, Central law Agency 2010) 1 [↑](#footnote-ref-7)
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9. William R. Vance, “*The Law Of Insurance”* (3rd. ed., Anderson, 1951) 157 [↑](#footnote-ref-10)
10. *Lucena v. Craufurd* [ 1806] 2. B&P 269 ( MR) [↑](#footnote-ref-11)
11. M.N. Srinivasan “*Principles of Insurance Law*” (7th ed ) 75 para [↑](#footnote-ref-12)
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15. Marine Insurance Act, 1963 s.7 [↑](#footnote-ref-16)
16. Marine Insurance Act, 1963 s.8 [↑](#footnote-ref-17)
17. *Seagrave v Union Insurance Co. Ltd*., [1886] LR 1 CP 305. [↑](#footnote-ref-18)
18. Rob Merkin and Jenny Steele, “*Insurance and the Law of Obligation”*, (1st ed. 2013) 263 [↑](#footnote-ref-19)
19. Edwin Patterson, “*Insurable Interest in Life*'”[ 1918] COLUM. L. REV. 381 [↑](#footnote-ref-20)
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22. *New India Insurance Company Ltd. v. G.N. Sainani*, [1997] 6. SCC 383. [↑](#footnote-ref-23)
23. *Tomlison (Haullers) Ltd. V Hoplurane,* [ 1966] 1. AC 418 [↑](#footnote-ref-24)
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27. The English Women’s Property Act, 1882, § 2. [↑](#footnote-ref-28)
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29. John F Dobbyn and Christopher C French*, “Insurance Law In A Nutshel”l*, 96. [↑](#footnote-ref-30)
30. Dagne Daukantaite, “*Is A Family Relationship Alone Enough To Create An Insurable Interest In The Life Of The Other?*” (February, 2004) 1 International Journal Of Baltic Law. [↑](#footnote-ref-31)
31. *West Coast Life Insurance Company v. Crawford*, [1943] 58 Cal. App 2d 771. [↑](#footnote-ref-32)
32. *Atena Life Insurance Company v. France* [1876] 94, U.S. 561. [↑](#footnote-ref-33)
33. *Debtor v.. Baldero*, [1807] 9 East 72. [↑](#footnote-ref-34)
34. *Powell v. Dewy,* [1898] 123 Log NC. [↑](#footnote-ref-35)
35. *Hershberger v. Young*, [Mo. Ct. App. 2001] 59 S.W.3d 614. [↑](#footnote-ref-36)