

FINANCIAL INCLUSION- A DIMENSION OF INCLUSIVE GROWTH WITH HEALTHY INSURANCE INDUSTRY

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Abstract

Indian economy, financial service vehicles and government's interest to create an atmosphere of right to accessibility making indicia of "right to life under Article 21 of the Constitution" forms a basic building block of inclusive growth. Inclusion of all segments of people in the agenda of growth process can pave the way to achieve it. Sufficient avenues to survival amenities make people work relentlessly for bettering their life, family, children etc. in all social perspectives. But the hardship of their acquisition makes them frustrated and bifurcate from the mainstream. Deprivation, discrimination, oppression etc. are social maladies and there is iota of doubt to say that they vividly oppose the accessibility right. Recent government of India (GOI) drive towards the "Accessible India Campaign" (Sugamya Bharat Abhiyan) is strategizing for rights of handicapped people as citadel of living and those with visual, orthopedic, hearing etc. impairment, people with locomotive and other disability to streamline their needs and requirements for decent living. These desiderata of life necessitate strong economic access, less barrier, tremendous opportunity of involvement and finally to augment the growth process to feed the needy safeguarding from starvation. The economic paradigm plays a vital role to growth inclusive of all segments of people and social aspects supplemented by banking, insurance, chit fund, stock exchange for money market sailing towards economic viability. Indian economy encompasses a striking paradox. On the hand we have banking sector which is flushed with money without any takers unless the interests rates are reduced and on the other there are highly efficient fund-starved sector of micro and small enterprises. These factors require and promote emergence of some entities to introduce inclusive growth right from root level right across social life to strengthen economic spirit of the nation. The entire country should be equipped with tremendous legal reformation for all round growth inclusive of necessary aspects.

Keywords- *Inclusive Growth-Insurance- Pyramid Schemes- Consumer's right*

1.1. Introduction

Insurance is a device by which some future security is created towards the life of human beings as well as non-life of any entity. Insurance is allowed to animal life also. It indicates damage of any life or non-life by accident, fire, flood, electrical damage, earthquake, mob violence, conflagration etc. if unintentional then some compensation is granted as and when claimed by surviving victim or on death by dependent family members or owner of the objects. Much water has flown under the insurance bridge in the name of innovation by denationalizing the insurance sector¹. The sudden fallout of any earthly object not in the hand of human agency

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but destined in the forehead is taken care of by the fundamental law of the land and under its allied legal framework. The monopoly of government in insurance sector has been minimized now under the Insurance Regulatory and Development Authority Act, 1999 (IRDA) which regulates and develops insurance industry in India. Insurance company/industry/institute is also called Non-Banking Financial Company (NBFC) because they accept money but donot channelize them to customers as loan. Both private and public entities are competing in their own field. The withdrawal of funding by the government transforming the mixed sector of insurance to private one delinking the parent entities with strong subsidiaries to make them work independently have been ventured. In India, the insurance sector does not have foreign domination but 26% Foreign Direct Investment (FDI) is allowed in automatic approval route and upto 49% is sought to be allowed on insurance to liberalize the economy.² The Insurance Amendment Bill, 2013 passed by both Houses of Parliament has hiked the FDI to 49% on July, 2014 keeping the management control entirely in India only. Aspiration of more progress or more capital makes the hike welcomed by the insurance companies. It was to initiate capital intensive industry in India. Insurance should provide for future claims because it facilitates stability and foreign capital investment and expand the insurance coverage in the country. This amendment also allowed investment as contributions to pension funds³ which were disallowed under Section 24 of the Pension Fund Regulatory and Development Authority Act, 2013(PFRDA) above 26% under National Pension System in Indian insurance company under Insurance Act, 1938. The fundamental aim is to compel the insurers to penetrate to unexplored rural sector needing the investment. Presently in India 52 insurance companies are operational out of which 24 deals with life and 28 deals with non-life.

Insurance is a *bona fide* assistance towards creation and destruction involving the causes of occurrence of risks. Risks inevitably environ a human being in all ventures i.e. on life and allied activities promoting gorgeousness of life. The cravings of owning goods is yearned by people earnestly. The ownership is jeopardized once protection favouring risks is overthrown and out of the desire against overthrow of risks insurance concept came into being. Manusmriti, Yajnavalkya, Kautilya's Arthashastra also covered insurance aspects and stated that pooling of resources are important that can be redistributed in times of calamities like flood, fire, epidemics, famine etc. which are precursor to modern times insurance. The grueling ventures of insurance protect the owner of life or goods from variety of risks as anticipated by them. The protection made to a

¹. www.fdi.com , last accessed on 18th May, 2016; the policy of foreign direct investment incorporated throughout insurance industry seems quiet relevant to attract investment for poor and weaker section

³ . Pension funds include a registered intermediary u/S 27 of PFRDA for receiving contributions and accumulating them in a pool to make payment to subscribers.

person is called assured or insured and who undertakes so is underwriter or insurer for a small consideration called premium. So, contractual obligation under insurance arises to insurer for undertaking in return of assured consideration for premium to pay to insured/assured a sum of money or its equivalent in the happening of any event or risks. The risks covering the loss ensues on the adversity of happening which is directly proportional to the quantum involved therein for both life and non-life. So, in insurance risk of financial loss due to death or disability of a person or damage, destruction, deterioration, loss of property perilously to which owner is exposed to misery is assumed by insurer. The loss is gauged on immediate, short-range proximity basis or far-sighted, long range and remote basis to ensure by the risks bearer to risks anticipator. Insurance is a financially adopted mechanism through which fear of future risk of capital disorder is lessened helping the growth of industrial, social, economic growth accelerating production of man power, human resource etc. in a welfare state.

Insurance is designed on any specific sum assured to the insured by the insurer condition precedent through the payment of premium. Insurance benefit is claimed by the insured keeping the insurance scheme or policy alive by punctually making the payment of promises. Insurance applications once filed with payment of prescribed premium either onetime, monthly, quarterly, half-yearly, annually, biennially etc. for a particular period of time covered by the scheme is assured with some lucrative financial benefits which can give some respite to the insured. Of course, insurance on life covers benefit generally on any physical distress of the insured through accident occurred to him or on succumbed to death. In modern time's insurance on both life and non-life has become a phenomenal advantage for people as it helps both the insurer and insured multiplying the concept among all. The risk covered under insurance policy is singularly one time advantage which along with the payment of assured sum provides more facilities to the insured to popularize the concept of the respective insurance strategy. Moreover, people with such monetary denominational succour find it complacent at the time of distress in the family. Insurance institutes of a country can reflect the vital need of economic protection of people as they earn money to defray but never learnt about investment. The reciprocity of earning and investment return can make people to arrange for future and this generalization can invigorate them to clinch the best possible insurance mechanism for investing money. Now-a- days some bogus money market or insurance institute has created havoc in the insurance regime duping the incipient hopes of the insured or investor sipping the honey from the hive. The IRDA is keeping strict vigil on the mushroom growth of such financial service providers in India. The present regulatory system initiates with the registration of an insurance company u/S 7 of the Company Act, 2013 for incorporation. The next procedures warrant that IRDA should register with such insurance company for the purposes of continuing the business. Under IRDA any insurance company cannot initiate a new business on any of its existing branch. The nascence of insurance ethics along with retention of promise of the insured is

to be kept alive if the insurance regime wants to survive with blooming markets of high return. The insurance strategy is anti-dumping measure against poverty as it vehemently increases the investment- consumerism flow in the economic sphere with drastic innovation of their new adventurism. The unethical money market or imprudent tactics to defraud people through insurance if ventured it will collapse with a result of prosecution after identifying the business to be gravest economic offence which is sought to be reflected here. It aims to the most relevant areas needed for the betterment of living aspects of people and their advancement in social spectrum.

2.1. Inclusive growth in India for all round development of society

When we talk about inclusive democracy it is discerned that the people in the society are always participative in all sorts of government activities irrespective of caste, creed, religion, place of birth, sex etc. Equal treatment is the ultimate object of inclusive democracy and underestimation of the due in society by the people is attempted to throw out. Inclusive democracy is a new term in which democratic values of existence is weighed ethically for social, economic etc. justice for inclusive growth simultaneously. It ensures equal distribution of powers at levels. Inclusive democracy is inconceivable unless it extends or reaches to the periphery of border of social realm to embrace all sorts of institutions to focus on general interest augmentation. Article 14 of the Constitution spells out “equality before law” and “equal protection of law” to provide opportunity in terms of advantages meted out to people in the society without discrimination. A society is legally blessed with various schemes launched by the government to bear the risks of prevailing disadvantage appropriately to occasional level but in reality some people are benefitted and some are deprived and duped. This inequality for discrimination is denounced under the constitutional scheme seeking to be remedied in a pragmatic manner to foster egalitarianism. The identification of backwardness of a particular community and subsequently afforded with barrier free ingress to growth orientation may be covered by insurance avenues.⁴ The social, economic, financial etc. guarantees assured under the Preamble of the Constitution are to be fulfilled to attain the welfare State otherwise promises shall remain as farcical. They constitute the inclusive democracy of a legal system with the minimum influence of elites on the capital structure of the society paving the way of inclusive growth cumulatively removing the frenzied administrative bottlenecks. Now the inclusive growth⁵ attainable through effective government agenda democratically is discussed below analyzing aspects involved.

⁴ . For example, report of Justice Rajinder Sachhar Committee (appointed in 2005 and submitting on 30th November, 2006) on the status of minority community and steps taken towards advancement of the community evaluating the needs by implementation of laws can serve the purpose.

⁵ . “*Concept of Inclusive Growth*” an article in Current Affairs Survey by Alfa Edu Pvt. Ltd., February, 2015, Vol.4, No.6, p.45

Inclusive growth is a process under which all segments of people in society are ensured equal access to enjoy the opportunities regardless of individual status. It dashingly facilitates basically the poor to project themselves towards the fruits of economic growth and grab them. Rapid and sustained poverty reduction facets ardently desire inclusive growth by allowing people to contribute to and benefit from economic growth. The growth obviously seeks to the neo-classical economic theory unrestrained or *laissez-faire* pattern with financial innovation and fairer financial regulation.⁶ Rapidity in the pace of growth is unquestionable for the sake of long run sustainable vision with broad-based impacts across sectors inclusive of large part of nation's labour force. Organization for Economic Cooperation and Development defines "inclusive growth" as the gap between rich and poor is hardly pronounced and the growth dividend factors are shared fairly to improve the living standard and outcomes that matter most the quality of life. Inclusive growth emphasizes on participation of people in addition to sharing the growth benefits towards wealth process and has a say in its orientation. Key elements on inclusive growth perceives the human development and well-being, benefitting all including marginalized, reduction of poverty and inequality, promotion of sustainable use of natural resources and climate protection etc. Moreover, investment on human capital, job creation, a shift towards more productive economic activities, progressive taxation policies, social protection by non-discrimination, strong and accountable government institutions fully subservient to statutory mandates etc. are fundamental ingredients of inclusive growth. The above desiderata of inclusive growth are decisive in order to minimize the inequity and unfair shocks hurting people for unacceptable disparity. Persistent inequalities endanger the peace and prosperity of a country indulging criminality, vulnerability, child labour etc. These factors make people incorrigibly prone to human waste promoting civil unrest, violent backlash derailing the growth process. So, it is the need of time to think from all corners for all aspects with a peer to peer study for a faster, sustainable and viable inclusive growth as focused below.

2.2. Social inclusion promoting inclusive growth

Social inclusion is a basic building block of inclusive growth for making every people safer, productive and integrated member of society. In our society poverty alone is not comprehensively termed as marker of deprivation but added by race, ethnicity, gender, religion, sex, place of birth etc. conferring disadvantage to people excluding them from a range of process and opportunities. Social inclusion empowers poor and marginalized people to have burgeoning global opportunities from crony financial system. It ensures the voice of people towards the decisions affecting their lives making them enjoy equal access to markets, services and political, social, physical areas. The thrust of social inclusion is backed by human development index for health, education and life expectancy etc. The millennium

⁶ . According to Llewellyn financial regulations have three objectives viz. sustain system stability, to maintain safety and soundness in financial institutions and protect the customers.

development goals for the eradication of poverty and hunger, universal accessibility to education, promotion of gender equality and women empowerment etc. also cobble the social inclusion drive for the growth. Some provisions of the Constitution of India provides for the mechanism of social inclusion vide Article 38 to secure social order for promoting welfare of people, Article 39 to arrange right to work, to education and to public assistance, Article 46 to promote educational and economic interests of schedule Castes, schedule tribes and weaker sections of society, Article 47 to raise level of nutrition and standard of living to improve health etc.

2.3. Economic inclusion- a sine qua non to inclusive growth

Next important aspect of inclusive growth is the financial inclusion under which some significant aspects have been aimed to focus. Financial inclusion is an outcome of financial campaign launched in 28th August, 2014 ensures the access to financial services in a hassle free manner to avail timely and adequate credit deserved by the vulnerably weaker sections and low income groups at affordable costs. In wider sense it covers universal access to different financial avenues at reasonable cost including not only banks but also insurance and equity products. Financial inclusion delivers the services at feasible cost to vastly disadvantaged people with low income indicia with lesser interest burden or zero interest. Governor of Reserve Bank of India Mr. Raghuram Rajan (as he then was) outlined financial inclusion as “simplicity and reliability in financial inclusion in India, though not a cure at all, can be a way of liberating the poor from dependence on indifferently delivered public services and from venal politicians. In order to draw in the poor, the products should address their needs- a safe place to save, a reliable way to send and receive money, a quick way to borrow in times of need or to escape the clutches of the money lender, easy to understand life and health insurance and an avenue to engage in savings for the old age⁷.” This inclusion has been prioritized by the government of India (GOI) as exclusion of larger people from the financial services inhibits the growth as evident from the reports of various committees already set up. The first Committee on “Comprehensive Financial Services for Small Businesses and Low Income Households” chaired by Dr. Nachiketa More submitting report on 31st December, 2013 proposed measures for achieving a healthy access to financial areas. The Committee also stressed on the full service electronic bank account to all people above 18 years age, insurance and risk management products at reasonable cost etc.

Pradhan Mantri Jan Dhan Yojana⁸ (PMJDY) launched on 28th August, 2015 is the pioneer to end the financial untouchability and bring under the scheme all unprecedentedly in economic history for universal financial access. No sooner did the Central government launch the scheme than huge bank accounts with Guianese

⁷ . <https://www.quora.com/why-do-corrupt-politicians-win-elections-in-India/> , last accessed on 22nd May, 2016

⁸ . www.pmjdy.com , last accessed on 10th May, 2016

Book of World Records were opened surpassing the target. Never before would the insurance companies have issued 1.5 Crore accident insurance policies in a single day. PMJDY covers not only bank account but also Rs.1 lac accident insurance cover and additional Rs. 30,000/- life insurance cover to those who open bank accounts before 26th January, 2015. In order to strengthen the commitments of insurance sector more other insurance avenues were ventured. Pradhan Mantri Surakha Bima Yojana⁹ (PMSBY) is for people between age of 18-70 years with premium of Rs.12/- per annum for accident insurance with bank account excluding service tax and debited from the account. In full disability or death the nominee shall get Rs.2 lakh as benefit. Pradhan Mantri Jeevanjyoti Bima Yojana¹⁰ (PMJBY) is for people of 18-50 years with annual premium of Rs.330/- aiming financial inclusion with bank accounts excluding service tax debited from the account with zero balance initially. In case of accident nominee can get Rs. 2 lakh as benefit. Atal Pension Yojana¹¹ (APY) covers contribution of people in unorganized sector ranging between 18-40 years and exit at 60 years debited from bank account. The government shall contribute upto 50% or Rs. 1000/- per annum in accumulation pool whichever is lesser in the account of the subscriber. Subscribers shall get benefit of Rs. 1000-5000 after attaining 60 years once monthly payment is ensured. These above schemes were launched in 9th May, 2015 making effective from 1st June, 2015 and joined with PMJDY. Though the schemes were poor oriented but then are not devoid of criticism. PMJBY was complained to have omitted middle class people rather than omitting poorer section. PMJBY though focuses on financial inclusion but revenue receipt did not fructify as expected and not sufficient even to meet the service costs. It does not require health certificate or clarification of pre-existing disease for joining. So, critics emphasized that financial inclusion is a myth and serving large number of people under the above schemes with some anomalies will encumber the authority with work-load.

Moreover, the Micro Unit Development Refinance Agency (MUDRA) was launched on 8th April, 2015 to lead maximum governance minimum government in financial sector entrusting the management in the hand of agencies with performance autonomy without external impediments.¹² It lends loans responsibly at low rate to micro finance institutions and NBFCs identified by National Sample Survey Authority, 2013 to protect them from indebtedness which then provides to small entrepreneurs. The eligibility to borrow under MUDRA includes small manufacturing units, shopkeepers, fruits and vegetable vendors and artisans etc. and revives the refinancing activities of micro finance institutions for above people. It is single regulator and refiner of all entities in microfinance space.

⁹ . www.pmsby.com , last accessed on 10th May, 2016

¹⁰ . www.pmjby.com , last accessed on 10th May, 2016

¹¹ . www.apy.com , last accessed on 10th May, 2016

¹² . “MUDRA for the Un-incorporated” an article in Current Affairs Survey by Alfa Edu Media Pvt. Ltd., June, 2015, Vol.4, No.10, p.12

MUDRA is likely to act as potential game changer bringing urgently needed funding to fund starved unincorporated micro business sector, integrating the large non-formal sector ushering in new era of inclusive growth. The MUDRA is a new adventure towards family farming and family economics by family owned business.¹³ It is a gruelingly vindicated step of rediscovered economy by the wind of change to which the GOI has acquiesced and bowed down.

The social, financial inclusions etc. pave the way of regional, educational, technological, poverty related factors, gender inequality etc. and their inclusion in the campaigning drive of national prosperity. They constitute the tip of the icebergs towards the inclusive growth. This inclusive growth in the insurance sector *inter alia* widens the scope for maximum involvement of clients as consumer once additional remedy under Consumer Protection Act, 1986 is intensified. It has two-fold impacts, firstly as increasing the number of insurance policy-holder and secondly the loss compensated rationally to the insured in damage increases consumerism in investment regime. If the inclusive growth in the above sectors is inhibited then insurance sector cannot boost because financial nexus at certain point is collided. Of course, the medical service provided by registered medical practitioner and any consequent damage to any patient of life, limb etc. are adequately compensated for faulty treatment. But sometimes the victim patients are exorbitantly claiming the compensation has made the medical practitioner to insure their service also so that for accidental damage to patient not rendered intentionally safeguards the medical professionals also. The recent incidence of HIV + infection of a three years child in Guwahati Medical College & Hospital after receiving blood from the blood bank of GMCH detected after blood transfusion created a tremor throughout India. The incidence of infection has been seriously taken up by the government of Assam terming as medical negligence with large-scale aftermath. A nationwide movement called “Stop Medical Terrorism” has been initiated by a group of victims of wrong treatment and supporters under the platform of Dr. Anamika Ray Memorial Trust, Guwahati demanding a separate law in the country to control unpardonable callousness of the medical professionals and malpractices at both government and private hospitals. Non-implementation of laws shall evoke intentional medical terrorism and that is why for mitigation of the problem strict application of consumer laws shall be explored. It indicates that the social growth is hydra-headed which involves honest service from all corners with honest approach by all inward volition to legal susceptibility.¹⁴ So, insurance schemes warrant ensuring the good and stable health of the investors so that the insurance authority is not blamed in the absence of counter evidentiary policy. Every people aspire to invest money for future which is possible through stable earning, planning and protected investment.

¹³ . Concept of Alexander Chayanov of 1930’s Soviet Russia Economist on “consumption-labour-balance” principle relied on the economic might of Adam Smith and Karl Marx.

¹⁴ . “Medical Terrorism-What is it?” an article published in Assam Tribune, 13th May, 2016, a vernacular English daily newspaper in Assam

So, if government makes sufficient money oriented avenues then prospects of living at old age comfortably increases under the esteemed coverage of the inclusive growth to ordain amenity of life for all people contributing towards nation building process.

Insurance is a mechanism by which a person can comfortably think about investment for future. It is required to assist the plight of old age dependency. Moreover, it takes care of supervening causalities by making consoling payments. But during the last few years certain pyramid and bogus financial service providers duped people contaminating the ethics of insurance regime. People became raged with their confidence withdrawal actions and depravity. The institutional reposition of faith towards insurance sector was lessened by sham designs of money collection by some non-existent entity. All these aspects invited the adoption of measures under statutory and judicial drive as briefed ahead.

3.1. Statutory and judicial measures to control bogus insurance sector

In India under the constitutional parameter several statutes have been enacted covering insurance regulation. Entry 47 of List-I of 7th Schedule speaks about “insurance” and the Parliament is wholly empowered to enact laws on the subject. The insurance company under statutory regulation can perform its function once the insurance sector replenishes its assigned formality. After the incorporation of an insurance company under the new Company Act, 2013 with the Registrar of Companies (ROC) the next step is to register the company under IRDA so that the insurance company does not move anti-incumbent to insurance laws. An insurance institute is called non-banking financial company¹⁵ (NBFC) and it can commence the business u/S 45-1A (a) of Reserve Bank of India Act, 1934 (RBI) once a certificate of registration is issued to it along with net owned fund required therein. Reserve Bank has plenary control over the NBFCs by collecting information as to the deposits taken and gives directions to keep the deposits of customers protected. Presently u/S 3 of IRDA any person or insurer carrying on any class of insurance business in India on or before the commencement of IRDA for which no registration was required prior to IRDA, may continue the business for three months after enforcement of IRDA or if an application has been made to that end then till the disposal of application. Thereafter the insurance business cannot be carried on if the insurance company is categorized as non-registered one. The Controller of Insurance under the Insurance Act, 1938 earlier used to regulate and supervise the insurance companies *inter alia* to bring it under control but the with nationalization of life insurance in 1956 and general insurance 1972 its power diminished significantly. The need of reformation and rise of anomalies in the management of insurance proliferated with the concept of control and foreign

¹⁵ . NBFCs perform all financial services other than banking services. They are doing lending activities and sometimes accepting deposits like banks but the deposits are term deposits and not call deposits. Banks promise the refund of deposits on demand or notice and withdrawal at any moment is not the case of NBFCs.

investment in insurance sector and IRDA was brought into force. IRDA is playing pivotal role now a days in controlling the bogus and sham introduction of insurance company in India.

The IRDA has issued a guideline on 20th May, 2016 to encumber the insurance sector with more risk liability so that it does not have any scope to deny the investment of the investors.¹⁶ It issued norms for insurance industry to maintain solvency ratio based on the line of business. Available solvency margin is calculated as the excess of value of assets over those liabilities. If an insurance company fails to pay back the invested money due to earthquake, natural calamity for massive loss then what should be the modality to obligate it to pay and not to obliterate its liability. That is why solvency ratio is a crucial component to streamline the dilemma. Solvency ratio refers to the size of capital of insurance company relative to all risk it has taken which is determined subtracting all the liabilities from the total assets. It is a measurement in assets how much a company has in comparison to that much it owes. It reflects the sound financial position of insurance company as insurer along with ability to pay the claims. The investors through solvency ratio can gauge the ability of company to meet the obligations similar to capital adequacy ratio of banks to determine its ability to facilitate withdrawal. Moreover, irrespective of nature of operation of financial service to prevent the fraudulent activities if required liquidity principles may be introduced. Liquidity is a measure of liability of a firm to return short-term debts while solvency is the ability to pay all debts including long-term one.

The prevalent statutes looking after the affairs of insurance industries are to confine the activities of such industries within limit and control. Because recently the jolt in some institutes of financial services e.g. Sarada, Rose Valley, Sahara, various bogus splinter organizations with sinister design to dupe the gullible customers for their mismanagement has attracted the scrutiny under three organs of the government. The unethical business principle adopted by such bogus institutes in the form of “ponzi scheme¹⁷,” has surpassed the level of financial mismanagement. Their perpetration has not only strangled the gullible investor but also opened the administrative lethargy of concerned area, the irresponsible

¹⁶ . www.waytoinsurance.com , last accessed on 20th May, 2016

¹⁷ . Charles Ponzi in 1920 started this fraudulent investment in which the operator as individual or organization pays returns to its old investors from the new capital earned from new entrant investors rather than from the profit earned from legitimate business. Operators frequently entice the new investors with high returns in short term which are abnormally and exorbitantly high. The high return is perpetually assured with ever-increasing flow of money from new investors to sustain the schemes. Promoters initially pay high returns to attract more investors and money already collected from new operators are paid to former investors but this chain finally tantalizes the new investors because of scarcity of money not paid to new investors and it happens due to their lack of knowledge or competence.

attitudes of which are the root of tantalization of the investors. The ponzi schemes are high yielding investment vehicles but then are not really achieved as assured to the investors. It is risible to consider the slackness of RBI, ROC or IRDA etc. the presence of which with live infrastructure has been swindled despite their iron curtain surveillance and the operators of ponzi companies are snatching away the lion's portion of money of people. The thunder of the recently excavated financial plunder by the above institutes has caused the immediate legislative reform with stringent measures knitted therein, so that future plans are denounced with sterner retaliation. The glut of earning money easily with lesser efforts, dreams of becoming "Lal Badshah of Kala Samrajya" i.e. "the red baron of black-marketing" etc. has emerged in the mind of some unscrupulous people who never bother about the fruits of Himalayan tasks of poor people. The nonchalance of the administrative authority has been taken as a loophole to escape the liability after committing huge financial irregularity with sham documents possessed by them. Moreover, reluctance and heedlessness of the common people also facilitates them to adopt the treachery and avoid legal sanction but then recent eagle's eye observation after disclosure of such pain-smear'd agony by the concerned authority has brought a slight remedial abatement of the problem.

Now the concept of such high yielding financial service provider has come to judicial scanner in recent times. The factum of fraudulent business and non-fulfillment of the assured payment makes them fully liable in the bizarre financial scams. People generally perceive their legal existence with proper formalities. But the people never bother about their legitimacy of existence. The lack of non-existent assessment is upon the common people and required to be queried with rational sentiments because sweating earning is going to be invested legally non-existent entity. The sham banner or hoarding in public places attract the people and convince them with stupid sleights. The "pyramid schemes"¹⁸ are of that sort which can misguide people with utopian benefit. The mirage of the sundry benefit of such schemes proves that there remains no iota of faith retained in freedom of trade of people. The present discussion reflects the expectation of high return, deception by the operators of such business, and finally fruitless investment of people make the cunning operator billionaire in short span of time. These things facilitate them to stash money abroad. But in July, 14, 2016 the Special Investigation Team headed by Justice MB Shah constituted under Supreme Court of India recommended ban on cash transaction above Rupees three lakh to stop black money. It also urged to enact law making more transaction illegal and punishable as the cunning people may take advantage to flee the legal sanctions swindling the innocent investors¹⁹.

¹⁸ . It is a scheme participated by people or investors relying on mistaken view of its existence with financial activity hoping extremely the rate of high return. It recruits additional investors benefitting directly and in no recruitment no investment return is inferred. Moreover, the new money is the source of payout of the initial investors.

¹⁹ . The Hindu, 14th July, 2016

Indian financial services have now been impaired by such sludge pyramid schemes and the money of innocent hard workers has been inflicted the hardships of fissiparous tactics. But it is not cleared by the operator whether they are collecting the money for insurance coverage or bank savings. They collect from investors who with delusion of high return invest with colossal expectation. The investors never realize about the return which s/he obtained after investing an amount as “return of the investment and not return on the investment”. The government has been trying to check the giant fraud of financial services discernibly delude as alternative of insurance or banking industries. The dramatic escapement and unknowingly fled away by the operators from the operational area leaving no scar of services motivated the GOI to think remedial alternative. For example, if we focus the financial scams of “Sarada Realty India Limited” that created a serious financial havoc evoking strong protest to ban it, introspective judicial verdict resonated on the matter. The scam was supposed to be a mastermind of high political clouts in Indian Parliament or people holding high positions. The severe scrutiny on the scam divulged to see the inter-state ramifications of the Chit funds or NBFCs or Nidhi etc. organizations and to unearth larger conspiracy behind them to bust out the racket. It booked the culprits creating perils to people who are men of methods. The *modus operandi* of the trouble monger chit funds adopted ponzi scheme tactics evolving newer and more ingenious ways of tantalizing the plain hearted people to invest money and thereby made them fall prey of their temptations and designs. Sarada played a great deceptive ponzi role promising its depositors rewards and returns and allured them to collect from market sizeable amounts. The entire gamut of the issues were disclosed in a forensic audit report of Sarath & Associate, Chartered Accountants on 27th February, 2014 submitted to SEBI which divulged the impacts of floating schemes on the defrauded public.²⁰ Sarada was stated to be dubious money multiplier scheme that sounded impressive but intentionally vague mesmerized people with 10% to 30% interest yield. The Apex Court went through the entire gamut of the problem and stressed for conducting meticulous investigation and submission of charge-sheet u/S 173 (8) of Code of Criminal Procedure, 1973 to unearth the larger conspiracy angle. Though some States had stringent laws but they failed to protect the interests of the depositors. The charge-sheet submitted in Sarada scam disclosed only individual deposits with no scarred involvement of larger conspiracy angle furnished. The Court held that whether the scam confined only to those actively managed and participated in the affairs of the financial service need to be addressed.²¹ Botheration of phenomenon on which the scam flourished under the support and patronage of other was said to be serious issue.

²⁰ . *Subrata Chattoraj vs. Union of India* ,AIR 2013 SC 401; *State of WB vs. Committee for Protection of Democratic Rights, WB*, (2010) 3 SCC 571

²¹ . *Alok Jena vs. Union of India*, AIR 2013 SC 413

The first investment and its slightly higher return allured the investor with regenerating income and again invested expecting so. But s/he is hooked and her/his invested money now goes to other investors. The hooked investor again attempts to invest slightly higher amount being allured by the appointed agents or promises and also informs the friends enthusiastically about the fantastic investment schemes. The first promised handsome return of money ensures genuineness of the schemes and instills an irresistible urge among others to invest as well. But this trend finally stands as misery because any query of skeptical investors made to promoters is avoided and always pointed to the benefit of the recently recruited investors. The rapid increase of new investors make their monetary pool shrink unavoidably as the money is not used in profit generating activity like the genuine banking or financial service providers. The cash inflow from new investors and return outflow to existing promised investors in rotation causes cash crunch. Failure of return and frequent run-to-the-entity premises by the investors compel them to flee sucking the blood of the poor. The money so collected and the way siphoned them off violated the Securities and Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. Sarada neither had registration under SEBI nor license under RBI for Nidhi/Chit fund/ NBFC. Moreover, KYC norms were not complied with identity or address proof of the investors like other bank and insurance business and authenticity of deposits by mere claiming back them were denied silently for being KYC non-compliant.

This widespread scam across Assam, Tripura, West Bengal (WB) etc. created severe public anguish on the fraud of colossal magnitude and government of West Bengal constituted Commission of Enquiry headed by Mr. Justice Shyamal Kumar Sen, retired Chief Justice of Allahabad High Court for receiving complaints and referring matter to Special Investigation Team (SIT). WB government notified for disposal of all the properties and attachment of bank accounts of Sarada based on two Writ Petitions No. 12163 (W) of 2013 and 12197 (W) of 2013. The integrity of RBI, SEBI, ROC etc. were also questioned for causing ripples in some fronts for connivance to such scams. Though there is no criminal intent of these authorities but then deep rooted apathy profusely divulged the scams went on unnoticed and unchecked. Though SEBI cannot look after chit funds but then it issued orders for winding up of ponzi companies which flourished unhindered. If the authorities would have engrossed to prevent them nipping the problem in the bud then recurrence could have been stopped. The fundamental legal issue confronted the judiciary is that under the jurisdiction of which authority the scam shall fall because the bogus entities had no valid documents issued by SEBI or ROC or RBI etc. Moreover, the ponzi companies having tentacles with ramifications of money laundering dimension cannot be ruled out. The jurisdictional dearth, impropriety of cognizance and major setback in financial services made the government to introduce measures so that the poor and innocent people are not jeopardized. Moreover, extreme proneness of easy money has

prejudicially made people inclined to ponzi's. The brisk action to decontaminate the financial services was mooted by promulgating Ordinance under Article 123 (1) awakening the people of different spectrum to launch massive sanction against their mushroom growth and deception.

4.1. Executive Order or Ordinance promulgated to ban bogus insurance company

The petrified financial services in recent times suffered certain setbacks in the name of fraud which lowered down their status in real sense. The inclusive growth was enjoined with severe blemish and stigmatized with unethical frauds. Moreover, unofficial recognition of such schemes perplexed people and the entities also abstained from disclosing their statutory identity. The secret motto behind their fraudulent earning activity prevented them to leak the sham dignity. The entire climate tarnished the image of financial services as expected by the thrust of inclusive growth under the garb of financial inclusion. They were sought to be revamped under statutory guidelines promoted by the promulgation of Ordinance. The Ordinance sought to empower capital market to protect the interests of the investors and check funds amending securities laws. SEBI now has acquired powers to control illegal collective investment schemes curbing the menace of insider trading. The Union Cabinet approved the Ordinance by its nod with legal backing to crackdown the new methods of fund raising not warranted by SEBI laws of collective investment schemes.²² SEBI now regulates the pooling of fund under investment contract involving corpus of Rs-100 Crore or more along with power of attachment of assets in case of non-compliance of SEBI rules. Now, it controls those entities which otherwise donot come under the ambit of any other regulatory mechanism. The power includes search and seizure, phone call records, fast track resolution etc. as part of the crackdown of the pyramid schemes. The Ordinance says to plug the loopholes around such pyramid schemes that collect money from people. These schemes escape scrutiny as they cannot be classified as collective scheme or chit fund, NBFC. Collective investment schemes are regulated by SEBI, RBI regulates NBFC and Chit Fund and the State government oversees the activities of the chit fund business and this cumulative strict observation shall serve the purpose of mitigation of pyramid schemes. SEBI as procedurally guiding law is treated neither petrified nor purblind but must possess a missionary view of giving justice to people so that they are not defrauded by the pyramid scheme managers for the ends of justice. The laxity of the proximate attachment to pyramid schemes has engulfed the society and still some areas reeling under the havoc of such cunning operators in Assam and north east region. The dire necessity of regulatory mechanism felt by the people has developed aspiration of confronting issues to eradicate the menace with appropriate measures.

²² . Ordinance promulgated in March, 2014 amending lots of markets and securities laws initiated a new exordium of financial services in India promoting healthy insurance regime.

5.1. Public awareness and attitudes to subvert plundering of poor segments

Public opinion is a two-edged sword to suppress evils in society perilously dominating the values and morals. The perpetrations and depredations are rampant in society which engulfs first the poor section. They are vulnerable to economic exigency and social dilemmas. The profusely and disorderly evolved pyramid schemes undermines the statutory limits germinating at the behest of high echelons of society. The lesser effort higher harvest tactics instilled in the mind of people that too sitting in well secured air conditioned room made the poorest the richest as per the outcomes judicial verdicts. In this money hunger society people take every step to earn by immoral, unethical means under the shadow of squatting barons. The staid approach of bringing down the malpractices in financial services proves tardy volition of the authority. The expeditious action desired under legal framework is necessary for creating stalwart barrier against utopian dreams. The stealthy fund raising vehicles are on steep rise with stench of stultifying people. The businesses are supplanted with different nomenclature and policy orientation with inter-resemblance of illegal fund pooling conception stupefying with sundry allurements to people. The legal stringency as demanded by people when they encounter anxiety basically in money investment issues then the public outcry should be attentively entertained because now-a-days people are conscious enough for the exploitation. Freedom of speech should not be misused by the scammers who tenaciously seek to inhibit the whistleblowers from bringing the truth to light.²³ The way to spread the illegal financial businesses is to be regulated throughout the country. Television, telecommunication, media, social networking sites, websites etc. should be warned against the dispersion of public fraud indulgence. The serenity of the value of business supported by people should grow not awfully causing amorphous illegal monetary appetite. The legislative temerity proves in that regard stupendously sufficient agog.

6.1. Conclusion

The financial services in India show aghast abyss of discrepancy on the penetration of fund collection in society without legitimate return prospects. The “might is right” hoodwinks with plundering attitudes. The abject way of duping people by alluring those to invest money and their abrupt shift of business operation with nonchalant flattering gestures adversely impair social life. People lose their utmost confidence on the law enforcing agency because in these activities the involvement high profile government functionary cannot be ruled out. The ambiguous operation of the pyramid schemes with large-scale manipulated pretence misleads people who do not understand the hollow and bizarre administrative tactics. The mismanagement from within the system never comes out because a small number of people integrate the authority with no-entry for strangers. Moreover, non-requirement of compliance to right to information

²³ . *Subramaniam Swamy vs. Union of India* (2016) 8 SCC 122 ; www.supremecourtcases.com , last accessed on 23rd June, 2016

regime has also made the authorities avoid the rigors of statutory mandates. The amiss of intentional deception anathematize the gullible investors pauperizing their plight to financial stress. The hurdles to arraign them become difficult for non-availability of document issued by them to investors because whatever is issued is simply printable by any person with identical feature. No hallmark, trademark, legal identity, or license etc. is possessed by them to implicate. The dearth of accomplished documentation has made them look to investors with askance while the invested money or return is claimed back. The financial crux develops indefinite avalanches in the life of investors with imbalanced jeopardy meted out to them. This is the reason for which insurance, banking etc. sectors should be controlled so that bountiful return of investment claim is not boomeranged by their unethical deft. Prevention is better than cure. So, law should not brook the crooks of looters and any bit of plunder is made to be recouped to recumbent losers.

So, abnormally glut to earn money resorting unethical means should synchronize the control mechanism for viable growth process. The Social, economic inclusion for growth and in turn their inclusion for promoting the notoriety of financial business houses are intolerable. The blatant disregards, procedural bottlenecks, laxity in dealing with fraud insurers, culture of corruption and nepotism etc. have awakened both people and regulatory authority to fight against evils. Indolence to unearth the depth of immense sufferings of the people by such fraudsters is to be vanquished. The insurance being a lucrative tool of inclusive growth under the guise of financial inclusion sufficient modalities are to be prepared to meet the challenges. It should focus on the needy people and their financial predicament which can crucially postulate forward-marching strategy. The insurance industry if gets impaired with fragmented operation not clubbing all sections of people it cannot bloom to promote inclusive growth desiring to heal malignancy of economic crackdown. The unrestrained volatility of services tend to increase money laundering, tax evasion, black marketing, terrorist funding and rise of scams etc. finally creating unstinted disorder in society. It is the benefaction of the legal taskforce which can lessen such befuddlement of services that make people sleepless to that misery. The blurred legal sanction denudes the institutional resilience to bring back normalcy and *status quo* which is necessary for sound administration. But the canny bubbles of words in law often create haziness for statutory operation in society which is unfair for cumulative growth *mutatis mutandis* in all the sectors for national prosperity as expected. A law once enacted should not relapse impotently as a blank-cheque power showering on authority. Aberrational law does nothing except being a part of dreary catalogue of statutes and death certificate should be issued to them.²⁴

²⁴ H. W. R. Wade & C. F. Forsyth, Administrative law, 10th Ed., Oxford University Press, New York, 2013, p.773