provide for statutory compensation to every rape victim, as an additional relief apart from awarding the prescribed sentence;

(4) The discretion given to the court to award a sentence less than the prescribed minimum, under Section 376, be removed;

(5) Death penalty as the highest sentence be prescribed for child rape, gang rape, and rape of pregnant woman;

(6) The punishment for an AIDS affected rapist who knowingly rapes a woman be provided as a separate measure and such an offence must be treated as capital offence;

(7) Adequate legislative measures be taken to provide for legal counselling, legal aid and rehabilitation, to every rape victim at every stage, at the cost of the State;

(8) As suggested by the Supreme Court, the Criminal Injuries Compensation Board be set up in every state to compensate the rape victims; and

(9) The procedural delays be reduced while ensuring that speedy trial takes place at least in rape cases.

The aforementioned few suggestions coupled with effective enforcement of the existing laws, would be sufficient to counter the evil of rape. It is hightime that the Parliament has amended the rape related laws in India, to ensure that 'rape' which has had a past, is denied its future, to ensure the protection of the dignity of women.

RISK IN FIRE INSURANCE

By

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Fire was a valuable element even before the beginning of human society for the maintenance of life itself and the primitive society tried in various ways to preserve it in active form by giving a religious character to such preservation. It is equally valuable to the modern society also which has utilized its properties for innumerable purposes. But inspite of the close contact established with it modern man has been unable to achieve complete mastery over it and a full control over this element of nature still remains to be attained by science which were so much proud of. In the mean time a great destruction by fire insurance is only a device to compensate for the loss consequent upon such destruction.

Object :—The object of the fire policy is to protect the insured against the consequences of negligence. The assured is entitled to recover in all cases of negligence whether it is attributable to a servant or a stranger of the assured himself.

Law governing fire insurance :—There is no statutory enactment governing fire insurance, as in the case of marine insurance

which is regulated by the Indian Marine Insurance Act, 1963. The Indian Insurance Act, 1938 mainly dealt with the regulation of insurance business as such and not with any general or special principles of the law relating to fire or other insurance contracts (*Vijayakumar v. New Zealand Insurance Co.*, 1954 Bombay 347-56 Bom. L. R. 341): So also the General Insurance Business (Nationalization) Act, 1972, in the absence of any legislative enactment on the subject Courts in India have in dealing with the topic of fire insurance relied so far on general rules of the law of contract and Indian decisions and to large extent on judicial decisions of Courts in England and opinions of English Jurists.

In England the insurance company's Act, 1958 defined 'fire insurance business' as the issue of, or the undertaking of liability under policies of insurance against loss by or incidental to fire, The Insurance Company's Act, 1958, Section, 33 (1), but the company's act reapled this section containing the definition and included in effect 'fire insurance business' in the definition of property insurance business. The company's Act, 1967, Section 59(9). In India the Insurance Act, 1938 defined 'fire insurance business' as the business of effecting otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies, The Insurance Act, 1938, Section 2 (6)(a). In similar terms it has been defined by *Cotton L.J.* in *Castellian v. Preston* that it means a contract whereby one person undertakes in return for the agreed consideration to indemnify another person against loss or damage occasioned by fire up to the agreed amount, (1883) 11 QBD page 380.

Fire insurance is a contact of insurance by which the insurer agrees for a consideration to indemnify the assured up to a certain extent and subject to certain may happen to the property of the assured during a specified period, Halsbury definition on Fire Insurance.

Thus in a fire insurance policy the insurer undertakes, on payment of the premium, to pay or make good to the insured any loss or damage by fire which may happen during a specified period to the subject matter, not exceeding the sum named as the limit of insurance, or of each item thereof. It is clear from this definition that a fire insurance contract like a marine insurance contract is essentially a contract of indemnity.

Peculiar features of fire insurance contract:—The following are the peculiar features of fire insurance contract. Fire, Insurance - An Introduction to its Principles and Practices - *John Davidson*, 1923.

(a) It is a contract of insurance.

(b) It must be for consideration.

(c) Fire insurance contract is a contract of indemnity.

(d) Contract of utmost goodfaith

(e) It must be made within the prescribed limits.

(f) The person must have interested in the subject matter.

(g) The loss sustained.

(h) Proximate cause.

(a) Contract of fire insurance:

It must possess all essential elements of valid contact, Section 2(h) of the Indian Contract Act, 1872 defines contract as "an agreement enforceable by law". Section 10 of Contract Act states about what agreements are contracts. The section lays

down the conditions under which an agreement will become a contract. The conditions under which and will become a contract are as follows: (i) The parties must be competent to contract, (ii) The consent of the parties to the agreement must be free, (iii) The consideration must be lawful (iv) They been declared to be void under the provisions of the Indian Contract Act or any other law for the time being in force in India. It is an agreement, the terms of which are set out in the instrument otherwise the policy is void. It is binding on both parties, on each of whom it imposes certain duties and obligations.

(b) Consideration:

In consideration of indemnity, which the insurer undertakes to provide the insured agrees to pay a sum of money, known as premium. The amount of premium is to be paid by the insured, estimated according to the fire risk and is paid at the commencement of the contract.

When once the contract is concluded with the assured, the premium and other particulars fixed, the policy was drawn and delivered, the insurer becomes liable for loss of fire.

(c) Contract of indemnity:

Contract of fire insurance is a contract of indemnity. Fire and marine risks are both properly contracts of indemnity, *Dalby v. India and London Life Assurance Company_ parke,* L.J. (1854) 15 C B. P. 365,387, the insurer engaging to make good, within certain limited amounts, the loss sustained by the assured in the buildings, ship *etc.*

(d) Contract of utmost goodfaith:

Contract of fire insurance is based on goodfaith. The principal of goodfaith must be observed by both the parties i.e. insurer and insured in the subject matter of insurance.

(e) within the prescribed limits:

The company's liability is limited in the contract. This limitation is effected in two ways:

(1) By the principle of indemnity and

(2) By a stated maximum *i.e.,* the sum insured,

Which fixes the maximum amount the company can be called upon to pay in the event of a loss.

(f) Insurable interest:

It is an implied condition of a contract of fire insurance that the insured has an insurable interest in the property. The contract presumes the existence of such interest, and would invalid without it, for a contract of insurance unsupported by an insurable interest is illegal. The interest must present at the time of taking policy and at the time of loss.

(g) The loss sustained :

Before the insured can recover under a policy of fire insurance, he must prove that he has suffered loss contemplated by the contract. The purpose of the contract is to relieve the insured of a direct loss he will sustain by a fire damaging or destroying the property specified in the policy.

(h) proximate cause:

The active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force, starting or working actively from a new or independent source. The fire must be the immediate or dominant cause and not the remote or distant cause in accordance with the maxim *"causa*

proximate cause" and not the remote or distant one, should be looked to risks its proposes to cover fire insurance.

Risk convered in fire insurance :—To constitute a fire within the meaning of a fire insurance policy the following two requirements must be fulfilled:

(1) There must be actual ignition.

(2) The fire must be insofar as it concerns the insured, be accidental or fortuitous one.

The risk covered under fire insurance is:

(a) **Loss or damage by fire :—**In loss or damage by fire the risk is covered as follows:

(i) Damage done by excessive heat

(ii) Lightning

(iii) Throwing of water by fire

(iv) Damage caused by an explosion

(v) Damage caused by a spontaneous combustion

(vi) Damage by thieves and rioters during fire

(vii) Fire caused by negligence of assured or his servants

(viii) Damage caused by insanity of assured

(ix) Damage caused by drunkenness of assured

(b) Loss or damage by fire :—Loss or damage by fire means loss caused by the process of burning and direct physical results.

The risk covered in loss or damage by fire is as follows:

(i) Damage done by excessive heat:

In *Harris v. Poland* case, (1941) K.B.P 462, the plaintiff took out a 'Lloyda' householder's comprehensive policy of insurance with the difendant and other underwriters, insuring the contents of her flat, including jewellery, against loss or damage caused by fire. For purpose of protection against theft, on leaving her flat one day, she concealed the jewellery in the grate under the coal and wood, which were ready for lighting. On returning in the evening she inadvertently lit me fire and the jewellery was damaged. Upon a claim under the policy the underwriters refused payment on the ground that the policy only covered damage by fire in a place where no fire ought to be.

Atkinson J. delivered the judgment in favour of the claimant. It was further held that it mattered not whether the property had gone to the fire or the fire had gone to the property. There had been ignition of insured property not intended to be ignited and the loss fell within the plain words of the policy.

Property which is damaged by excessive heat cannot be said to be caused by fire unless there is also actual ignition of property not intended to be ignited.

In this context we may consider the views of some eminent writers on fire risk. Bunyon, Bunyon - Fire Insurance, observes that fire risk means not only to loss by fire but also to loss by the agency of peril insured against. *Mc gillivary* in his book on insurance law discusses loss or damage by fire under two heads. In the first head he discusses about the meaning of the fire and under the second head he states when may the loss or damage be deemed to be caused by the fire. To the first he states that there has been much discussion, but until recently no clear decision, as to whether "fire within the meaning of a fire policy means fire

which has broken bounds. The view taken in earlier editions of this book was that there must be actual ignition where no ignition ought to be the authority relied on being *Austin v. Drew*.... Damage done to the heating apparatus or surrounding property by excess of fire heat without improper ignition is beyond the protection of a policy which insures merely against 'loss or damage fire'. Thus, damage done by the bursting of a boiler caused by excess of ordinary fire heat and absence of water in the boiler, or by reason of the boiler being old and worn is not damage by fire *Mc. Gillivary Insurance Law* p.989-990. Thus fire means which has broken bounds, there must actual ignition. Damage caused by excessive of fire heat in its proper place or smoke from a fire in its proper place is not damaged by fire. But damage caused to insured property by burning or scorching or smoke or by falling walls on account of ignition of other property in the vicinity, are also considered as due to fire and damage by fire within the policy. On the second point he states at p.991 that the meaning of loss or damage by fire may be extended by other terms in the policy so as to include damage by excessive fire heat and other risks *prima facie* excluded.

(ii) Damage caused by electric current:

The proposition that fire need not be the actual instrument of destruction is well illustrated in an *American* case, *Lynn Gas and Electric Co. v. Meriden* (1893) 158, Mass P 570, where an electricity generating station and plant was insured against "loss or damage by fire". A fire broke out and the heat of the flames caused a short circuit between two lightening conductors. The result of the short circuit was to produce an increase of electric current in the dynamo, where by extra pressure was put upon a pulley which was ruptured thereby causing a general breakdown in the machinery. The fire had not reached that part of the building where the machinery was, but the damage to the machinery was nevertheless held to be a 'loss or damage by fire'.

(iii) Lightning:

If lightning results in ignition, any loss occasioned by such ignition is a loss by fire but damage caused by lighting without ignition is no damage by fire, *Kenniston v. Merchants Mutual* (1843) 14 NH.P 341 Frequently, however, a fire policy will expressly include any loss by lightning.

(iv) Throwing of water by fire:

Any loss resulting frogman apparently necessary and *bona fide* effort to put out a fire, whether it be by spoiling the goods by water or throwing the article of furniture out of a window or even the destroying of a neighbouring house by an explosion for the purpose of checking the progress of the flames, in a word, every loss that clearly and proximately results whether directly or indirectly from the fire is within the policy. Thus in *Johnston v.West of Scotland* case, (1828) 7 Section 52 cf, the insurance was on a house in glasgpw against "loss or damage" which the insured shall suffer by fire on the property. It was held that loss was a loss by fire within the meaning of the policy.

(v) Damage caused by an explosion:

In *Everett v. London Assurance Company*, (1865) 19 c.B N.S.P 126, a house was insured against "such loss or damage as should or might be occasioned by fire". There was an explosion of gun power on ignition in a factory situated 800 yards away from the insured premises, which caused its windows and window frames to be shattered. But the house was not set on fire. The house was insured against such loss or loss damage as should or might be occasioned by fire. It was held that the damage was not covered by the policy as it

could not be said to be occasioned by fire. *Willy*, J., said we are bound to look to the immediate cause of the loss or damage and not to some remote or speculative cause. If the damage was occasioned by a *conclusion* or disturbance or the air caused by elsewhere. Speaking of this injury no person would say that it was occasioned by fire.

(vi) Damage caused by spontaneous combustion:

Many policies contain an exception of "loss or damage to property occasioned by or happening through its own spontaneous fermentation or heating. It is submitted that if a stockyard was insured and one *stace* were to ignite through spontaneous combustion, the loss of that *strack* would fall within the exception; but if the fire were to spread to the rest of the stacks their loss would be recoverable.

In *Boyd* case, fire broke out in the hold of the ship and consumed a cargo of hemp. It was alleged that the hemp was shipped in a defective condition and that the fire was due to consequent of fermentation. The allegation was not proved and the assured recovered, but Lord *Ellenborough* said that, "If the hemp was put on board in a state liable to effervesce and it did effervesce and generate the fire which consumed it, there, upon the common principle of assurance law the assured cannot recover for a loss which he himself has occasioned".

(vii) Damage by thieves and rioters during fire and breakage of goods:

Generally, theft or riot might well be considered a *nova causa interveniens* but as a matter of practice many insurance companies pay loss or damage by thieves or rioters during the confusion caused by fire. It is desirable that, at any rate, theft during the removal of goods from the scene of the fire should be covered since otherwise the assured might be tempted to leave them to burn and in Canada a claim has been allowed on this ground.

Thus in the following case of *Marsden v The City and county Assurance Company Ltd.,* (1866) LRIC P 232, the policy was on plate glass "against loss or damage originating from any cause whatsoever except fire. breakage during removal, alteration or repair of premises". A fire broke out on some premises adjoining the assured's house and the assured began to remove his furniture and stock-in-trade, and whilst he was so engaged a mob feloniously broke in the window for the purpose of plunder. The Court held that the breakage was not damage by fire within the meaning of the exception of that the insurers were liable.

Loss or damage by riot, civil commotion or theft is usually expressly excepted from the risk in a fire.

(viii) Damage by inherent vice:

Similarly where a vessel on a time policy goes to sea in an unseaworthy condition and having met with no extraordinary weather, has to put into a port of refuge for repairs, *Fawckus v. Sarsfied* (1856) 6 Ex.B.P.1902.

(ix) Fire caused by negligence of assured or his servants:

If the proximate cause of the loss is fire, it is immaterial that the fire has been caused by the negligence of the assured or his servants. Even gross negligence will not debar the assured from recovering under the policy unless his conduct was so reckless and careless of consequences that it amounts in law to wilful act.

In *Davidson* case it was held that negligence of the assured or his servants, *Davidson v. Burnard* (1868) L.R. 4 CPP 117, 121, by the assured on his policy. The

proximate cause of the loss is fire, even though the fire has been caused by negligence. The insurers are therefore liable unless:—

(1) Negligence of the owner or his servants gives the underwriter a right of cross-action which extinguishes the claim.

(2) Negligence of the owner works some personal disability upon him.

(x) Damage caused by insanity of assured:

If the assured is so insane as not to be legally responsible for his act of incendiarism will not disentitle him form recovering, *D. Autremont v. Fire Association* (1892) 65 Hon. P 475.

If the act of the insane man is apparently wilful and deliberate, the question will be whether he was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or as not to know that what was doing was wrong. Mc Naughten case (1843) 10 CL & F p220.

(xi) Damage caused by drunkenness of assured:

The assured may, while drunk, deliberately set fire to his premises. Can he recover on his fire policy? Criminal law does not excuse an offender on the ground that an offence was committed under the influence of drink, *Pearson's* case (835) 2 Law CC p 144. If the assured was so drunk that he did not know what he was doing, it was not his wilful act and there appears to be no bar to his recovering on the policy.

Excepted perils:—Risk in a fire policy depends on the scope of the risks undertaken and peril insured against by the insurers. The assured can only recover on proof of loss sustained to the satisfaction of the insurers and that the loss in question is covered by the contract. Normally the insurers protect themselves by inserting excepted perils in the policy.

Warranties in fire insurance:—Risk in fire insurance depends upon the warranty inserted in the fire insurance contract. A warranty may be defined as a stipulation or engagement by a party insured that certain matters relating to the subject matter affecting risk exist or shall exist or have been done or shall be done.

The warranty in contract of insurance may be express or implied. A warranty is generally in writing and is usually inserted in the policy. In fire cases English decisions incline rather to limit the warranty so as to prohibit only variations increasing the risk. In *Dobson v. Sotheby, Dobson v. Sotheby* (1827) 1 Moo and M p.60, the premises were described as born where no fire is kept and no hazardous goods deposited. The premises required tarring and a fire was consequently lighted in the inside and a tar barrel, was brought into the building for the purpose of performing the necessary operations. By the negligence of assured servant the tar boiled over and set fire to the premises.

The insurers desire to prohibit even the occasional and temporary introduction of fire, heat, or hazardous goods *etc.,* into a building they may do so by expressly providing that such things shall not be introduced.

The standard policy clause:—For the convenience of the readers the standard policy of fire insurance is given in the following pages which indicates the coverage of risk in a fire policy. In fire insurance policy, its wording and conditions, is made comparatively easy because, since 1922 there has been in general use amongst companies a standard policy form. This form is employed for all types of risks, other than private dwelling houses and its use is particular value, for it secures uniformity of cover and limitations and of conditions and their interpretation.

Summary of the discussion:—From the above discussion it follows that the fire insurance is a contract whereby the insurer undertakes to indemnify the assured against the consequences of a fire happening within an agreed-upon period, in return for the payment of money in lumpsum or by instalments. The insured must have an insurable interest in the premises or goods insured, *i.e.,* he must be in such a position that he incurs loss by the burning. The contract being one of indemnity, only the amount of loss actually suffered can be recovered. The protection of the policy extends to losses caused by lightning and certain kinds of explosions etc. There is no fire within the meaning of the policy unless there is ignition, either of the property insured or of the premises where it is. Heating or fermentation, unaccompanied by ignition is not sufficient. The cause of the fire may be disregarded. Fire need not be purely accidental in origin. The object of a fire policy is to protect the insured against the consequences of negligence. The assured is entitled to recover in all cases of negligence, whether attributable to a servant or a stranger or of the assured himself. Hence, the fact that the fire was deliberately lighted for the purpose of destroying the property insured does not disentitle the assured or by someone acting with his privity or consent.

The risk in fire policy commences from the moment of the cover note, or the deposit receipt or the interim protection is issued and continues for the term covered by the contract of insurance. It may even date back, if the parties so intend. A contract of fire insurance is a contract of one year only with option to the parties to continue it for a further period on payment of this stipulated premium. It is customary to allow certain days of grace in which to renew the policy and if a fire should occur during these days of grace, the insurer would not be liable. The days of grace can give protection only the assured intended to renew the policy. In case no days of grace are allowed, the insured will not be entitled to get anything, if fire occurs after the expiration of term of the policy and before its renewal.

It is becoming very common in policies of fire insurance to insert a condition called the average clause, by which the insured is called upon to bear a portion of the loss himself. This condition is called the *pro-rata* condition of the average. The main object of this clause is to check under insurance and to encourage full insurance and above all to impress on the property owner the necessity of having his property accurately valued before insurance. Under the average clause the insurer and the insured share the loss in proportion to the risk that each is carrying. This condition comes into operation if the assured under insurers his property and in the case of partial loss he would be paid in proportion to their ratio and if there is a total loss he is entitled to be paid the full sum insured.

In case of loss generally the insurers are given an option either to reinstate the property or pay the amount mentioned in the policy. If the property is completely destroyed the insured can claim as a total loss. In case the property is so damaged or spoiled or charges for its salvage or so high that the cost of repairing or restoring the property will exceed its market value the insured may abandon the property. Whatever remains the property insured after the fire in the nature of salvage and must go to the insurer if the insured claims total loss. This right is absolute and affective even against prior encumbrances. Thus the risk in fire insurance balances the interests of the assured and the insurance company and protects the property from the risk of damage or loss.