



The Insurance Laws (Amendment) Bill, 2008 in India: Legal Position of a Nominee

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Abstract

Life insurance certainly serves as a tool of financial security against risks ensuing from unfortunate loss of the bread winner of a family. However it is crucial for the insured to make sure in advance that on his death the proceeds should go to his beneficiaries. Accordingly they nominate their family members, assuming that in case of unforeseen contingencies the latter will get title to the proceeds. However reality is far away from intentions. Distinct construals by different courts regarding the legal position of a nominee coupled with lack of awareness of the same among people are a cause of grave concern. This warrants immediate attention by law-makers through amendments to the Insurance Act, 1938 as are comprehensible to all market participants and also bring consistency in interpretation of the law. In this context the paper highlights the legal status of a nominee as interpreted by different courts in India, the tribulations arising out of the same and the efficacy of the new Insurance Laws (Amendment) Bill, 2008.

Key Words: *Insurance Act, Nominee, Legal Status, Amendments, Insurance Bill.*



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Introduction

“If a child, a spouse, a life partner, or a parent depends on you and your income, you need life insurance” – Suze Orman

The significance of the above statement cannot be undermined. However ensuring the purchase of a right policy, of the right amount, at the right time is no doubt essential, but most important is to understand, how can one ensure stress-free and quick settlement of claims, especially on happening of the contingency i.e. death of the insured. This is imperative, as during this crucial juncture one's beneficiaries are in dire need of money. According to law this necessitates

nomination. However this ritual seems to be over-looked by many, probably because it is optional. But its absence may delay claim settlements owing to formalities like the need of producing legal documents like a succession certificate (Mukerjee, 2011).

Thus the question arises should nomination be made mandatory by law? Undoubtedly life insurance service providers insist on nominations, but does it really warrant quick settlement of claims and the proceeds going into desired hands of the beneficiaries? This question is relevant in a situation of opposing judicial interpretations of the legal status of a nominee and a general lack of awareness of the same among the insured, their nominees and beneficiaries.

In the light of these problems, the Insurance Act, 1938 needs an overhaul to reflect the requisite changes. No doubt the new Insurance Laws (Amendment) Bill, 2008 has been tabled in the Parliament for deliberations and enactment. However in this scenario it is vital to understand the efficacy of the amendments suggested to Sec. 39, of the Insurance Act, 1938 relating to nomination. Also it is inevitable in a global setting to study the amendments made by the different countries in their respective Insurance Acts, specific to nomination.

Problem Statement

A lack of awareness of the legal implications of nomination and contradictory interpretations of the legal position of a nominee by different courts necessitates easing of the complexities in law by making clarifications in it for the benefit of related parties.

Objectives of the Study

- 1) To understand the legal position of a nominee - a trustee or a beneficiary, with the help of different case laws relevant to life insurance in India.
- 2) To appreciate the complexities of the same from the perspective of the judiciary, life insurance service providers and beneficiaries of the insured.
- 3) To identify the reforms undertaken by the Indian government hitherto in this context.
- 4) To comprehend the efficacy of the new Insurance Laws (Amendment) Bill, 2008 in relation to nomination.

Scope of the Study: This study will deliberate on civil court cases in India related to nomination under life insurance to understand the legal position of a nominee and also envisage the effectiveness of the new Insurance Laws (Amendment) Bill, 2008 relating to the same.

Research Methodology: An analytical method of research has been adopted by the author to appreciate a common strand flowing through various case laws associated with nomination and analyze the various sub-sections of Sec. 39 of the new Insurance Laws (Amendment) Bill, 2008.

Review of Literature

Legal Position of a Nominee under the Insurance Act, 1938

The Insurance Act, 1938 has not specifically defined the terms nomination and nominee. The word originates from a Latin word 'nominare', means "to name" (Oxford Dictionaries). Other dictionaries define it as "the one who is appointed to a job, position, task or function". Thus what are the functions required to be performed by a nominee and what is the extent of his rights?

In this context, diverse rulings were given by different High Courts in India relevant to the subject matter of nomination under life insurance. For instance, in *Sarojini Amma v. Neelakanta Pillai*¹, *D. Mohanavelu Mudaliar v. Indian Insurance Insurance and Banking Corporation Ltd.*², *Ramballav Dhandhanian v. Gangadhar Nathmall*³, *Atmaram Mohanlal Panchal v. Gunavantiben and Ors.*⁴, *Life Insurance Corporation of India v. United Bank of India Ltd. and Ors.*⁵, *Raja Ram v. Mata Prasad and Anr.*⁶, *Malli Dei v. Kanchan Prava Dei*⁷ and *Lakshmi Amma and Anr. v. Saguna Bhagathi & Ors.*⁸, it was observed that a nominee does not get any title to the policy proceeds. Whereas in *Kesari Devi v. Dharmma Devi*⁹, *S. Fauza Singh v. Kuldip Singh and Ors.*¹⁰, *Uma Sehgal and Anr. v. Dwarka Dass Sehgal and Ors.*¹¹ and in *Karuppa Gounder & Ors. v. Palaniammal & Ors.*¹², the respective High Courts held that nomination results into a statutory testamentary disposition.

1) *A.I.R. 1961 Ker. 126*

2) *A.I.R. 1957 Mad. 115*

3) *A.I.R. 1956 Cal. 275*

4) *A.I.R. 1977 Guj.134*

5) *A.I.R. 1970 Cal. 513*

6) *A.I.R. 1972 All. 167*

7) *A.I.R. 1973 Ori. 83*

8) *I.L.R. 1973 Kant. 827*

9) *A.I.R. 1962 All. 355*

10) A.I.R. 1978 Del. 276

11) A.I.R. 1982 Del. 36

12) A.I.R. 1963 Mad. 245

In 1983, the Supreme Court in *Sarbati Devi v. Usha Devi*¹³, gave a landmark verdict that a nominee is a mere trustee of the deceased's estate and nomination cannot be considered as a third kind of succession, as money is *payable to a nominee and does not belong to him* to the exclusion of the legal heirs. Thus nominee being a trustee (Deore, 2010), nomination does not tantamount to a testamentary succession (Khilnani, 2011), thereby does not provide title or ownership rights to the nominee, unless the insured has made a will or an assignment (Dharmasi 2009). Accordingly role of nominee is to collect and pass on proceeds to the legal heirs of the deceased as per the succession laws (Mehta, 2014). This indicates that although a legal heir can be a nominee but a nominee may not necessarily be a legal heir, thereby necessitating vigilance on part of the insured while making nominations.

Definitely the complexity associated with nomination was attempted to be eliminated by the Apex Court in *Sarbati Devi (Supra)*, wherein its intent was to give a verdict particular to life insurance by investigating the provisions of the Insurance Act, 1938 (Patwardhan, 2011). However it certainly did not rule out the possibility of a controversy arising out of a different ruling given by any Court in future, which is clear from a divergent judgment given by the Bombay High Court in *Harsha Nitin Kokate vs. The Saraswat Coop Bank Ltd.*¹⁴, wherein the court stated that the legal position of a nominee under the Companies Act is *res integra*.

Further post, *Sarbati Devi (Supra)* and *Harsha Nitin Kokate (Supra)*, the former verdict has been criticized by different subject experts (Azmi, 1988 and Sukhtanker, 2010), whereas contradictory views have been expressed by others (Somasekharan, 2010). This demands simplifying the law and educating the consumer about succession and nomination laws to avoid future legal hassles. As lack of awareness of the subject leads to disputes between the legal heirs and nominee(s) in the event of insured's death (Preeti Sukhtanker, 2010). In countries like Singapore, Malaysia, Canada, laws are lucid as to give a choice to the policy holder to either make a trust nomination or a revocable nomination. Under the statutory laws of Bangladesh a nominee is entitled to beneficial rights (Mian et al, 2013).

Steps Initiated by Indian Government: Sarbati Devi (*Supra*) was judged by the Apex Court on the rules of “consideration” and “privity of contract”. The counsel in Rambhallav Dhandania (*Supra*) referred to a passage from Cheshire and Fifoot (3rd Edition of Law of Contract, pages 361-362) “insurance although commonly purchased for the benefit of spouse or children, yet they fail to derive beneficial rights under common law, thus highlighting the unjust nature of privity rule, which fails to meet the changing needs of modern times”.

The English Law Revision Committee (1937) in its sixth interim report marked that the most notorious provision of the privity rule was that a stranger to a contract cannot enforce upon it although he is the beneficiary. Experience indicates that bread winners of the family purchase life insurance policies in their names for the benefit of their spouse and children, but probably fail to indicate it in the proposal form evidently [(Barewell, 1940 pp440 in *Law of Insurance in India*, as quoted in D. Mohanavellu Mudaliar (*Supra*)]. For instance in innumerable cases like

13) A.I.R. 1984 S.C. 346

14) A.I.R. 2010 159 Comp Cas 221 (Bom)

*Rama Rao v. Krishnamma*¹⁵, *Lalithambal Ammal v. Guardian of Indian Insurance Company*¹⁶, *Venkatasubramania Sarma v. United Planters Association*¹⁷, *Krishna Chettiar v. Volaya Ammal*¹⁸, *Kannaya Lal v. Subaraya Chette*¹⁹, the language of the instrument was not sufficient to create a trust in favour of the beneficiary, despite the intention of the assured to do so. Thus owing to ignorance, the beneficiaries are left at the mercy of the Court interpretations, which may or may not bestow upon them their privileges. In the light of these problems the Committee recommended conferment of the benefits directly on the third parties, as they are intended beneficiaries (Miller et al, 2010). This view was also endorsed by the thirteenth Law Commission of India in its 147th Report (1993).

The Law Commission in its 82nd Report (1980) recommending modifications to Sec. 39 of the Insurance Act, 1938 stated, if a policy holder nominates his parents, wife or children, they should be treated as beneficiaries, unless there is reason to believe the same as contrary and this provision should apply to all the policies on enactment of the amendments to the Insurance Act.

The government failed to take any decision on the same. Meanwhile the Supreme Court in Sarbati Devi (*Supra*), ruled that nomination does not countermand succession under the law.

With reference to the 82nd report (1980), the Law Commission of India in its 137th Report (1990) proposed the idea of Collector Nominee and Beneficiary Nominee. Emphasizing lack of public awareness of the legal position of a nominee and significance of Supreme Court's decision in Sarbati Devi (*Supra*), it sought clarity on the issue for the benefit of all concerned.

The Law Commission of India, in its 190th Report (2004) re-considered this issue. It rejected the argument that in all cases beneficial rights in policy proceeds should be granted to a nominee. Instead recommended introduction of two distinct types of nominees - a Beneficial Nominee (beneficially entitled to her share of the policy money) and a Collector Nominee (merely collect policy money from the company, give it a valid discharge and distribute the same among legal heirs as per applicable succession laws). This recommendation has been included in the Insurance Laws (Amendment) Bill, 2008 placed in the Rajya Sabha (December, 2008) awaiting decision as of date.

Analysis of Sec. 39 of the Insurance Laws (Amendment) Bill, 2008: Impending Problems

Presence of substantive laws (rights and obligations of citizens) and procedural laws (procedure for enforcement of substantive laws) is an important characteristic of any civilized society. Categorically the former are very important, but their efficiency to a great deal depends on the quality of procedural laws (Law Commission of India, 1964). Thus interpretation of substantive laws by the legal experts is of prime importance, which calls for precision in their formulation, to avoid distinct interpretations.

However the proposed sub-sections of Sec. 39 of the new Insurance Laws (Amendment) Bill, 2008, may leave scope for varied interpretations and further intricacies as under:

15) *A.I.R. 1929 Mad. 825*

16) *A.I.R. 1937 Mad. 645*

17) *A.I.R. 1938 Mad. 234*

18) *A.I.R. 1938 Mad. 604*

19) *A.I.R. 1938 Mad. 413*

1) Sub-section 1: If insured appoints a minor nominee, he shall appoint any person to receive the policy proceeds on his death during the minority of the nominee.

Interpretations:

- a) In this case if a minor person other than the one included under sub-section (7) is appointed as a nominee, is it necessary to mention beneficiary or collector nominee or is it assumed that nomination in favour of a minor will always be a beneficiary nomination or is it, that minor children of the insured alone can be nominated under sub-section (1)?
- b) Further in case of beneficiary nomination in favour of a minor as mentioned under sub-section (7), is a trust required to be created for the benefit of the minor nominee similar to the one under Married Women's Property Act, 1874 and in countries like Singapore, Canada, etc.?
- c) In case of nomination in favour of a minor as under sub-section (7), in the event of minor nominee's death after the policy holders' death but before collecting the proceeds, will the property now vest in the legal heirs of the minor nominee as under sub-section (8)? If so, then the legal heirs of a minor nominee need to be defined.

- 2) **Sub-section 2:** Nomination may be cancelled or changed by an endorsement or will provided it is intimated by the assured, otherwise the insurer not bound to make payment to the nominee mentioned in the document.

Interpretations:

- a) Will the consumer remember to intimate the changes to nomination? In case unmarried policy holder has made beneficiary nomination in favour of parents, especially mother and post-nuptial failed to intimate and dies, it will lead to litigations, especially in case of financially dependent spouse and children. As per Hindu Succession Act 1956, mother and wife are first class heirs. If beneficiary nomination is treated as testamentary succession in favour of either wife or mother it clashes with class I legal heirs under the Hindu Succession Act. This calls for clarity in rules and consumer education. To avoid legal hassles, a provision can be made that post-nuptial, nomination towards parents gets cancelled automatically and vest in wife and children as under Provident Fund Act, 1956 or in case of a 'Will' (Sec. 69 and Sec. 70, Indian Succession Act, 1925), as marriage leads to formation of new legal situations, rights and interests in various persons and properties (Raghavan et al, 2006).

- b) Nomination can be cancelled by a 'Will'. Does it mean a 'Will' supersedes nomination, especially beneficiary nomination? If so, then this sub-section contradicts sub-section (7). For instance in Singapore, Borneo, Canada, an irrevocable nomination confers beneficial interest in nominee i.e. serves as a testamentary disposition.
- 3) **Sub-section 4:** Nomination which was automatically cancelled consequent upon transfer or assignment will stand automatically revived when the policy is reassigned by the assignee in favour of the policy holder on repayment of loan.

Interpretation:

This is a welcome move; however can one assign/transfer a policy which has a beneficiary nomination or will it be treated as trust/irrevocable nomination, as in case of Singapore and Canada? This requires clarity.

- 4) **Sub-section 5:** On maturity of policy or on death of nominee(s) prior to maturity of policy, proceeds shall be payable to the policy holder or his heirs or legal representatives or holder of a succession certificate, accordingly.

Interpretation:

Does it mean that on the nominee(s) death prior to the death of policy holder, property in insurance policy will revert back to the latter on maturity?

- 5) **Sub-section 6:** Where nominee(s) survive the insured, proceeds shall be "*payable to*" such survivor(s).
- 6) **Sub-section 13:** Where the insured dies after maturity of the policy, but before collection of the proceeds, the nominee shall be "*entitled to*" the policy benefits.

Interpretation:

The words 'payable to' and in the latter case 'entitled to' the benefits are indicative of which kind of nomination – collector or beneficiary? Is former related to death claim prior to maturity of the policy and latter to post maturity? If yes, what difference does it make as the role of a nominee arises only on the insured's death? The only difference that matters is the kind of nomination - beneficiary or collector. Thus the terms 'payable to' and 'entitled to' may further give rise to assorted interpretations.

- 7) **Sub-section 7:** In case of parents or spouse or children or spouse and children as nominee(s), they shall be beneficially entitled to the policy proceeds, unless proved otherwise.

Interpretation: This will give rise to litigations especially when an unmarried insured has nominated parents and failed to change nomination post-nuptial and spouse and children are financially dependent or insured has died immediately on changing nomination after marriage and the spouse is financially well off whereas parents are not. Thus once again onus of proving rests on the survivors of the deceased and leaves room for precedence of common law over statutory laws. For instance, the Singapore Insurance Act, 2009 very precisely mentions that nomination post-nuptial vests in spouse and children (*Lim Lina v. Estate of Quick Cheng Gee*²⁰). Further Sec. 39 fails to give definition of “family”, similar to the one under Provident Fund Act, 1956.

- 8) **Sub-section 8:** In case of death of the beneficiary nominee mentioned under sub-section (7), the policy proceeds shall be payable to his heirs or legal representatives or the holder of succession certificate respectively and they shall be beneficially entitled to the same.

Interpretation: Does it mean beneficiary nomination will supersede a ‘Will’, i.e. amount to testamentary succession? In other words will it confer beneficial interest similar to irrevocable nomination as in Singapore, Malaysia, and Canada?

- 9) **Sub-section 10:** Sub-sections (7), (8) and (9) will apply to all life insurance policies whose maturity falls post commencement of the Insurance Laws (Amendment) Act, 2008.

Interpretation:

How will existing nominations be treated - as beneficiary or collector and will the insurers’

20) 2012 SLR 905

educate their existing policy holders regarding the same?

- 10) **Sub-section 11:** Every policyholder can exercise an option by indicating clearly whether the person(s) appointed is/are beneficiary or collector nominee.

Interpretation: Will the insured be educated about the legal implications of nomination – both beneficiary and collector? Further as per Muslim Personal Law an individual can make a will only up to 1/3rd of his property. Does this mean he will have no right to make beneficiary nomination or can make only to the extent of 1/3rd of the policy proceeds? For

instance in Borneo (Malaysia) Section 166, of the Insurance Act, 1996 related to nomination, does not apply to Muslim policy owners (Chuan 2012). In Singapore Insurance Act, 2009, a revocable nomination can be made by a Muslim subject to Muslim Personal Law. Similarly as per Pakistan's Supreme Court and Saudi Arabia's Shariah Court a nominee in the insurance policy is a mere trustee (Falaki, 2007). Thus to avoid further legal hassles and ensure a quick discharge by the insurers, it will be significant to note if the insured is governed by the Muslim Personal Law or the Special Marriage Act, 1954 (consequently Indian Succession Act, 1925), especially while making beneficiary nomination.

11) Sub-section 12: The collector nominee shall be responsible to pay policy proceeds to the beneficiary nominee or his legal heirs/representative as per the rules made by the Authority.

Interpretation:

If the collector nominee is the one of the persons mentioned under sub-section (7), will it not give rise to litigations, for instance, a married person appointing his parents or an adult child as collector nominee for the benefit of his spouse and children or spouse respectively?

12) Sub-section 14: Every life insurance policy to which Sec. 6 of the Married Women's Property Act, 1874, is applicable or has at any time applied and expressly stated to be made under this section shall be immune to all sub-sections under Sec. 39.

Interpretation

According to Sec. 6 this provision has to be effected *ab initio*, i.e. while buying a policy. Further married Muslims can assign a policy under this Act, but it has to be named nomination. However awareness of this clause among insured is a questionable issue.

Additional Observations:

13) The Bill makes no mention of policies without nomination. For instance, as per the Singapore Insurance Act, 2009, in the event of death, the policy proceeds in absence of nomination are payable to the proper claimants, as defined under this Act.

14) No mention of living benefits (critical illness payout riders attached to the policy) as under Singapore Insurance Act, 2009.

15) In case of child plans is the proposer i.e. parent required to appoint a collector nominee or the child himself will be the beneficiary nominee and a Trust is to be created which will be

operational on the death of the proposer? Further in the event of the death of the child after the proposer's death, but before collecting policy amounts, who will be entitled to the policy proceeds?

Recommendations

- 1) Defining the term “family”, “nomination”, “nominee” under the Act.
- 2) Engendering awareness among public and policy holders.
- 3) Compatibility of the Act with the other relevant Acts, like Indian Succession Act, 1925 and the like.

Conclusion

Thus for the Act to be effective, the Insurance Laws (Amendment) Bill would require modifications based on the recommendations of the Standing Committee. However in addition to clarifications in the law, stimulating awareness among the public and policy holders regarding nomination are vital for the efficient functioning of the insurance sector.

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