ROLE OF NOMINATION IN INSURANCE LAW

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# Abstract

### Insurance policies are not only having life insurance policies but they do have various social and commercial insurance also. Social insurance is more likely called as social security schemes which is controlled and aid by government. There are various social security schemes started by government in India, such as Atal pension yojana, National Pension Scheme, **Pradhan Mantri Jan Dhan Yojana**, **Public Provident Fund (PPF), etc.** The main aim of insurance policies could be summed up as to protect the near and dear ones of the policy holder and the policy holder himself. If the policy has been taken for the policy holder itself, the question of nomination does not arise but the policy like life insurance policy and various social insurance schemes nomination process is must. The easiest way to protect our family and fulfilled the objective behind taken this policy is assigning a Nominee. For fulfilling the motive of insurance, policy holder should assign the nominee, who would take charge of the policy amount. Nomination is the important part of every insurance policy. Though the nomination is not a mandatory part of insurance policies but it does consider one of the main and important part of insurance policy. If the policy which do not having any nomination, there is different procedure to hand over the policy amount but it would have lengthy and being tough for family to get that amount or need lot of paper work and unnecessary burden on family members. This research paper would be dealing with the role of nomination in the insurance policies in India. The main aim of researcher is to portrait the importance of nomination process while taking any insurance policy. This research paper would throw light on the assignment of nominee and cover all further consequences would be arising in the absence of nomination of policy. The researcher would give legal clarity on the assignment of nominee by law when the nomination has not been done by the policy holder.

# Introduction

* ***What is insurance*?**

Insurance is an agreement between the policy holder and the insurance company, to save policy holder from the possible future uncertainties and in the form of consideration, policy holder have to pay premium to Insurance Company. The Insurance Policy is taken by the consumers to compensate them in the event of happening of an unforeseen event. It is a hedge against unavoidable circumstances. In general insurance the loss is payable only on happening of some specific event. If the insured does not suffer any loss no claim is paid to him. The premium is charged on yearly basis and no accumulation takes place. However the scenario is different in case of life insurance.

If the insured dies during the policy period he gets the sum assured along with the bonus accrued under the policy if any. If the insured survives the policy period he gets the maturity amount accrued under the policy. In this lesson we shall learn the various aspects in settlement of life insurance claim.[[1]](#footnote-1) Every insurance company makes their agreements on their own terms and conditions on which the policy holder should be agree and an agreement has to be signed by him. Insurance policy is a contact to indemnify the policy holder from future loss and uncertainties.

The main aim of insurance policies could be summed up as to protect the near and dear ones of the policy holder and the policy holder himself. The insurance industry has been at the forefront of economic development in India. Gross premiums have grown at a CAGR of 7.2% over the last decade,1 pushing the country’s sector into the league of larger insurance economies globally. During this period, the behaviour of customers has also changed significantly, with 20–25% of them now using digital channels to understand and compare insurance products. Moreover, with the rapid adoption of the Internet of things (IoT) and other devices, enterprises have become more connected and aware.[[2]](#footnote-2)

* ***Evolution of Insurance Sector in India***

Insurance industry is one of the growing and leading industries in the country. The growth of insurance sector was increased after year 1991, where the globalization and liberalization has been takes place but Insurance sector is not new for India. India, insurance has a deep-rooted history. It finds mention in the writings of Manu ( *Manusmrithi* ), Yagnavalkya ( *Dharmasastra*) and Kautilya (*Arthasastra*). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine.

This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers’ contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular. [[3]](#footnote-3)  In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life business.

In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.

The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number of insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business.

      An Ordinance was issued on 19th January, 1956 nationalizing the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector.[[4]](#footnote-4)

* ***Types of insurance***

There are different kinds of insurance policies which are recognized by legislature of India. Insurance policies are not only having life insurance policies but they do have various social and commercial insurance also. Social insurance is more likely called as social security schemes which is controlled and aid by government. There are various social security schemes started by government in India, such as Atal pension yojana, National Pension Scheme, **Pradhan Mantri Jan Dhan Yojana, Public Provident Fund (PPF), etc. Let discuss all kind of Insurance in brief.**

1. ***Life Insurance Policy:-*** Life insurance is one of the very important insurance policy which protects future of family after the life of policy holder. Life insurance policies are taken by the policy holder for the future of his family after his uncertain death. Likewise others insurance policies, Life insurance has its own terms and condition subject to the company and in the consideration of premium which has to be paid by policy holder on the regular basis.
2. ***Commercial Insurance:-*** This kind of insurance has taken for the recovery of lost or damaged things of policy holder. Insurance of property, things such as Mobile phone, Laptop, other electronics gadget, Fire insurance of property, Motor Vehicle insurance are some basic examples of Commercial Insurance.
3. ***Social Insurance:-*** Social insurance is more like an aid from government for Public. There are many kinds of social insurance has been introduced by government. Social insurance is also called Social security schemes of government. There are various social security schemes started by government in India, such as Atal pension yojana, National Pension Scheme, **Pradhan Mantri Jan Dhan Yojana, Public Provident Fund (PPF), etc.**
4. ***Health Insurance:-*** Health insurance has taken to bear the uncertain future expanses of hospitals and medicines. It could be for an individual or for the whole family also, it depends upon policy has been taken by the policy holder. There are many family health insurance scheme have been present and quite popular in comparison of other policies. Payment of premium in the form of consideration has to be done by policy holder.

## Essential Of Insurance Contract

Insurance policy is kind of an agreement which is considered as Contract, when an agreement has fulfilled all requisites of a valid contract according to The Indian Contract Act, 1872. According to Indian Legislature, we have 6 basic elements of valid contract such as:-

1. Intention to create legal relationship
2. Offer or proposal by one party
3. Acceptance by another party
4. Consideration
5. Capacity to contract, means both the party has to be competent
6. Agreement needs to have lawful object

Insurance policy is considered as contract when all the basic conditions of valid contract have been fulfilled by an agreement of insurance policy. All these above mention elements needs to be fulfilled for the validation of agreement. If the Insurance policy attains the status of contract then it would be binding on both the party. If the insurance is of binding in nature, it would be beneficial for the parties and one party can sue for any wrongful doing of another party in the court.

## Nomination Clause In Insurance Contract

The easiest way to protect our family and fulfilled the objective behind taken this policy is assigning a Nominee. For fulfilling the motive of insurance, policy holder should assign the nominee, who would take charge of the policy amount. Nomination is the important part of every insurance policy. Though the nomination is not a mandatory part of insurance policies but it does consider one of the main and important part of insurance policy. If the policy which do not having any nomination, there is different procedure to hand over the policy amount but it would have lengthy and being tough for family to get that amount or need lot of paper work and unnecessary burden on family members.

A nomination will be effective when it is incorporated in the text of the policy itself, or it should be made by an endorsement on the policy communicated to the insurer and registered by him in records relating to the policy. A nomination is revocable. At any time before the policy matures the policy-holder can cancel or change the nomination. Such a cancellation or change may be made either by an endorsement or further endorsement on the policy or by a will.[[5]](#footnote-5)

* ***Role of Nomination clause in insurance contract***

Nomination part plays very important role in an agreement of insurance policy. As abovementioned paragraph, we have discussed that nomination is the easiest way to protect our family members and could keep our family away from unnecessary legal burden. Nomination clause is a part of Insurance contract likewise there are various clauses has been put by the insurance company in the policy for the policy holder and he/she needs to be agreed on that written clauses of the contract.

Nomination means to nominate a person or persons by the policy holder of his/her family or any other person he wishes to nominate, who would be entitled for compensation against the insurance policy. The decision of nomination is kind of right given solely to the policy holder and it’s a matter of his/her discretion that who will going to take a compensation against the policy after him/her. Nominee is a beneficiary of the policy taken by the policy holder.

If the process of **nomination** was not done at the time of inception of the policy, it can also be done at a later date either by an endorsement made at the back of the policy document or by making the endorsement of nomination on a piece of paper pasted on the policy. Nomination can also be cancelled or changed any time by the policyholder. It can be done via telephone, internet or written communication to the insurer. It entirely depends on the procedure of the insurer.

Thus, if A is the Policyholder and B is the Nominee, then the insurance proceeds would be paid out to B only if A dies. If A survives the entire policy term, then there is no requirement of B. **Nomination** automatically stands cancelled if the policyholder survives the entire policy term, because in that case the maturity proceeds would be paid out to the policyholder or his legal heirs.[[6]](#footnote-6)

* ***Importance of nomination in accordance with the nature of Insurance***

As we all know there are different kinds of insurance, it would be decided in accordance of nature of insurance and it also depends upon the insurance company. The importance of nomination clause is differed with the type of insurance and nature of insurance policy.

Previously the nomination procedure was not a mandatory part of Insurance policy, but the new rules effected by the Insurance Laws (Amendment) Act, 2015, clearly make nominees, immediate family members such as spouse, parents and children, the beneficiary so that the insurance money can go to the intended recipient. In fact, the new rules have another nominee-friendly feature that you must know in detail, but first let’s start with understanding what a beneficial nominee means.[[7]](#footnote-7)

During a person's lifetime, he or she makes many financial decisions-be it investing in a bank, mutual funds and shares, health insurance or life insurance policies, provident fund etc. Important as these financial investments are, what is equally important is appointing a nominee. We all know life is short and unpredictable. What happens to your financial assets if you meet your end unexpectedly? How does your family sustain the shock of losing their loved one as well as the financial security you provided for them? Whereas the tragedy of the death of a family member is irreconcilable, appointing a nominee when you make financial investments allows you to posthumously take care of your family's financial condition. This is especially important in the case of insurance policies which are largely bought to ensure the dependents of the insured are well taken care of post his or her demise.[[8]](#footnote-8)

As I said earlier, importance of nomination is different in every kind of insurance policy. Let’s discuss the importance individually, such as:-

* ***Life Insurance Policy****:-* Life insurance policies are quite popular than other and accepted by the public. The importance of nomination in Life Insurance policies is very high and the clause of nomination is considered as most required part of the policy. This is because, the policy will get mature by the death of the policy holder and after the death of policy holder, the clause of nomination will decide that who would be entitled for the claim amount of policy and who shall be the owner of that policy. So, it is must that policy holder did complete the formality of nomination.
* **S*ocial Insurance policies****:* - Social insurance is more like a social security schemes and aid given by the government to the public of the country. Employees Provident funds, Provisional Provident funds, Pension, Gratuity income etc were also considered as social security schemes given by government to their employees. In this abovementioned funds, it is very important that they were having nominees, so after the death of that account holder, nominee which was appointed by that person himself, will get amount of the funds without any unnecessary delay and legal burden.
* ***Commercial Insurance:-*** Commercial insurance are insurance policies which have been done to recover the future and uncertain loss of any property and things possessed by the owner of the insurance. These kinds of insurance policies are different from life insurance and social insurance policies and the importance of nomination would be lesser in comparison with others. That is so because, the things which may going to lost or damage, possibly in possession of the policy holder and in the lifetime of policy holder. If the policy holder died eventually, the insurance is of that thing or property; nomination must be done of that property or that particular thing.
* ***Consequences where no nomination is being done***

After discussing the importance and role of the nomination in insurance policies, the question blows in my mind that what if when there no nomination being done throughout the lifetime of policy holder by him/her, what consequences would have faced by the family and legal heirs when policy holder skips the nomination part of the policy. By seeing the importance and role of nomination in insurance policies, we can say that there will be major consequences should bear to family and beneficiaries of the policy holder. They have to face a legal consequential as well as mental and physical burden to get the amount to which they were entitled or have rights to get that claim easily.

Before year 2015, it was very difficult to get the claims of insurance policies without nomination. In the absence of a nomination, the insurance company discharges the claim amount to the Class I legal heir, that is, to son, daughter, spouse and mother. If you have a will, the proceeds will be distributed according to the wishes that you have stated in your will. This is according to the Indian Succession Act, 1925. Alternatively, the insurance company asks for a succession certificate by the court of law, which will clearly state to whom the amount should be paid. "*In case there is more than one legal heir, the insurer will call for a joint discharge statement, waiver of legal evidence and an indemnity bond. These documents safeguard the insurer's interest in case of any dispute on settlement of the claim,*" says Mahajan of Bajaj Allianz Life Insurance.[[9]](#footnote-9)

The amended Act has introduced the concept of a beneficial nominee. The nominee in this case is the person who ultimately benefits or owns the insurance money. According to the new rules, when a policyholder nominates parents, spouse or children, then the nominee or nominees will be beneficially entitled to the amount payable by the insurer.

“In the new insurance law, if an immediate family member such as spouse is made the nominee, then the death benefit will be paid to that person and other legal heirs will not have a claim on the money. This is good because it makes the nomination process more meaningful and clear. A policyholder knows that the immediate family member nominated by him will get the benefit. This will be applicable for all insurances that have a maturity date after March 2015,” said Mehta.

That’s not all. The new rules give rights to the nominee to collect the insurance money even on maturity of the policy in the event of the policyholder’s death. “Before the amendment Act, a nominee had the right to collect the policy money only upon death of the life assured during the term of the policy, but not if a policyholder survived till maturity, but died before getting the maturity corpus. The nominee is entitled to receive the maturity benefits, and in case he happens to be the beneficial nominee, then other legal heirs can’t claim the maturity proceeds,” said C.L. Baradhwaj, senior vice-president, compliance, and chief risk officer, Bharti AXA Life Insurance Co. Ltd.[[10]](#footnote-10)

* ***Assignment and Nomination distinguished***

The main point if distinguished between an assignment and nomination are:-

1. An assignment passes to the assignee the right to the insurance money. The nominee on the other hand, gets no rights and holds the money for the benefit of the estate of the deceased assured.
2. Once an assignment is made it cannot be cancelled at the option if the assignor. It creates a vested right in the assignee, subject only to the equities between the assignor and the insurer. On the other hand, a nomination, unless there is a special clause inserted to make it irrevocable, does not deprive the policy-holder of his rights, etc., under the policy including the rights to alter the nominee.
3. An assignee gets the right to further deal with the policy, for he becomes a policy-holder, but nominee gets no such rights.
4. An assignee is entitled to the money even if the assured survives the policy; but in the case of nomination if the assured is alive at the time of maturity, nominee gets no rights.[[11]](#footnote-11)

## Important Case Laws on the Role of Nomination

There are several time when the Indian Judiciary recognized the importance and role of nomination in Insurance policies. There are various cases where the Judiciary guides on the circumstances when the process of nomination is not being done in the life term of policy and life time of policy holder. There are ample of cases got registered where the nomination of spouse was not changed after marriage and the nomination has been done on the Father’s name, eventually the policy holder died then, who will be entitled for the claims and funds amount? Let have a look on the case laws having different circumstances and conditions related to the role of nomination which help in understanding the role of nomination in insurance.

***Where Law of succession was upheld by Court over nomination clause***

* ***Satyabhama Behera vs. Divisional Manager, Life Insurance Corporation of India and Ors. (12.04.2002 - ORIHC)[[12]](#footnote-12)***

A mere nomination made under Section 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them." Hence writ petition allowed.

* ***Nirmala Singh and Ors. vs. Jai Singh and Ors. (30.07.2015 - RAJHC)[[13]](#footnote-13)***

Having regard to the facts and circumstances of the case and the clear legal position, as indicated herein above, it is held that in the present case, the mother namely, Sugan Kanwar will have only the right to receive the maturity value of the Insurance Policy of the deceased Budhkaran Singh Charan on the basis of her nomination but, the aforesaid quoted impugned portion of para 8 of the impugned order will not come in the way of the present appellants-applicants to claim their share in the maturity value of the Insurance Policy of late Budhkaran Singh Charan in accordance with law.

# Conclusion

I would like to conclude with this research article that nomination has been a very important part of insurance contracts and after the amended act i.e., Insurance Amendment Act, 2015, the rights of nominees have been increased. But still the nomination could not overruled the legal heir’s rights, it always been upheld by the Courts in India. Nominee could only be the trustee of insurance money which would be later distributed to the Legal heir’s of the policy holder. As of now, one good thing had done with this new amendment that atleast the nominee among the family member would become beneficial nominee and there would be no need to distribute the policy amount into other legal heir. There is still a scope to increase in the rights of nominees in the insurance law, as of in Company law the situation is different, nominee of stock would become a beneficial owner of that shares or stock of shareholder irrespective of fact that he/she does not belong from the family or not amongst one of the legal heir. Like Company law, insurance law could be done more for nominees from outside family.

1. Claims and settlement available at <https://nios.ac.in/media/documents/VocInsServices/m3-f7.pdf> last visited on 4-01-2019 at 11:30 AM [↑](#footnote-ref-1)
2. Available at <https://www.pwc.in/assets/pdfs/publications/2017/india-insurance-perspective.pdf> [↑](#footnote-ref-2)
3. History of Insurance law, available at <https://www.irdai.gov.in/ADMINCMS/cms/LayoutPages_Print.aspx?page=PageNo4> last visited on 2-01-2019 at 9:47 PM [↑](#footnote-ref-3)
4. Ibid [↑](#footnote-ref-4)
5. Law of Insurance, Avatar Singh, Eastern Book Company(Second Edition)Pg no. 376 [↑](#footnote-ref-5)
6. Nomination in insurance, available at <https://www.myinsuranceclub.com/guides/nomination-in-insurance> last visited on 3-01-2019 at 2:04 PM [↑](#footnote-ref-6)
7. New rules benefit insurance nominee, available at <https://www.livemint.com/Money/bYKOp9A5yMl9WYyEvAdq2L/New-rules-benefit-insurance-nominees.html> last visited on 4-01-2019 at 12:03 PM [↑](#footnote-ref-7)
8. The importance of nomination, available at <http://www.sify.com/finance/the-importance-of-nomination-news-bank-ofvloNbfgebsi.htmt> last visited on 3-1-2019 at 10:15 PM [↑](#footnote-ref-8)
9. For the benefit of beneficiary, available at <https://www.businesstoday.in/moneytoday/insurance/how-to-choose-nominee-for-insurance-policy-to-help-claims/story/18850.html> last visited on 4-01-2019 at 12:17 PM [↑](#footnote-ref-9)
10. Supra note 6, pg 13 [↑](#footnote-ref-10)
11. Supra note 5 pg. 13 [↑](#footnote-ref-11)
12. **MANU/OR/0221/2002** [↑](#footnote-ref-12)
13. Available at **MANU/RH/1448/2015** [↑](#footnote-ref-13)