

Life Insurance Policies under Married Women Property Act 1874

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History of Indian Insurance Industry

It is an interesting fact that history of Life Insurance in India is almost 2 centuries old. One will be surprised to know that Sun Insurance Office which was doing business in India in Fire, Marine and Miscellaneous lines, having its office at 21, Netaji Subhas Road, Calcutta till 1954, was incorporated in 1710. General perception among the public is that it all that can be called as life insurance got started with the setting up of LIC of India, a nationalized company, but historical fact is that there were about 210* Indian Insurers and 107* Non-Indian Insurers doing business in India at the time of nationalization in 1956. (* As per Insurance Year Book 1955).

In the same way, Insurance legislation is also has a history. British Insurance Act,1870 was a precursor and was followed by Indian Life Assurance Companies Act,1912 and Insurance Act, 1938. Another statute “Married Women’s Property Act,1874” was brought in the interim to protect the proprietary rights of women. It is this Act, which is the point of study in this little article.

Normally life assurance is purchased to provide for financial protection to the dependents in the event of death of the life assured. The objective is excellent, but in reality, in majority of the cases, dependents don’t end up getting the intended protection because of the very nature of Life Assurance, ie. Liquidity. Meaning, because life assurance policy provides for complete liquidity, life assured can take maturity proceeds of the policy and spend it away for domestic urgencies or in case of death of the life assured, his creditors or executors/assigns can easily access the moneys

payable under the policy under legal provisions. In the end, practically nothing being left to the dependents.

Married Women’s Property Act 1874

It is no doubt strange, but true, that the then Government of India created a statute as early as 1874 to provide for the protection to dependents of the breadwinner of the family, by means of life assurance, which is beyond the reach of creditors. The insurance policy shall be deemed to be a trust for the benefit of beneficiaries mentioned therein and is beyond the reach of the husband or his creditors and does not form part of his estate. On the death of the assured such a policy shall not be aggregated with the other property left by the deceased. Thereby protection to the dependents of the deceased ensured by operations of law.

The statute is known as “Married Women’s Property Act 1874”. The Act, applies to all married men in India, except those in Jammu and Kashmir.

Section 6, MWP Act:

Sec 6, MWP Act 1874, provides for “when a policy of Insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.....”

In simple words, the provisions of MWP Act in this regard can be summarized as below:

Who can take such a policy?

Such life assurance policies can be taken out by only married man.. The term married man includes a widower or a divorcee.

And the policy should be on the life of married man. Meaning the life assured should be the married man. When a policy of insurance is effected on the life of another, say, wife or children, the provisions of Sec 6 M.W.P Act are not applicable.

How to propose for a MWP Act Policy?

At the time of taking out the policy, along with the regular proposal form or application for insurance, the life assured has to fill up a relevant addendum(s) to the application, which is appropriate for his wishes, intentions and specific requirements.

Who can be a beneficiary:

The beneficiaries to such policy should be for the benefit of his wife, or his wife and children, or any of them and this should be clearly mentioned.

When such a life Assurance policy is effected, a trust is created in favour of beneficiaries so mentioned, who may be given equal share or specified unequal shares. The trust may be in favour of a married wife and/ or named children male or female (children to include adopted children and not grand-children). It can also be provided that the benefit under the policy shall go to the beneficiaries jointly, or to the survivors or survivor of them. A trust may also be created in favour of the wife and children as a class. In such an event, the benefits payable under the policy would go to the person who at the death of the assured shall become the widow of the assured and those of the children by any marriage and whenever born, who shall survive him.

When can such a policy be effected?

To avail the benefits of this section, a policy has to be proposed and effected under the above provision. An existing policy cannot subsequently be brought under the purview of M.W.P Act provisions.

What types of coverage allowed?

All types of protection cover Policies can be issued under the provisions of MWP Act. Meaning, a life insurance contract dependent upon the exigencies of human life can be covered and that it should be on the life of married male alone and taken out by himself. Other types of policies, such as policies on the life of other like Joint Life Endowment. Children Deferred Assurance etc cannot be taken out.

Can Life assured or his creditors claim the policy moneys?

Since, under the provisions of the MWP Act, insurance policy shall be deemed to be a trust for the benefit of beneficiaries mentioned therein, it is beyond the reach of the husband or his creditors and hence does not form part of the estate. In other words, on the death of the assured, such a policy shall not be aggregated with the other property left by the deceased.

Can Life assured Nominate the beneficiaries under Sec 39, Insurance Act?

Appointment of beneficiaries, generally known as 'Nominees' not applicable and the beneficiaries (nominees) details in the proposal form / application for insurance should not as such be completed and to be mentioned 'does not arise'.

Can such a policy be assigned under Sec 38, Insurance Act?

Proposed Insured cannot execute an assignment under such policy.

How Claims are settled?

Appointment of special trustees is a requirement, at the time of issue of the policy. When a claim is made for the policy moneys, either on maturity or death of the assured, settlement is made to the special trustees, after getting all requirements completed and obtaining a valid discharge from them, irrespective of whether the beneficiaries are major or minor, named or mentioned as a class or alive or dead and the payment for the entire claim amount would be made by drawing cheque in the personal names of special trustees.

Conclusively it can be said, that, wherever the real intention is to provide financial security to wife and children, by means of insurance coverage, it is always safe to get it under MWP Act provisions. The purpose of this article is to provide an idea that such a legal provision exists. More details, if required, can be had from any of the life insurance companies.
