

Suicide Clause in Various Life Policies in India

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Abstract

Life insurance policy is a contract between the policy holder (assured) and the insurer (insurance company), where the insurer promises to pay a designated beneficiary a sum of money (a "premium") upon the death of the insured person. In return, the policy holder agrees to pay a stipulated amount (at regular intervals or in lump sums). In nutshell, life policies are legal contracts and the terms of the contract describe the limitations of the insured events. Specific exclusions are often written into the contract to limit the liability of the insurer; common examples are claims relating to suicide, fraud, war, riot and civil commotion.

Suicide means a wilful and intentional act on the part of the selfdestroyer. It includes every act of self-destruction. Policies of life insurance contain conditions by which the liability of the insurer is modified and limited in case of suicide by the assured. Where there is such a clause in a policy, the insurer can avoid the policy. The position in England and in India is different on this issue. In England suicide is a crime and hence no money is payable if a person commits suicide while in a sane state of mind. On the other hand if the assured was insane at the time of committing suicide, the sum due can be recovered by his legal representatives. Under the Indian law, suicide in itself is not an offence, and as such a policy cannot be avoided on the ground of suicide, unless the policy otherwise provides. Suicide will, however, not affect

the rights of assignee, if the policy holder had assigned the policy for valuable consideration. The burden of proving suicide is upon the insurers and where the cause of death is not known, the presumption is against suicide and the policy cannot be avoided.

This same is followed in India. According to this approach, the claim would be barred on a contractual level because the assured cannot be the author of his own loss, and on a broader level, because the law will not allow him to benefit from his own criminal acts.

This paper examines the development of law and policy in relation to claims on life insurance policy where the assured or insured has committed suicide after the commencement of the policy and the effect of suicide clause in life insurance contract. Is that the present practice of insurance companies to insert suicide clause in life policies, indirectly promotes commercial suicide in cases of intentional suicides.

Introduction

“Yatbhavati tat nasyati-whatever is created will be destroyed¹”. Change is a natural course & its occurrence involves risk. Risk is closely connected with ownership. The owner want to save them from risk and out of this desire, is the business of insurance born.

The insurance policy² is a contract (generally a standard form of contract) between the insurer and the insured, known as the policyholder, which determines the claims which the insurer is legally required to pay. In exchange for payment, known as the premium, the insurer pays for damages to the insured which are caused by covered perils under the policy language. Which states the risks covered, the exclusions, if any, and the benefits reimbursed on the happening of an event like death, illness etc.

¹ This statement is the Hindu philosophy that gives the axiomatic truth of the nature of insurance. In nutshell it means creation is inevitably followed by destruction.

² The expression, „insurance policy“, has not been statutorily defined in India and it carries the meaning and definition evolved through practice of insurance business and common law cases.

Life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any ³. There is no statutory definition of life insurance policy or life insurance contract in India and UK. However it has been defined in

*Dalby v London and India Life Assurance Company*⁴ as, “A contract in which the insurer in consideration of a certain premium either in lumpsum or in any other periodical payments, in return agrees to pay to the assured or to the person for whose benefit the policy is taken a stated sum of money on the happening of a particular event contingent on the duration of human life”⁵.

Its salient features are not as widely understood in our country as they ought to be. There is no statutory definition of life insurance, but it has been defined as a contract of insurance whereby the insured agrees to pay certain sums called premiums, at specified time, and in consideration thereof the insurer agreed to pay certain sums of money on certain conditions and in specified way upon happening of a particular event contingent upon the duration of human life.

The essential features of life insurance are; a) it is a contract relating to human life, which b) provides for payment of lump-sum amount, and c) the amount is paid after the expiry of certain period or on the death of the assured. The very purpose and object of the assured in taking policies from life insurance companies is to safeguard the interest of his dependents viz., wife and children as the case may be, in the event of premature death of the assured as a result of the happening in any contingency. A life insurance policy is also generally accepted as security for even a commercial loan.

³ Section 2(11) of Insurance Act, 1938 defines, „life insurance business“.

⁴ (1884) 15 C.B 365

⁵ Ibid

Event Insured Against in Life Insurance⁶

The event insured against in ordinary life insurance is the death of the life assured arising from disease or accident. It is immaterial whether the death is caused by natural or accidental causes or even due to the criminal act of a third party. Courts of law do not enforce contracts, the objects of which are against public policy. One of the cardinal rules of legal theory based on public policy is that no man shall be allowed to take advantage of his own wrong and this rule is expressed in the maxim *ex turpi causa non oritur action*, i.e., no cause of action arises out of a wrong. Based on this principle, in law of life insurance, to the above general rule that the legal representatives of the assured can recover on a life policy of the assured on his death, whether the death is due to natural or accidental causes including death caused by a criminal act of a third party. There are two exceptions to the aforesaid principle that have been laid down, namely; first, where the death of the assured is caused due to the violation of a rule of criminal law by the assured himself and secondly, where death is the result of a suicide⁷.

The willful misconduct of the assured has always been treated as an implied exception in a policy not only in life insurance but in other branches also. For example, in the case of fire insurance where the fire is caused by the willful misconduct of the assured, he is debarred from recovering on the policy⁷.

If the insured violates the law or commits an act punishable with a capital punishment and if he is sentenced to death, he is said to have brought death on himself and the rule of public policy that no one can make a profit out of his own wrongful or culpable conduct comes into play and debars the assured or his representative to recover under the policy. It shall be seen presently that when the assured commits suicide the claims under the policy are denied. In

⁶ *Supra note 4*

⁷ *Ibid*

⁷ *Liberty National Life Insurance Co. v Weldon* (1957) Alabama 100 So 2d 696.

such cases, it was pointed out that it would be contrary to public policy to insure a man to benefit upon his death, by the hands of justice. Death resulting from illegal operations or death in a fight or duel falls within this principle and the insurance company is absolved from liability in such cases⁸.

Suicide or Felo de se

The risk insured against in a life policy is death and death may be caused by disease, accident, negligence or wilful misconduct of himself or third person. When the event insured against namely death occurs, the insurer is liable to pay normally under the contract. But as in other branches of insurance when the event insured against happens due to the wilful and wrongful acts of the assured or his agent, the implied terms theory comes in and it absolves the insurer from liability. Thus, an ordinary life policy covers the risk of the assured being murdered by third parties⁹ and on similar grounds the commission of suicide by the insured while insane should not imply an exception to the risk.

Historically, suicide was known by the Latin expression *felo de se* or *felonia de se*. The Athenians would "punish" the self-murderer by cutting off his hand or, more properly stated, off the corpse of the self-murderer. The prevailing view at the time was aptly summarized by Plato (427-347 BC), who wrote:

"Man is a prisoner who has no right to open the door of his prison and runaway." "A man should wait and not take his own life until God summons him". Plato (427-347 BC)

"What punishment can human laws inflict on one who has withdrawn himself from their reach? They can only act upon what he has left behind, his reputation and fortune; on the

⁸ *ibid*

⁹ Lord Abinger, in *Wainwright v Bland* (1835) 1 Moo & Rob 481, 486.

former by an ignominious burial in the highway with a stake driven through his body; on the latter by a forfeiture of all his goods and chattels to the King, hoping that his care for either his reputation or the welfare of his family would be some motive to restrain him from so desperate and wicked an act."

In this case there was a conflict between two grounds of public policy. The first was the duty of the court to enforce contracts and the other that no man or his estate is allowed to benefit by his own crime, or, as it may be more aptly put here, no man is allowed to insure himself against the commission of a crime. In the court of first instance Swift J, held that sanctity of contract is of paramount importance. Swift J came to the conclusion that the rules of public policy did not prevent the plaintiff from recovering, and entered judgment for the plaintiff. The Court of Appeal held that it was contrary to public policy for the plaintiff to be entitled to enforce the contract, and entered judgment for the defendants. It is the over-riding duty and inherent power of the court to refuse its aid to enforce a promise where the plaintiff has to set up his own crime or the estate of a deceased seeks to benefit from a crime of the deceased.

The case went to the House of Lords. The House of Lord upholding the decision of the court of Appeal, expressed the view that, it is necessary when discussing the subject of the effect of suicide on policies of life insurance to distinguish between two different questions: (i) What was the contract made by the parties? (ii) How was that contract affected by public policy? On the first question if there is no express reference to suicide it will prevent the representatives of the assured recovering. If the contract does expressly deal with suicide the rights given to the parties by the contract must be ascertained according to the ordinary rules of construction, and it is only after such ascertainment that the question of public policy arises. This case contained an express term in the contract dealing with suicide. The relevant condition in the insurance policy was condition 4 which provides:

“If the life assured shall die by his own hand, whether sane or insane, within one year from the commencement of the insurance, the policy shall be void as against any person claiming the amount hereby assured or any part thereof.” On true construction of the contract the insurance company expressly agreed that the company would pay the sum assured to the person upon proof of the happening event if he dies by his own hand whether sane or insane.

There was a contract between the parties.

The second question addressed was whether such contract was enforceable in a court of law. Lord Atkin found it was not enforceable. The principle was stated in the judgment of Fry LJ, in *Cleaver v Mutual Reserve Fund Life Asscn*, at p 156: „It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person.“

The effect of this decision will be to strengthen the ordinary interpretation of the suicide clause, referred to above, and suicide after the restrictive period will not prevent beneficiaries or administrators of the assured from suing the company, and the company cannot deny liability and refuse payment on grounds of public policy, except when it is definitely established that it was a case of suicide while of sound mind with an intention to cheat the insurance company. In this connection, it should also be remembered that suicide is recognised as a felonious act in English law and hence is a crime, but committing suicide is not regarded as a crime in India either by common law or by statute. !

In England, the Suicide Act 1961 abrogated the law laying down that attempt to commit suicide is an offence. Although suicide is no longer an offence in itself, any person who aids, abets, counsels or procures the suicide of another or an attempt by another to commit suicide, is guilty of an offence and liable on conviction on indictment to imprisonment for a term which

may extend to 14 years¹⁰. In England, the Act of 1961 provides that, "The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated."¹²

The history of suicide and life insurance shows the considerable civil law effect of criminalising certain pathways to consensual death. In so far as the mode of death is criminal, those who participate in the killing will normally be prevented from benefiting financially from the death.

The insured is protecting against a risk even if she brings about the event herself, providing she did not have that intention at the moment of contracting. In suicide cases, the insured is covering her against the chance that she will form the intent to commit suicide during the term of the policy. Whilst the death by suicide may be an deliberate act, there is only a chance that this intent will arise, and that provides the element of uncertainty necessary for insurance. In practice, this issue has been resolved by the introduction of a contractual exclusion for suicides occurring within a given period of time after the policy's inception. Such a term would be likely to be implied, even if not expressly provided in the policy.

Life policies commonly provide for a minimum period of one or two years from the inception of the risk. It might be thought that such clauses reflect the need for the death to be fortuitous, but this is questionable¹¹. It is more likely that these clauses are designed to reduce the adverse risk selection issues that would arise where a person purchases life insurance with the hidden intention of committing suicide.

In India the committing of suicide is not a crime. Attempted suicide is punishable under Section 309, I.P.C., while abetment of suicide is punishable under Section 306. The committing of suicide itself is not and cannot be regarded as a crime in India. In this respect the English

¹⁰ Halsbury's Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106

¹² Section 1 of Suicide Act 1961, UK.

¹¹ Insurance law requires that the insured disclose all circumstances material to the risk prior to contracting. However, the underwriter would have to prove non-disclosure in order to avoid the contract. The one-year exclusion avoids the need to prove non-disclosure.

Common law is inapplicable to India as the criminal law of India is the creation of Statute. In *Faqir singh v. Union Of India*, the insured had died due to asphyxia on account of rope round the neck causing cardiac failure. However the fact of suicide had not been proved and existence of a vital proof suggested that it may even be murder. In such a situation, it was held that denial of benefit of postal insurance to father of the insured on ground that death was due to suicide is improper.

In *Northern India Assurance Co. v. Kanhayala*¹², the contract stated that the policy would become void if the insured Moolchand caused his own death before the policy has been in existence for one year. The insured assigned the policy to his son Kanhayala and when the policy had run for over 13 months killed himself by taking poison on discovering the infidelity of his wife. The assignee son claim to the sum assured was upheld by the court on the ground that committing suicide is not a crime in India and the principles of English law under which committing suicide was a felony is not applicable to India.

The question whether suicide is opposed to public policy in India was considered in the later case of *Scottish Union and National Insurance Co. v. Jahan Begum*¹³, in which on the strength of the insurer's representation that they are the only company operating in India that issued policies free of suicide restrictions whatsoever and that they would pay the sum assured in the event of the life insured committing suicide even after the payment of the initial premiums. The insured in this case took fresh policies on his life on 31st August 1935 and paid the initial premiums. A fortnight later, on account of domestic problems he shot his second wife and shot himself. When the insurance company rejected the insured's claim, the court said, "Whatever the usage or the custom in this business may be, we cannot shut out an intention so clearly defined by the contemporaneous interpretation of the company itself. Nor can we ignore the

¹² (1938) Allahabad High Court, P.561

¹³ AIR 1945 Oudh 152

conclusions to which we are inevitably led by the subsequent incorporation of suicide restrictions in the policies of 1935 onwards. "The court therefore passed on to deal with the question whether suicide is opposed to public policy in India or not. After an elaborate reference to Beresford case, the court emphatically held that suicide is „unhesitatingly“ not against public policy in India.

The question is that, what effect is produced upon the policy of life insurance by the suicide of the insured, or by his legal execution, in those cases where the policy has been taken out in good faith, and where suicide and execution are not expressly named in the policy as exceptions to the insurer's liability? Situation is different both in India and England. In England suicide and execution for murder, in this connection, may conveniently be put upon the same plane and the beneficiary is not entitled to recover the policy in cases where the insured commits suicide or if he is executed for a crime.

Life insurance is an important institution in our country, in some respect, related to huge charitable fund established, mainly for the unfortunate wives and children. But life insurance is not a pure charity. To the life insurance fund, very often, wives and children have made large contribution in money; toil and sacrifice. Their title to the fund became vested prior to the commission of the crime. What difference should it make, whether the insured was killed by his own act, or by the act of some stranger or by accident? It must not be forgotten, in this connection, that policies of life insurance are often utilized in the market as a means of procuring loans of money. If the rights of an assignee for value are likely to be cut off by events over which he has no control, the commercial value of the instrument will be seriously impaired.

The Suicide Clause

Restrictive conditions are imposed to eliminate or reduce moral hazard or to exclude physical hazards which are not provided for in the premiums charged. A moral hazard exists where it lies within the power of the assured to bring about a loss or to increase the risk of loss to the company. If the existence of the assurance is not an operative motive for the assured to bring about this loss or to increase the risk of it, a company can take account of the moral hazard in the premium charged (although data for its assessment may be deficient). But where the existence of assurance may be expected to be an operative motive for such acts, no premium can be adequate or at least no assurance satisfactory to the company can be arranged.

Under such circumstances the company has no option but to refuse the assurance or to exclude from the policy the risks over which the assured can exercise control. The problem so far as it relates to life insurance is simple, for loss can only be brought about by the extinction of the life assured, and this implies suicide or murder. Some offices, therefore, exclude the risk of suicide in early years and rely on the common law to defeat the claim arising out of a murder. The wording of the suicide clause is on the following lines:

"In case the life assured shall within thirteen months from the date of commencement of assurance die by his/her own hands, whether sane or insane, or at the hands of justice, this policy shall be void and all premiums paid forfeited; but in this case the interests of a bonafide assignee for valuable consideration will be protected to the extent of his/her interest provided such assignment has been registered with the company at least one month prior to the date of suicide or the date of the offence for which the assured meets with death at the hands of justice, as the case may be."

Classically, suicide clauses essentially rendered the insurance policy void, so that all the premium payments made were for naught and the bereaved were left in no better a position than before. Often, it was actually much worse than before the deceased has committed suicide.

Things have been changing of late. There is a second type of suicide clause gaining popularity throughout the world. At this same time, it still manages to live up to the original goal of the clause: to prevent policy-holders from committing suicide in order to allow their family to collect on the policy.

Another major development in this area is the condition that states that the suicide clause only remains in effect for the first two years of the term. That is, after two years of paying premiums, suicide will not stop the family from collecting on the policy.

Is the suicide clause on its way out?

More and more policies these days are becoming more sophisticated about the way they handle suicide. Furthermore, more policies are dropping the suicide clause altogether! It seems that statistics have shown that it does not do them any good. For most people at high risk for suicide, their insurance policy isn't going to stop them.

A more nuanced understanding of suicide has also changed things. Suicide is seen more as a symptom, side effect, or medical condition than it is as a choice these days. Studies are beginning to prove that committing suicide is not associated with mental illness alone; sadness is not a cause. Advanced psychology and modern medicine have offered a new understanding of suicide, so it seems much less necessary to prevent fraud by self homicide. If, like cancer, suicide is an uncontrollable medical problem, why shouldn't it be covered? If you suffer from depression or are high risk for suicide, it makes sense to include a favourable suicide clause or no clause at all in your search for the right life insurance policy.

New laws were enacted that required life insurance policies to cover suicide after a "reasonable" period ("reasonable" in this case meaning no more than two years). The premise is that no sane person is going to buy a policy with the intent of waiting two years to jump out

a window; that a person would do this was ample demonstration of mental illness, and that would be a covered exposure. This protects the interests of innocent family members, while still discouraging a casual view of suicide.

Conclusion

A suicide clause in life policies which covers suicide *felo de se* is not only legalises the act of taking one's own life but is also inherently against the public policy in India.

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