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A Comprehensive Analysis of the Suicide Clause in Life Insurance Policy in India, USA and UK

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ABSTRACT

Life insurance policy is the arrangement between the policy owner (assured) and the insurer (insurance undertaking) when, on the death of an insured person, the insurer undertakes to pay the appointed recipient an amount of money (a premium). The policy owner decides in order to pay a fixed sum (at regular intervals or in lump sums). Life plans are, in short, lawful arrangements and the contract provisions define the limitations of insured incidents. 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 is voluntary and deliberate self-destructive behavior of a person killing himself. Any act of self-destruction is including in suicide. Life insurance policies have provisions in which the insurer's liability is altered and restricted by the insured in cases of suicide. The insurer may prevent a policy where such a provision exists in a policy.

There are conflicting perspectives on this provision in England and India. Suicide is a crime in England and thus no money is due for a person who commits suicide when in a healthy state. On the other hand, if you were insane at the time of your death, your legal members will collect the amount due. Suicide itself does not constitute a crime under Indian law, and as such a suicide clause cannot be enacted unless the policy provides otherwise. However, if the policy holder assigned this policy for beneficial consideration, suicide shall not impact the right of the customer. The insurers bear the risk of proving suicide, because if the cause of death is not determined, the assumption is not against suicide and the policy cannot be prevented. In India, that is the same thing. This method would prevent this allegation to a contractual level because the insured person could not be the author of his own loss and to a wider extent, as legislation would not enable him to take advantage of it.

“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. It

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also provides the comparative analysis of the provision of suicide clause in USA, UK and India.

I. INTRODUCTION

“*Yat bhavati tat nasyati*” which means whatever is created will be destroyed is a statement in the Hindu philosophy that provides the truth of the nature of insurance. Basically, it means creation is inevitably followed by destruction.

Variation in the life is a natural process which also involves risk. Risk is strongly related with ownership. The owner intends to protect them from risk and out of this desire, is the business of insurance born. The insurance policy 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.

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.²

There is no as such statutory definition of life insurance policy or life insurance contract in India and UK. However, it has been defined in the case of *Dalby v London and India Life Assurance Company*³ as, “*a contract in which the insurer in consideration of a certain premium either in lump sum 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.*”

A life insurance policy is purchased by someone so that they have a financial stability for any contingency. The insurer makes a contract with the insured to provide a sum assured as a death benefit to the person whom he nominated in the event of an unexpected death of the insurer. Every insurance company is expected to ensure only genuine claims that arise due to the death of the policyholder.

² Section 2(11) of Insurance Act of India (1938)

³ *Dalby v London and India Life Assurance Company* (1884) 15 C.B 365

II. INSURED EVENT IN LIFE INSURANCE

In ordinary life insurance, the insured situation is the loss of life assured resulting from an illness or accident. It makes no difference whether the death was caused by natural or unnatural causes, or even by a third-party criminal act. Contracts whose objectives are against public policy are not enforced by courts. 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 theory, under life insurance law, the legal representatives of the assured will collect the assured's life policy upon his death, whether the death is caused by natural or accidental causes, including death caused by a third-party criminal act. There are two exceptions to the above principle firstly, 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 suicide.⁴

In the case of *Liberty National Life Insurance Co. v Weldon* it was held that, “*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 policy.⁵

When the assured violates the law, or commits an act punishable by a death sentence, and he is sentenced to death, the assured or his representative is reported to be killed by himself and the public policy rule that nobody may benefit by his own wrong or guilty conduct comes into play and is obliged to recover under the policy. It is seen that the claims under the policy are refused when the guaranteed person committed suicide. In such circumstances, the insured person must be assured by the hands of justice of benefiting from his death would be contrary to public policy. This theory covers death as a consequence of criminal activities or death during a war or duel and the insurance company is absolved from liability in such instances.⁶

III. SUICIDE OR FELO DE SE

In earlier times, 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.

⁴ Insurance Act of India, 1938, Section 2 (11)

⁵ *Liberty National Life Insurance Co. v Weldon* (1957) Alabama 100 So 2d 696.

⁶ *Ibid.*

Felo de se is a latin phrase which means “felon of himself”. It's an old legal phrase that generally referred to suicide. An adult who committed suicide was regarded as a criminal and therefore punished by the king. However, a child or individual who is mentally unstable or incapable of doing his own tasks and killing himself would not be considered a felo de se and has therefore not been penalized. In legal practice, the word felo de se is not popular. Suicide is normally not an unanticipated or unplanned insurance event.

The likelihood of death and death insured in a life insurance may be a disease, accident, negligence, or misconduct by a third party. When death-related insurance occurs, normally the insurer is liable for payment under the policy. However, the principle suggests that the insurer has been released from responsibility as it is in other insurance divisions where the insured case is perpetrated on the basis of the intentional and unauthorized conduct of the insured individual or his officer. The risk of assured people being killed by third parties thus falls within the scope of the normal life policy and the insured suicide commission though insane is not an exception to the risk for similar reasons.

India's National Crime Records Bureau (NCRB) has published yearly reports since 1967 covering all states in India and Union Territories. Nowadays due to the pandemic many lost were jobs which increased the number of suicide cases in India, financial crisis was the main mental stress and according to the data, 80 people killed themselves each day.

Changes in the insurance policies were made in 2014, all insurance policies did not include suicide clause. Before 2014 no claims were entertained by such companies where the insurer commits suicide. But from 2014 onwards amendments were made keeping in mind the ache and problems of the people left behind in the family.

IV. EXCEPTION TO SUICIDE OR THE SUICIDE CLAUSE IN THE INSURANCE POLICY

Classically, the suicide provisions made the insurance policy effectively null and void such that all payments made for premium were meaningless and the deceased were no left largely. It was also much worse than when the deceased committed suicide. Later things have changed. A second form of suicide clause has gained worldwide prominence. This provision provides for the entire payout made during the time of the policy to be returned to the family in such a case even though the policyholder would not have to pay the death benefit for his own life.

Changes in the policies were made in 2014, where all insurance policies did not include suicide clause. Until 2014, the cases in which an insurer committed suicide have not received any claims. However, amendments have been introduced since 2014 in order to take account of the hardship and the concerns of the family members. The policy concept was released on 1

January 2014 covering the families of covered persons with a suicide death. The term insurance plan's suicidal death protection shall apply after 12 months of the issue date policy or after 12 months after the policy has been improved. If the suicide of the insured is a true cause of death, the applicant shall be fully compensated, and even full death benefits shall be paid: The suicide clause was found invalid before January 2014 and no family claim was due.

The 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 India, 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 contributions 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.

V. SITUATIONS WHEN SUICIDE CLAUSE IS NOT APPLICABLE

The insurer is entitled to refuse your request when the lapsed policy is renewed and the later owner executes suicide 365 days after the date of the policy's renewal.

Second, when insured, it gives false/inconvenient information to the insurer that is prima facie deceptive and leads to reject the claim.

Thirdly, it is important to appoint a candidate when it is guaranteed to take insurance as a candidate. The nominee dies before payment of the policy is due in exceptionally rare circumstances. In that event, the legal heirs will have the right to receive the cash.

Finally, if the policyholder was protected by group insurance policies, suicide death allowance cannot be sought by the employer of the policyholder. The Policy Bazaar states that the suicide clause is not protected by the community insurance policy, given that it has been in effect for one year and requires more than one year of the suicide clause. Therefore it is not included here.

VI. ITS APPLICABILITY AFTER ONE YEAR

In a year, life insurance will cover it against the moral danger of the business and in order to stop insurance fraud as well. The policyholder will also fail to pay the debt and buy a life insurance cover for paying the insured sum. It is also thought that one year is sufficient to be free of such a perspective.

However, suicide compensation is provided for emotional and debt distress after the completion of one year and may cause him psychological stress and is the only viable alternative. The insured's dependents after the policyholder's death could confront these reasons. Since life insurance is a perfect alternative to keep the life of the dependent financially safe when their family member dies, the claim coverage would protect them in this situation.

VII. POSITION IN INDIA

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 306.⁷ It is not and cannot be considered as a crime in India to commit suicide itself. The English common law in India is inapplicable in this regard, because the establishment of a Statute is Indian criminal law.

In *Faquir singh v. Union Of India*⁸ the insured had died because of asphyxia because of the rope all around the neck, which caused a heart attack. The fact of suicide, however, was not proven and there was crucial evidence that it may also be a murder. In such a case, the refusal to benefit the insured's father through postal insurance because the death was attributed to suicide was incorrect.

In *Northern India Assurance Co. v. Kanhayala*⁹, The contract specified that if Moolchand being the insured had caused his own death for a year before the policy was in effect, the policy would become void. When his policy was over 13 months old he suicide by taking poison on the discovery of his wife's infidelity and allocated the insured policy to his son, Kanhayalal. The court upheld the assigned son's argument that suicide was not a crime in India, and India was not subject to the rules of English law, which enable to take place as a felony.

In the case of *Scottish Union and National Insurance Co. v. Jahan Begum*¹⁰, the question of whether suicide is against public policy in India was raised in which, since they were represented by the insurer, the insurer was the only company to be in India to issue policies

⁷ Section 306 & 309 of the Indian Penal Code, 1860

⁸ *Faquir singh v. Union Of India* AIR 2002 J&K 62

⁹ *Northern India Assurance Co. v. Kanhayala* (1938) lah ore High Court , P.561

¹⁰ *Scottish Union and National Insurance Co. v. Jahan Begum* AIR 1945 Oudh 152

that did not impose suicide restrictions and pay the amount insured in the lifetime insured committed

Life insurance is a significant institution for the large charitable fund founded in our country, especially for unfortunate women and children. In some respects it is a major institution. Life insurance, though, is not pure love. Life insurance, though, is not pure charity. Wives and children have very frequently made a major contribution to the life insurance fund; labour and sacrifice. Before the crime had been committed, their title to the fund was granted.

VIII. POSITION IN ENGLAND AND COMMON LAW

“The position of law in England was that when the insured person died by suicide, while he was sound, it equated a fraudulent act to *felo de se* and hence the insurance company was relieved of responsibility because no one could have benefited from his own misconduct.

Leading case on this point is *Beresford v. Royal Insurance Co Ltd*¹¹, in which the executioners of Major Rowlandson's estate brought a suit to recover the sum of £50,000 allegedly payable under the defendant's five life insurances policies.” 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 effect of the above decision does not prohibit an insured person from suing the company and cannot reinforce the common interpretation of the above-mentioned suicide clause and restrict suicide on the company, even where it has clearly been shown that this is suicide, the denial of liability and payment on the basis of public policy, the company will not be prevented. Here, suicide is also an act of felony under Common law and a crime; however, suicide is not considered to be a crime by ordinary or legislative actions in India.

In England, the Suicide Act, 1961 overturned the law that an attempt at suicide was an offense. Though suicide no longer constitutes an offence per se, someone who supports, encourages, advises or procures another's suicide or attempts to commit suicide is responsible for an offence and is convicted of imprisonment on charges for a period of up to 14 years.¹² 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.*”¹³

¹¹ *Beresford v. Royal Insurance Co Ltd* [1938] 2 ALL ER 602.

¹² Halsbury's Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106

¹³ Section 1 of Suicide Act 1961, UK.

The history of suicide and life assurance has shown that civil law considerably penalizes such ways of consensual death. Where a criminal mode of death exists, those who participate in the crime normally cannot take advantage of death.

IX. POSITION IN UNITED STATES OF AMERICA

In USA, the applicable suicide exclusions stated that *“if the insured, whether sane or insane, dies by suicide within 2 years from the Policy Date, Our liability is limited to an amount equal to the total premiums paid and suicide by the Insured, whether sane or insane, within two years from the Policy Date is not covered by this policy....”*

In the case of *Federal Guar. Life Ins. Co. v. Wilkins*¹⁴, it was held that, *“an insurer may deny a claim for life insurance benefits based on suicide by the insured so long as the policy includes a provision excluding coverage for death by suicide. Where an insurer has an arguable basis for denying a claim based on suicide, such as a coroner’s report indicating suicide, the insurer cannot be held liable for bad faith claim denial.”*¹⁵ However, it is a factual issue that can be determined better in a declaratory judgement suit, if an insured has effectively committed suicide so that no payments are due. In addition, suicide in Alabama is considered by law. The insurer can prevent the presumption from being operated by direct proof of suicide rather than by circumstance.¹⁶

Recent reports by the National Center for Health Statistics have shown a 35% rise of the suicide rate in the U.S. between 1999 and 2018.¹⁷ According to the National Mental Health Institute, rates of suicide for women were most common for those between the ages of 45 and 54, while among men the ages are more commonly 65 or older.¹⁸ These are age groups that are more likely to have life insurance. The American Foundation for Suicide Prevention indicates it is the tenth leading cause of death for Americans, and along with self-injury, cost a total of \$69 billion in 2015 alone.¹⁹ That’s why many life insurance policies have special terms in the fine print to account for suicide.

Insurance companies typically require that you have an active policy for a minimum of one to two years, either through your own private policy or one provided by your employer. According to the American Council of Life Insurers (ACLI), 99% of all life insurance

¹⁴ Fed. Guar. Life Ins. Co. v. Wilkins, 435 So. 2d 10, 13 (Ala. 1983).

¹⁵ Ibid

¹⁶ Jefferson Standard Life Ins. Co. v. Pate, 274 So. 2d 291, 294 (Ala. 1973).

¹⁷ Hedegaard H, Curtin SC, Warner M. Increase in suicide mortality in the United States, 1999–2018. NCHS Data Brief, no 362. Hyattsville, MD: National Center for Health Statistics. 2020.

¹⁸ <https://www.nimh.nih.gov/health/statistics/suicide.shtml>

¹⁹ The Centers for Disease Control and Prevention (CDC) Data and Statistics Fatal Injury Report for 2019.

claims are paid in full, but you must be paid up premium-wise in full to receive benefits, whether suicide is the cause of death or not.”

X. FUTURE OF THE SUICIDE CLAUSE

In this age nowadays, more and more policies are being developed on how suicide is handled. Moreover, the suicide clause has been completely removed mostly by policies. Statistics appear to have shown that they do little benefit to them. The insurance policy would not stop the majority of people at high risk for suicide. More complex suicide awareness has also changed the situation. The symptoms, side effects, or health conditions of suicide have been seen rather than as an option in the past few days. Studies begin to show that suicide is not linked with mental illness alone; depression is not a cause.

Advanced psychology and medicine have provided a new definition of suicide, so deception by self-homicide seems to be far less important. Why should suicide not be insured if, like cancer, suicide is an uncontrollable medical problem? It makes sense to have a suicide clause or no clause at all when searching for the correct life insurance policy when you suffer from depression and are highly at risk for suicide. New rules were passed, requiring "reasonable" life insurance plans to cover suicide (reasonable in this case means no more than two years).

The idea is that no healthy individual can purchase a policy in order to wait two years to save the window; it's a sufficient demonstration of mental disease and it's a covered exposure. This safeguards the needs of innocent families and also restricts a casual perception of suicide.

Therefore, there are chances that in the upcoming years the law related to suicide clause will be applicable all over the world due to the increasing need of safety of other family members.

XI. CONCLUSION AND SUGGESTIONS

Life insurance plays a sacrosanct and important role against the risk of life and the like; but if the proceeds of insurance are unavailable, it is contrary to public interest for those who see no other way out of financial challenges except by committing suicides.

Suicide-related life policies or a suicide clause not only legalizes one's life, but opposes Indian government policy as well. Felo de se. In case of intentional self-destruction, the adoption of suicide policies would promote commercial suicide. Many such media activities did not draw Indians' attention to the law and policymakers. Unfortunately, the researcher is not able to find in his research any cases pending before the Supreme Court of India which challenge the legality of suicide clauses under commercial or social pressure in situations where the policyholder had suicide.

Another situation involves the suspicion of a financial institution or the family members of the insured who are beneficiaries of the scheme, which is an offence under the IPC. This is indeed an offence but the investigatory agencies and prosecutors had difficulty in determining anything, as the case does not aggravate anybody to lift the issue before the court and the police. Since the representatives of the insured themselves profit from the circumstance and it goes against their own interests to prove those matters. The assumption that modern living plans legalize suicide provisions in case of intentional death does not justify the act if someone waited for or committed suicide for a duration of one or two years. If a person is in a financial crisis in the centers of his or her life, instead of living in misery, he or she ought to kill him/herself for the happiness of his or her loved family members. Although insurance is not a major driver to suicide but who are already distressed, knowing that death comes with a financial reward for their families could provide extra motivation.

The suicide clause found in life policies in India is on similar notes as other insurance companies in different parts of the world. It means the payment or return of premium to the beneficiaries in case suicide has been committed by the insurer within the stipulated period of one or two years as per the policy if the insured destroys him with sane state of mind. However, if he commits suicide even though intentionally and with sane state of mind, the policy would be payable to his beneficiaries or representatives. The practice of paying the proceeds in case of intentional suicide in a fit state of mind by the insured after the stipulated period of time, is justified on a logical presumption that no one can plan and wait to commit suicide for such period does not suffice the legality of the enforcement of life policies in such cases. It is apparently clear that, 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.

How far enforcing the contract of insurance against the insurance company or the insurer stands can be legally justified in a situation where the insured destroyed him willfully with sane state of mind to get the proceeds of the policy for his or her legal representative.

The practice of allowing the proceeds of life policies to the beneficiaries as well as creditors in case of intentional suicides for policy proceeds is not only against the public policy in India but it would also lead to the growth of commercially planned suicides. It is very difficult to establish by investigation the difference between suicide and murder of a person having huge sums of money as policy property for the beneficiaries or creditors. Further, it would degenerate the morals of an individuals life dignity against the economic interest of the few.

The present practice of law in the aforesaid situation must be amended to exclude the benefit to the legal representatives as well as beneficiaries of the life insured, however the demands of the sympathetic situation may be. Denying this would be against the cardinal principle of criminal law that no one should profit from his own crime. Therefore, there are chances that in the upcoming years the law related to suicide clause will be applicable all over the world due the increasing need of safety of other family members.”

XII. BIBLIOGRAPHY

- Banerjee (1994). *Law of Insurance*, Hyderabad: Asia Law House.
- Birds, J. (1997). *Modern Insurance Law*, London: Sweet & Maxwell.
- Colinvaux, R. (1997). *Law of Insurance*, London: Sweet & Maxwell.
- Gilmar, JCB., Mustill, A. (1981). *The Law of Marine Insurance*, London: Sweet & Maxwell.
- Halsbury's Laws of England. (2000). Reissue, 11(1), Para 106.
- Hardy Ivamy, E. R. (1993). *General Principles of Insurance Law*, London: Butterworth & Co.
- Hanson, J., C. Henly, C. (1999). *All Risks Property Insurance*, Hong Kong: LLP Asia.
- Maclean J. B. (1945). *Book on Life Insurance*, Mc. Graw hill Publishing Co. Ltd.
- Murthey K.S.N., Sarma, K.V.S. (2009). *Modern Law of Insurance*, Lexis Nexis Publication.
- Peter M., Eggers, D., Foss, P. (1998). *Good Faith and Insurance Contracts*, Hong Kong: LLP Asia.
- The Insurance Act of India. (1938)., available at: http://financialservices.gov.in/Insurance/Acts/The_InsuranceAct_1938.pdf, 5th May 2014.
- The Suicide Act 1961, UK, available at <http://www.legislation.gov.uk/ukpga/Eliz2/9-10/60>, 7th May 2014.
- Hedegaard H, Curtin SC, Warner M. Increase in suicide mortality in the United States, 1999–2018. NCHS Data Brief, no 362. Hyattsville, MD: National Center for Health Statistics. 2020.
- The Centers for Disease Control and Prevention (CDC) Data and Statistics Fatal Injury Report for 2019.
