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## Dear Friends & Professional Colleagues

### Spouse and Law of Nomination

Most unfortunate thing to happen to [a woman is](#) to become a WIDOW. Still worst is that she is not [NOMINEE](#) in LIC / GIC Policies, P.F., P.P.F., [Bank Account](#) / FDRs and other welfare laws and DDA / [Society flats](#), etc. and – or the [deceased spouse](#) has not even made his “REGISTERED WILL”. Though legally nominee receives money as ‘Trustee’ as opposed to a beneficiary, yet in most cases, nominees are reluctant to hand over money to wife and family due to one reason or other. [The widow](#) has to fight a [legal](#) battle to [get the money](#) due to her.

2. Most [people in India](#) believe that nominee is rightful person to receive and keep money. But the position in law is otherwise. An attempt has been made to explain the law of nomination under various Acts/ Schemes such as: Insurance Act, 1938, Employees Provident Fund Scheme, 1952. Payment of Gratuity Act, 1972, Public Provident Fund Act, Companies Act 1956 and Rules, laws concerning DDA / Societies flats, etc.

#### 3. Nomination under the Insurance Act 1938

3.1 A nominee is the person named in the proposal form to whom the Insurer (LIC /GIC) pays the assured sum in case of death of the assured.

3.2 Nominees is a trustee who receives the money due under the policy for the benefit of the legal heirs of the deceased. In other words, the fact that a person happens to be mentioned as nominee by the person insured, does not give him the TITLE to the insurance money.

3.3 The position of the nominee was finally settled by the Supreme Court in the case of Sarbati Devi Vs. Usha Devi (AIR 1984, SC-346). In this case, a person insured his life and appointed his wife Usha Devi as nominee to receive the sum assured on his death. Sometimes later he dies, leaving behind his wife, son Ashok Kumar and mother Sarbati Devi as his nearest legal heirs. On the strength of the nomination, Usha Devi claimed absolute right to the sum assured to the exclusion of the other two heirs i.e. the son and the mother of the deceased. The Supreme Court dismissed her claim holding “a mere nomination made under Section 39 does not confer on the nominee any beneficial interest in the amount payable under the [life insurance policies](#) on the death of the insured.” The Court further observed that the nomination only indicates the hand, which is authorized to receive the amount. The amount, however, can be claimed by the heirs of the assured in accordance with the Law of succession governing them.

4. Nomination and Labour Welfare Laws Para 61 of the employees Provident Fund Scheme, 1952 and Section 6 of the Payment of gratuity Act, 1972 deal with the procedure for nomination to the respective funds. The right of nomination is restricted, i.e. in the case of an employee having no family, the nomination can be made in favour of any person. However, as soon as there is a member in the family, the nomination in favour of an outsider becomes void and fresh nomination in favour of any member of the family has to be made. Also it is pertinent to note that while an employee has family, nomination in favour of an outsider (including Mother, Sister and Brother) is void.

5. Public Provident Fund Act, 1968 Section 8 of the Act says that all amount standing in the credit shall go to nominee (whether a member of family or not). Where there is no nomination, the amount shall be payable to his legal heirs. It is advisable to nominate wife as nominee in PPF Account in case one is married. In case account has been opened before marriage, nomination to be changed in favour of wife as and when one gets married.

6. Nomination and the Societies Flats The legal position of a nominee remains the same under the property law. After Sarbati Devi's case (AIR 1984 SC -346) the law is clear on the principle that the nominee is a mere trustee with whom the Society can initially or prima facie deal. And after the death of a member, all the heirs of whom a share in the said Society has been bequeathed, will have the right to succession to the property and the nominee cannot exclude the heirs. If Society rules permit, make wife as co-allottee and – or nominee in the Society flats and make and register the Will in spouse's favour. DDA LdDO/MCD/Municipalities insist for Registered Will for mutation.

7. Law on Transfer of Shares on Demise A 'nominee' under the Companies Act, 1956 as amended, has all the rights of ownership. Accordingly, it is necessary that wife should be made a nominee (Section 109A) in all shares, bonds, debentures, etc.

8. Following conclusion can be drawn from above discussion:

1. Nominate the spouse as Nominee in all documents and make and register Will making the spouse as beneficiary. However, this is subject to the relationship between the spouse.

2. Nomination does not affect the title to the money secured by policy – schemes, fund or property. It only provides a mode of payment in particular person who is the nominee.

3. In spite of such a nomination, the policy holder or owner of the fund or the property retains complete power of disposition which he can exercise either by transfer or assignment which operates during his lifetime or by a REGISTERED WILL which operates only subsequent to his death.

4. The rightful claimants to the sum under a policy or scheme or the share in the property as the case may, are the LEGAL HEIRS OF THE DECEASED, AND NOT THE NOMINEES.

5. In order that the amount under the policy or the welfare schemes or a share in the society or flat falls due to the desired person (spouse), it is necessary to bequeath it by way of REGISTERED WILL. A WILL alone puts into effect the wishes to the testator after his death.

6. Nominate your spouse or any other person whom you wish to give shares / debentures, etc.

7. Making WILL is a simple affair. However, it requires **will / desire** to make a WILL which is lacking in most people & in process leave behind disputable legacy which otherwise might have been a **windfall or blessings**.