

Life Settlement in India & Insurance Laws (amendment) Act, 2015

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Abstract

With the amended Insurance Act at place, the Legislature's stance on a long persisting debate has been answered. Trading of Life Insurance Policies was allowed by the celebrated Bombay High Court judgement in 2008. However, the judgement is under appeal in the Supreme Court. Meanwhile, the Parliament has brought amendments in the Insurance Act. The amendments have passively disallowed trading of life insurance policies in India and by a strange step; it has given the power to decide such public interest issue in the hands of private insurance companies, which are engulfed with vested interest. In the quarrel of increase in FDI in insurance sector, amendment of such nature has been neglected. Not only it has abruptly stopped the debate, rather it has made the ongoing litigation infectious and brought new dimension in the debate. Will the amendment survive the test of its constitutionality? This is the question which shall be answered in this paper.

A theoretical method of research was adopted during the preparation of this article. A comparative study was made between the international and Indian outlook towards the life settlement industry. The Insurance (Laws) Amendment Act was critically examined and it was concluded that the law is perverse in the eyes of law.

Keywords: Life Settlement, Viatical Industry, Insurance Laws (Amendment) Act, 2015, India

1. INTRODUCTION

With the amended Insurance Law at place, a new pandemonium has been added in the debate of

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trading of Life Insurance Policies. Over a period of time, Life Insurance has changed its character. Earlier, insurance policies were considered as a matter of guarantee but nowadays it is considered as a matter of securities. People are taking insurance policies not just for securing their future rather they consider it as the most sound and effective medium of investment. The government policies are also in consonance with the changing scenario. From providing tax benefits to operate government run insurance schemes, government is promoting insurance as a medium of investment.

This new approach in the insurance sector has created a paradigm shift. Taking a cue from the change in attitude towards life insurance policies and non-requirement of insurable interest, the business world started a new industry by the name Viatical Industry or Life Settlement Industry. They transact in buying and selling of existing life insurance policies. This was a breakthrough for the insured but a headache for the insurer. While the insured was now having a third option to look for in case of his inability of continuing the insurance policy, the insurers were in incredulous regarding strangers possessing the policy and reaping benefits out of it.

In United States, this new industry was widely accepted by the general public. It draws wide range of investors in the pool and makes it a highly profitable industry. But with success comes problems. The complete profit interest in the policy gave the contract a nature of wager. Apart from that it was contested that the contract is against public policy. While in America, a lot of regulations were formulated in order to facilitate the industry, the stance taken by India is contrary. The sole case of trading of life insurance policy was raised in 2008 in Bombay High Court. The High Court upheld the trading yet the attitude of the Life Insurance Company of India (thereafter: LIC) didn't change. The case is currently under the consideration of the Apex Court, while the amendment bill passed by the

Parliament drops in favour of LIC making the litigation infructuous.

I have tried to analyse the condition from the prospective of all the interested parties. The manuscript is divided into six parts. Firstly, the nature of the life insurance policy is discussed.

In the next part the debate of insurable interest is discussed. I have tried to analyse the nature of insurable interest in Life Insurance Policy. Subsequently, I have tried to investigate the history and need of life settlement. Following which the problems which are discussed include the prospective of it being against public policy, a problem to taxation policy and the problem of it being a wagering contract. Lastly, I have analysed the condition prevalent in India and inspecting it through the perspective of the Law Commission, the K.P. Narsimhan Committee and the Standing Committee on Insurance Laws (Amendment) Act. Preceding the conclusion a special emphasis has been given to the change brought after the enactment of the Amendment Act.

2. NATURE OF LIFE INSURANCE POLICY - GUARANTEE OR SECURITIES

Unlike marine and fire insurance contracts, life insurance contracts are not contract of indemnity. In cases of life insurance, instead of compensating the damage, a fixed amount is received by the beneficiary. The payability of this sum is not contingent on the proof that by this death the claimant has suffered a loss which is quantifiable in terms of contract (*Scott v. Dickson*, 108 Pa. 6 (1885)). It is difficult to characterise life insurance. Perhaps, for regulatory, descriptive and even definitional purposes, generalisations about the nature of life insurance are commonplace (Niekerk, 2007, 302). A contract of life insurance in its strict form may be defined as a contract under which the insurers undertake, in consideration of specified premiums being continuously paid throughout the life of a particular person, to pay a specified sum of money upon the death of that person (*Dalby v. India and London Assurance Co.*, [1843-60] All ER 1040) (Lexis Nexis, 2006, ¶525).

In a broader sense, the expression ‘life insurance’ as defined in Section 2(11) of the Insurance Act, 1938, meaning that any contract in which one party agrees to pay a given sum upon happening of a particular event contingent upon the duration of human life (*LIC of India v. Vishwanath Verma*, AIR 1995 SC, 189). Thereby, the contract of insurance is hedged by bilateral agreement on human life upon payment of premium

subject to the covenants contained there under (Srinivasan, 2009, 1043). But the insurer is not entitled to impose unconstitutional conditions including the denial of right of entering into the contract, limiting only to a class of persons under a particular policy (Srinivasan, 2009, 1043). The insurer is free to evolve a policy based on business principles, and conditions before floating the policy to the general public offering insurance on the life of the insured. As seen earlier, the insurance being a guarantee or social security measure; it should be consistent with the constitutional animation and conscience of socio-economic justice adumbrated in the Constitution (*LIC of India v. Consumer Education & Research Centre*, 1995, 5 SCC 482).

The very purpose and object of the assured in taking policies is to safeguard the interest of dependents in the event of premature death of the assured as a result of happening of any contingency (Srinivasan, 2009, 1052). The assignees or nominees and the dependents of the assured cannot be deprived of the dues payable under the policy (*Santosh Kumar Gupta v. LIC*, AIR 2000 Raj 327, at 332).

In modern times, we generally think of life insurance as protection for families against the risk of losing their breadwinners and for businesses against the risk of losing their most important participants (Crites-Leoni & Chen, 1997, 63 at 76). But, soon after, people started using it as a medium of investment and profit. Life insurance has traditionally been classified as an illiquid asset (Garbade, Silber, 1979, 577). To most policyholders, the value of life insurance rests in the guarantee and certainty that it provides and not its liquidity; to many, purchasing life insurance is „the opposite of gambling” (Christensen, Stevick, 2004, 1-19).

The lack of a secondary market supports the contention of others. For many years, people treated life insurance as an illiquid asset because there was no secondary market that would allow policyholders to safely sell their policies (Connolly, 2004, 14). Due to this, the policy holders were compelled to choose either of the two existing options. First, that they keep the policy going and reap the benefits out of it or second, to surrender it to the issuer at a price decided by the issuer without any right to bargain. However, this scenario has changed in recent years. Older policyholders are now selling in-force life insurance policies to independent third parties (known as life settlement providers) in a secondary market transaction (Kohli, 2006-07, 279-281). The transaction of selling one’s policy to a life settlement provider is referred to as either a viatical settlement or a life settlement (Kohli, 2006-07, 279 at

281). The only difference between the two terms is that viatical settlements deal with insured individuals who have a life expectancy of less than twenty-four months and life settlements deal with individuals who are expected to live more than twenty-four months (Wolk, 2005, 13).

Now, the insured has a third option for the policy. This also allows the insured to receive a better price for the policy than to the surrender value offered by the insurer. The competition will compel the insurer to provide for a better surrender rate. This will benefit the insured ultimately.

Although, trading of life insurance policy has its own benefits. Certain class of people are in defiance of it. They submit that trading of life insurance policy will defeat the purpose of it. They are sceptical that if the policy will be granted without taking insurable interest into account then there will be no difference between a wagering contract and contract for life insurance. Perhaps, it is not such a case.

3. INSURABLE INTEREST & LIFE INSURANCE

It was business reasons that spurred the origin of life insurance in Europe in the late Middle Ages, but, almost immediately, people started using life policies to gamble on the demise of famous people (Clarke, 1999, 13–14). This wagering activity became so popular, but so disreputable and distasteful, that many European cities banned the sale of life insurance policies, and the English Parliament enacted the Life Assurance Act of 1774, which did not prohibit life insurance but, instead, initiated the doctrine of insurable interest (Martin, 2014, 91–95).

Contract for wager and gambling is prohibited in common law. Therefore, no insurance is to be made on the life or lives of any person or persons, or on any other event or events whatsoever, where the person or persons for whose use or benefit, or on whose account, the policy is made has no interest, or by way of gaming or wagering; every insurance made contrary to this provision is void (*Fuji Finance Ltd. v. Aetna Life Insurance Co. Ltd.*, [1996] 4 All ER 608 (CA)).

The doctrine of insurable interest in life insurance policies continues to plague the courts because there are so many aspects of the law still open to question (Salzman, 1965, 517). There is some uncertainty as to whether or not the English common law required that a beneficiary of a life insurance contract must have an insurable interest in the life of the insured (Edward Thompson Company, 1897, 930–931).

The requirement of having an insurable interest while applying for a life insurance policy removed the components of wagering contracts. Although, the requirement of insurable interest while receiving a life insurance policy, through assignment, is debatable.

Basically, an insurable interest is the interest created by the relation between the insured and the contingent event insured against which would cause a loss to the insured should the event actually occur (Patterson, Young, 1961, 226–227). It is also such an interest which precludes any wagering intent on the part of the person who will benefit by the event occurring (Vance, 1951, 184). It is this theory which is used against the trading of life insurance policy. As per the objectors, if trading is allowed then the insurance policy will be owned by people having no interest in the life of the insurer, which will make the policy more of a wagering contract. Their premise for the requirement of insurable interest is based upon the requirement of the same in assignment or transfer of general insurance. But, they fail to appreciate the difference between that contract of life insurance and general insurance.

On one hand, the contract of general insurance is a contract of indemnity whereas the contract of life insurance is not. In the famous case of *Dalby v. India and London Life Assurance*, the English Court had held that the presence of an interest in the assured at the inception of the policy, and that a decrease, suspension, or entire termination of that interest before the policy matures in no wise affects the assured's right of recovery under a policy valid at its inception (*Dalby v. India and London Assurance Co.*, [1843–60] All ER 1040). Even the American Courts, without referring to the English decisions, arrived at the same conclusion. Justice Bradly was of the opinion that 'a policy taken out in good faith, and valid at its inception, is not avoided by the cessation of the insurable interest, unless such be the necessary effect of the provision of the policy itself' (*Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457 (1876)). Recently, the same principle was reiterated by the Bombay High Court.

Henceforth, it is undisputed that insurable interest, in the case of life insurance, is required only at the time of initiation of the policy and not afterwards.

4. LIFE SETTLEMENT INDUSTRY - HISTORY AND NECESSITY

The securities character of life insurance policy paved the path of trading of life insurance policy. Essentially, viatical settlement or life settlement added a new financial concept to life insurance. The

term derives from *viaticum*, used in ancient Rome to describe a purse that contained money and provisions for a trip (Martin, 2010, 173–185). It came as a great relief and option for those who want to reap out the benefits of the life insurance policy but can't afford to continue the same or for those who are in need of money but don't have anything to sell for the required sum of amount.

Although, the path for trading of life insurance policy was levelled long ago but the most precise instance can be traced in the early 1980s. In the 1980s, when HIV/AIDS patients were terminally ill with no jobs, high medical expenses, and life insurance premiums they could no longer afford, a viatical settlement allowed them to sell their policies to third parties for cash (Bozanic, 2008, 229–233). Because AIDS patients usually died very soon after diagnosis, these financial arrangements became very popular for the third-party purchasers and for the financial companies arranging them (*Life Partners, Inc. v. Morrison*, 484 F.3d 284, 287 (4th Cir. 2007)).

Quickly, the business world found a new market for investing money, and industry for life settlement started shaping up. The industry started buying life insurance policy of patients of incurable diseases or old age people. Investors found these instruments of particular interest because they were not correlated with other traditional investments and, therefore, could act as a risk mitigation tool (Martin, 2014, 91–97).

The business of life settlements has evolved from having investors purchase existing life insurance policies from insureds who no longer need the insurance to protect their families in the event of their deaths, to an arrangement in which a life insurance agent or a life settlement broker persuades a senior citizen (preferably one with a net worth of at least \$5 million) to take out a lifeinsurancepolicy, not for the purpose of protecting his or her family, but for a current financial benefit (Leinberg, 2009, 573–576).

The industry reaps out of the benefits of the non-requirement of insurable interest for assignment or claiming of a life insurance policy. Though, requirement insurable interest is the biggest argument against the same. The legal problem with this arrangement is that the actual party, for whom the policy is purchased i.e. the life settlement company, has no insurable interest in the life of the insured and, therefore, it is claimed to be against public policy designed to prohibit wagering on the lives of others and in violation of statutes in most states (Mathews, 2008, 521–523).

The U.S. authorities decided to regulate Viatical Settlements. Therefore, in 1993, the National Association of Insurance Commissioners (NAIC)

adopted the Viatical Settlements Model Act (Model Act) in an effort to regulate the growth of the industry (Schroeder, 2006). The Model Act was brought into effect only to eradicate fraudulent practices. Due to the Act, it was mandatory for the purchaser of the policy to be a licensed trader or otherwise, the viator was required to disclose the same to the authorities.

However, after the enactment of Health Insurance Portability and Accountability Act the scenario changed. The new law facilitates the industry in a new way. When an insured is terminally or chronically ill, HIPAA excludes from taxable income the proceeds from the sale of their life insurance policy to a viatical settlement provider (Bozanic, 2008, 229–238). This provision afforded viators the same tax-exempt status of the viatical settlement payment as the death benefit payout would be to the beneficiary (Bozanic, 2008, 229–238).

By introducing „death bonds”, a new dimension has been added by the Wall Street. The idea is to securitise life settlement bonds. This macabre investment is known as a *Death Bond*, the technical and less chilling label is a *life-settlement backed security* (Goldstein, 2007, 44).

Despite having pros of it, on certain issues, scepticism is evident. One of the foremost issues is of lack of insurable interest. Another is the immoral character of the settlement which is supposed to be against public policy. Apart from that the possibility of fraud and uncertainty on tax treatment of the same raise doubts.

5. ARGUMENTS AGAINST THE INDUSTRY

Like any other industry, industry of life settlements has its own problems. Despite the acknowledgment by law in most of the jurisdiction, on certain issues, the debate is still alive.

On the surface, the high expected returns and low risk associated with a life settlement, a life settlement-backed security seem like an investor's dream (Bozanic, 2008, 229–242). The life settlement industry has not been plagued by the same difficulties in mortality prediction and blatant dishonesty of doctors and insureds that the viatical settlement industry experienced (Bozanic, 2008, 229–242).

The life settlement market is considered supply-constrained, because there are a limited number of life insurance policies available for sale (Bozanic, 2008, 229–242). An investor seeking to increase the supply of life insurance policies available for sale on the secondary market can only do so through fraudulent

means (Sledge, 2005, 8). By inducing senior citizens to take out a life insurance policy on their life with the intention of later selling their interest in the policy to the investor, an investor is able to reduce the supply constraint (Leimberg, 2007, 110). This practice is known as stranger-originated life insurance (STOLI), and is nothing more than a collusive attempt to skirt the insurable interest laws (Bozanic, 2008, 229–243).

Aspects of fraud in STOLI were examined by the U.S. Court. The U.S. Court found that people were buying life insurances with intent to sell it at a later point of time. The U.S. Court considered this practice as a wagering and fraudulent practice.¹ If a life insurance company successfully challenges the validity of a policy on the ground that it was purchased with the intention of re-selling it, the policy will be deemed void *ab initio* (*Rice v. Wal-Mart Stores, Rice v. Wal-Mart Stores, 2003 D.N.H. 166 (D.N.H. 2003)*). If a STOLI policy gets securitized, and its STOLI nature exposed by the insurer, it will negatively impact the pool in which it is securitized (*Rice v. Wal-Mart Stores, Rice v. Wal-Mart Stores, 2003 D.N.H. 166 (D.N.H. 2003)*).

The U.S. government tried to fight with this problem by amending the Model Law. They introduced a new provision which prohibited reselling of life insurance policy for the initial two to five years (Washington, 2007). The amendment was widely criticised. The effect of this classification is argued to be a burden on the free alienation of property (Connolly, Pressing for Change on Many Fronts, 2007, 7).

Although, the government has determined that there are certain goods and *property rights* which are simply inalienable; acting in the public's interest, the government substitutes its judgment for that of the populace (paternalism), and determines that certain things are just not saleable (Bozanic, 2008, 229–257). These restrictions are generally justified in light of preserving the well-being of society (Radin, 1987, 1849). Arguably, the government regulates not to restrict freedom, but to enhance it and benefit society as a whole (*Donaldson v. Lungren, 2 Cal. App. 4th 1614, 1619 (Cal. Ct. App. 1992)*).

The tax confusion is another problem associated with the trading of life insurance. The proceeds from life settlement transaction are not excluded from being taxed. The amount realized from the sale should

¹ Only one who obtains a life insurance policy on himself on his „own initiative” and in good faith that is, with a genuine intent to obtain insurance protection for a family member, loved one, or business partner, rather than an intent to disguise what would otherwise be a gambling transaction by a stranger on his life--may freely assign the policy to one who does not have an insurable interest in him (*Grigsby v. Russell, 222 U.S. 149, 156 (1911)*.

be treated as a disposition of property with all of the applicable tax consequences (Bozanic, 2008, 229–261). Life insurance policies are exempted from being taxed because of their nature of providing security at the time of death but that is not the case with life settlement.

We must understand that life settlement is a kind of a contract. It is the freedom of contract available to every person. Considering the fact that there is no requirement of insurable interest for claiming a life insurance policy, the insurance holder is free to sell it to anyone. The freedom to sale and purchase property is a guarantee for it. Therefore, such trading is allowed in United States. But the condition in India is not the same.

6. LIFE SETTLEMENT AND INDIA – AND ANALYSIS OF INSURANCE LAWS (AMENDMENT) ACT, 2015

On March 22, 2007, the Division Bench of the Bombay High Court held that life insurance policies can be freely assigned to corporations for the purpose of trading (*Insure Policy Plus Service (India) Pvt. Ltd. v. LIC of India, 2007 (109) Bom LR559*). This judgement started a new set of debate in India. Prior to this judgement, there was no law, either allowing explicitly or disallowing, even implicitly, trading of life insurance policy.

The discussion started when Insure Policy Plus Services, a company which carried out the business of assigning life insurance policies to buyers after acquiring them from the policyholders for a consideration (Nandy, Gupta, 2008, 653–656). The Life Insurance Corporation issued circulars against the company stating that any assignment which it suspects as trading shall not be entertained. Henceforth a writ petition was filed in the Bombay High Court.

The Bombay High Court analysed the American decision deeply. Understanding the wagering aspect involved, it gave due respect to the argument of freedom of contract. After applying its judicial mind, the Court concluded that life settlement is permissible in India. Although, the matter has gone into appeal and the Supreme Court is now taking due care in this regard. The Supreme Court vide its order in May 2008 directed the Reserve Bank of India to formulate guidelines on whether a lapsed life insurance policy could be revived by a third party for pecuniary benefits (Press Trust of India, 2008). The matter is still under consideration.

Prior to this episode, Insurance Regulatory and Development Authority of India constituted the K.P.

Narsimhan Committee on the provisions of Insurance Act, 1938. The Committee suggestions were contrary to the judgement. In the words of the Committee, „[section 38] is called for to nip in the bud the potential for trading in life insurance policies by certain agencies, and to prevent moral hazards associated with such trading in life insurance policies” (Narsimhan, 2005, 69). It further stated that „the Law Commission had dealt extensively with the provisions in the Section and had made recommendations on specific amendments that could help to cover partial transfers of interest and conditional assignments” (Narsimhan, 2005, 69).

Despite the fact that both the reports were contrary, the High Court neglected the reports and laid emphasis on the western jurisprudence.

However, the Parliament had a different stand. Recently, the Insurance Laws (Amendment) Act, 2015 was given the force of law. Among other amendments, one amendment to section 38 was also placed. In the standing committee report, it was revealed that though the Finance Ministry was of the opinion that trading of life insurance policies shall be allowed, the LIC and CII were not in favour of it. The Finance Ministry was of the opinion that life settlement will empower the insured, giving him options from which he can choose what suits him the best. However, the CII took a patristic approach and presented its scepticism on the ability of the insured in identifying his welfare (Ministry of Parliamentary Affairs, 2011, 138–139). At last, the provision for disallowing trading of life insurance policy was considered by the standing committee. Subsequently, it was accepted by the Lok Sabha as well (Press Trust of India, 2015).

It is quite evident that the Indian Insurance Industry is cynical about life settlement. Although, the provision is still not in effect and can be termed ultra-virus on the terms of it being violative of freedom of contract; it is sad to see the approach taken. The amendment was in favour of the Insurance Companies. However, the legality of the amendment can be questioned on various grounds.

The changes brought by the Amendment Act are quite significant. It has not discarded the possibility of life settlement rather has given the power to the insurer to decide whether the insurance should be issued or not, though the intention is to sell it afterwards.² This decision will be made on a case to case basis. There are no established parameters, broad or specific, to decide the case. It seems *prima facie* bizarre. The implications of the amendment will be catastrophic. The lawmakers

² Insurance Laws (Amendment) Act, 2015 (Act 5 of 2015) s. 45 cl. 2.

fail to appreciate that the law has a wide scope of being abused for nepotism and corruption. It is a settled principle of law that no power can be conferred without devising a proper mechanism for disposal of the power (*State of Punjab v. Khan Chand*, AIR 1974 SC 543). Furthermore, it is incongruous to delineate the public interest power in the hands of private entities. A private entity, filled with vested and private interest, perjures the decision which shall be taken in public interest. Therefore, in absence of guidelines, the delegation of power will fail the test of due process and hence be arbitrary; and violative of Article 14 (*Avinder Singh v. State of Punjab*, AIR 1979 SC 321).

Another solecism made by the lawmakers is that they have made the Act itself self-contradictory. In the haze of appealing the insurance companies, the draftsmen of the legislation forgot to create a harmonisation between the existing statute and amended statue. The Act describes a policy-holder as a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.³ Owing to this definition, the policy-holder shall have all the rights pertaining to the insurance policy. Implicitly, it means that a policy-holder does possess the right to transfer the insurance policy as per his whims and fancies. Considering the nature of insurance policy, we can conclude that insurance policy is a movable property. Justice Homes impeccably worded it in *Grigsby v. Russell*. In his words, „life insurance has become in our day, one of the best recognised forms of investment and self-compelled saving; So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property...To deny the right to sell...is to diminish appreciably the value of the contract in the owner's hands” (*Grigsby v. Russell*, 222 U.S. 149, 156 (1911)). The nature of property imbedded in life insurance policy was observed by the Madras High Court as well.⁴ Similarly, the Sind High Court of British India was of the same view.⁵

The Apex Court has categorically pointed out that it was not only necessary for a person to have property or interest in property but that interest must be in regard

³ Insurance Act, 1938 (Act 4 of 1938) s. 2 cl. 2.

⁴ The insured's creditors can attach the policy in execution, like any other property belonging to the insured (*D.M. Mudaliar v. I.I. and B. Corporation*, AIR 1957 Mad 115).

⁵ The Sind High Court had treated the money payable under a life insurance policy as an actionable claim as being a beneficial interest in movable property (*ShamdasGobindram v. Savitribai*, AIR 1937 Sind 181).

to a movable property and this interest should also be capable of being ascertainable during his lifetime or at the time of his death (*Muthiah and Another etc. v. The Controller of Estate Duty, Madras, AIR 1986 SC 1863*). In case of life insurance policy there is always a tangible continuing interest only that the value of that interest might be subjected to a change at the time of passing of the property (*Muthiah and Another etc. v. The Controller of Estate Duty, Madras, AIR 1986 SC 1863*). In short, the holder of a life policy can deal with it like any other property, by way of sale, mortgage or create a trust out of it or bequeath it.

Considering the arbitrary delegation of power and the inconsistent nature of the amendment, it can be lucidly construed that the amendment is *ultra-virus*.

7. CONCLUSION

It is evident from the basic understanding of law of insurance and contract that the life insurance policy can be assigned to anyone. The approach of the Bombay High Court as well as of other Courts across the globe is the same. The only ground which finds water against it is that such practice can be against public policy.

Some people termed life settlement as death dealing. However, it is hard to digest the same. If someone wilfully disavowing his rights from a particular life insurance policy, for consideration, then it can't be termed against public policy. Although, certain contracts like organ transplant, slavery etc. are termed against public policy and have been termed illegal, but we must understand the basic difference between them. On one hand, in the contracts of organs transplant or slavery, it's a part of the body or the entire body which the seller is losing in his lifetime, on the other hand, in life settlement; it's not the body but the benefit which is being transferred. The same will be transferred only after the death of the person.

It may be argued that it will destroy the basic essence of insurance that being insurance was brought for guarantee purposes.

SUMMARY

Life settlement industry is a standard and well recognised form of business in the United States. What was started with trading of life insurance policies of AIDS patients has now become a viable option for those who don't need the policy anymore and want to cash it at a better price. The demand for encouragement of such industries is taking pace. It is considered as a

weapon for destroying the monopoly created by the Insurance Companies in the surrendering of insurance policies.

Life settlement Industry or Viatical industry do business of selling and purchasing of life insurance policies of old people or patients suffering from incurable diseases. Such people don't have much life left and the purchaser of the policy pay them an amount as decided between them and get the policy assigned. This allows him to claim the policy on account of the death of that person. This industry serves dual purpose. Firstly, it gives an option to the seller to receive a better amount than the surrendering of his policy and secondly, it allows the buyer to earn significantly with little investment.

However, the record of the industry is not unblemished. The industry is made subject to long controversies and was even termed as a business of wagering contract. It was argued that selling of life insurance policy is equivalent to selling of life. It was submitted by the opponents that a stranger holding a policy will violate the principles of insurable interest and the stranger will not have any interest in the life of the person. Such complexions will lead to wagering contract. Though, by principle, insurable interest is not required at the time of claiming of a life insurance policy.

In India, by virtue of *India Policy Plus Service v. Life Insurance Corporation*, a Bombay High Court judgement of 2007, such business was allowed. However, with a strong lobbying of the insurance companies, the Insurance Laws (Amendment) Act, 2015 was enacted which in reality reversed the judgement and made its appeal infructuous. The amendment made life settlement business to strive. It was allowed only on a case to case basis and the power to determine that was arbitrarily given to the insurance companies. Also, the Act has inherent contradictions. The definition of „policy-holder” is left unchanged. As per the definition, the policy holder possesses all the interests attached to the policy. Even in the literal most sense, it suggests that the policy-holder shall have the right to determine the way of disposal of his policy. However, the amendment made to the assignment section suggests contrary.

Considering all the irregularities in the amendment, it is argued that such amendment will fail the test of its constitutionality and henceforth will allow the sun of life settlement business in India to shine. The rise of life settlement industry in India will break the shackles and monopoly of the insurance companies. It will give them a viable third option. Competition will come in

and the policy-holder will get a better amount for its policy.

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