



## **THE MARRIED WOMEN'S PROPERTY ACT, 1874- PROVISION RELATED TO INSURANCE PROCEEDS**

*Dear Friends,*

*As you are aware the importance of insurance in our life. Every person to some extent requires insurance to protect him and his family from financial loss in case injury, damage or destruction. Life insurance Policies /Term Insurance Policies are long term policies and benefit-based policies. Generally, we choose life insurance policies for investment and security purposes and Term Insurance Policies to protect our family members from unfortunate events and keep them financially stable in case of our demise.*

**PLEASE NOTE THAT** – *in case of insolvency or you are not in place to protect your family due to unfortunate demise , your creditors will claim the insurance proceeds from your policies for their amount legally and your family find only after satisfaction of debt of creditors. The purpose of insurance in this case does not fulfill the goal and your family will be under tremendous financial trouble.*

***But many of us are not familiar with Married Women's Property Act (MWPA), 1874 - To protect your family against such crisis, you need bring their policy under the scope of the Married Women's Property (MWP) Act. This ensures that on the death of the life assured, the dependents receive the proceeds, not the creditors.***

*Both businessman and salaried employees should use this option. Let's try to understand the benefits which our family members would get when a life insurance policy is affected under the MWP Act.*

*To cover your life insurance policy under MWP Act is very simple and inexpensive process. Every policyholder can adopt this route to protect his family and does not have to spend any additional money for the purpose.*

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*Married Women's Property Act 1874 (MWP Act) was created to protect the properties owned by women from relatives, creditors and even from their own husbands. The Section 6 of the MWP Act covers life insurance plans. Any married man can take a life insurance policy under MWP Act. This includes divorced persons and widowers.*

### **LET'S FIRST CONSIDER SOME PROVISIONS OF MWP Act,1874**

*The Married Women's Property Act, 1874 has come to force on 24<sup>th</sup> February, 1984.*

*The Preamble of the Act says;*

*WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day:*

*AND WHEREAS by the Indian Succession Act, 1865 (10 of 1865), section 4 it is enacted that no person shall by marriages acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:*

*AND WHEREAS by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by them, and their husbands do not by their marriage, acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide, for the enforcement of claims by or against such wives;*

**SECTION 4 -Married women's earnings to be their separate property.** —*The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband, and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill, and all savings from and investments of such wages, earnings and property, shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.*

### **SECTION 5- MARRIED WOMEN MAY EFFECT POLICY OF INSURANCE. —**

*Any married woman may affect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit, thereof, if expressed on the face of it to be so affected, shall ensure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.*

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**SECTION 6. INSURANCE BY HUSBAND FOR BENEFIT OF WIFE. —**

*(1) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long any object of the trust remains, be subject to the control of the husbands or to his creditors, or form part of his estate.*

*When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the State in which the office at which the insurance was effected is situated and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.*

*And in reference to such sum, he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. 17 of 1864 to constitute an Office of Official Trustee, Section 10.*

*Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been affected with intent to defraud creditors.*

*(2) Notwithstanding anything contained in section 2, the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which effected—*

*(a) by any Hindu, Muhammedan, Sikh or Jain —*

*(i) in Madras, after the thirty-first day of December 1913, or*

*(ii) in any other territory to which this Act extended immediately before the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959), after the first day of April 1923, or*

*(iii) in any territory to which this Act extends on and from the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959),*

*(b) by a Buddhist in any territory to which this Act extends, on or after the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959).*

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*Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed —*

*(i) before the first day of April 1923, in any case to which sub-clause (i) or sub-clause (ii) of Clause (a) applies ; or*

*(iii) before the commencement of the Married Women's Property (Extension) Act, 1959, in any case to which sub-clause (iii) of Clause (a) or Clause (b) applies.*

**SECTION 7- MARRIED WOMEN MAY TAKE LEGAL PROCEEDINGS.** —A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 18652 (10 of 1865) or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as is she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

**SECTION 8 - WIFE'S LIABILITY FOR POST-NUPTIAL DEBTS.** —If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree :

*Provided that nothing herein contained shall—*

*(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or*

*(b) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.*

**SECTION 9 - HUSBAND NOT LIABLE FOR WIFE'S ANTE-NUPTIAL DEBTS.**—A husband married after the thirty-first day of December, 1865 shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if he had continued unmarried:

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*Provided that nothing contained in this section shall invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.*

**NUPITAL DEBTS** – means A prenuptial agreement, antenuptial agreement, or premarital agreement (commonly referred to as a pre-nup), is a written contract entered into by a couple prior to marriage or a civil union that enables them to select and control many of the legal rights they acquire upon marrying, and what happens when their marriage eventually ends by death or divorce. Couples enter into a written prenuptial agreement to supersede many of the default marital laws that would otherwise apply in the event of divorce, such as the laws that govern the division of property, retirement benefits, savings, and the right to seek alimony (spousal support) with agreed-upon terms that provide certainty and clarify their marital rights.

*A premarital agreement may also contain waivers of a surviving spouse's right to claim an elective share of the estate of the deceased spouse.*

**IT CAN BE DEFINED AS-**

*a written contract between two people who are about to marry, setting out the terms of possession of assets, treatment of future earnings, control of the property of each, and potential division if the marriage is later dissolved. These are fairly common if either or both parties have substantial assets, children from a previous marriage, potential large inheritances, high incomes, or have been "taken" by a prior spouse.*

*It means that husband is not responsible of any debt of his wife incurred before they tied in a marriage.*

**SECTION 10- EXTENT OF HUSBAND'S LIABILITY FOR WIFE'S BREACH OF TRUST OR DEVASTATION.**

*—Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of deceased.*

**IT MEANS THAT-** *a husband is not liable for act of her wife as a trustee even after or before the marriage unless he has participated in management of the trust, or he has played active role in administration of trust and breach as the case may be.*

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## **LET'S CONSIDER RIGHTS OF A MARRIED WOMEN IN CASE OF AN INSURANCE PROCEEDINGS;**

**SECTION 6- OF MARRIED WOMEN'S PROPERTY ACT, 1874 -** deals with the rights of married women to receive proceeds of insurance in case an insurance policy held by his husband and it is on the face of insurance policy shows that the policy has been taken for the benefit of wife, or wife and children of the deceased or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long any object of the trust remains, be subject to the control of the husbands or to his creditors, or form part of his estate.

*It means that the proceeds of insurance policy shall be received and kept by the Official Trustee same as trust reposed on the insurance policy. The proceeds of insurance policy shall not be utilized to pay creditors of the husband unless fraud is proved that the insurance policy has been made to defraud creditors of the husband.*

### **PROCEDURE TO COVER UNDER MWP ACT,1874**

*The policy can be taken only on one's own name, i.e., the life assured has to be the proposer himself. Any type of plan can be endorsed to be covered under MWP Act.*

#### **THE BENEFICIARIES CAN BE:**

- *The wife alone;*
- *The child/ children alone (both natural and adopted);*
- *Wife and children together or any of them;*
- *The policy can also be a named policy meaning the name of the wife and the child/children are mentioned in the plan or as a class by not mentioning the names.*

*However, Mohammedan proposers can only take up named policies. The benefits of the policy proceeds can be mentioned as specific percentages to each beneficiary or as equal amounts.*

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## **LET'S CONSIDER SOME IMPORTANT QUESTIONS**

### **HOW WILL THE BENEFICIARIES GET THE BENEFITS?**

*Each policy will be considered as a separate trust. At the time of the proposal, the proposer is expected to mention the trustees too. The trustees can be the wife and/or one or more of his adult children, or a third person.*

### **PLEASE NOTE THAT –**

- 1. The policies are considered as an automatic trust and there is no need to create a Trust under the Trust Act. The policy holder has the option to change the trustees at any point in time.**
- 2. However, the beneficiaries of the plan once declared cannot be changed at any time by the proposer. The main advantage for the beneficiaries is that the plan cannot be surrendered or be assigned for taking a loan by the proposer.***
- 3. Also, in case of a death claim, the policy proceeds are received by the trust and cannot be claimed by the debtors, nor will it form part of the estate of the proposer. Hence, the welfare the wife/child/children are protected with utmost care.***

*The policy is particularly helpful for the families of businesspersons who have highly leveraged businesses (businesses with a high component of loans).*

*In proprietorship and partnership concerns in case of a loss, the owner/s of the firms have unlimited liability. This means in case of winding up of the business or in case of a loss, the creditors (those who have provided loans in the form of money or material) have the right to sell all the assets of the owners and their families like land & buildings, jewels, cars, artistic collections, savings in life insurance, mutual funds, bank deposits, etc to recover their money.*

*However, the creditors cannot access the life insurance policy covered under MWP Act. Thus, the policy creates an immediate asset for the dependent family members, which they can enjoy for sure.*

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### **HOW TO GET A PLAN COVERED UNDER THE MWP ACT?**

*At the time of making the application, a separate form has to be filled by the proposer for it to be covered under MWP Act. The form will seek details of the beneficiaries, the share of the benefits that are to be accrued to them and the trustees.*

### **WHY ARE PEOPLE NOT MAKING USE OF THE MWP ACT?**

*There is lack of awareness. Not many people, even in the insurance industry, are aware of the provisions of the MWP Act. Once covered under MWP Act, the proposers lose control to change or make alterations in the plan.*

### **CAN A PROPOSER ASSIGN OR TAKE LOAN ON POLICIES UNDER MWP ACT?**

*No, your policy covered under MWP Act 1874 cannot be assigned to another person (or) no loan can be taken against the policies covered under the MWP Act 1874.*

### **CAN A PROPOSER SURRENDER POLICIES UNDER MWP ACT?**

*Surrender request has to come from policyholder and signed by the trustee / received from the trustee directly. Surrender proceeds will be paid to the trust for the benefit of the beneficiary, as stated in the policy.*

*Due to lack of awareness, very few policies are being taken under the MWP Act. Life insurance is a tool to protect the dependent family members. If this purpose is to be achieved in its fullness, then having the life insurance plan availed under MWP Act may be considered. So, the next time you are buying a life insurance policy, suggest you avail it under MWP Act. But do not misuse the MWP Act to intentionally defraud your creditors.*

### **CAN A DIVORCEE WIFE CLAIM BENEFICIAL INTEREST IN POLICY?**

*For any term insurance policy covered under the MWP Act, the beneficiary once opted at the time of taking the policy cannot be changed. So, when you appoint your wife as the beneficiary and in case you both divorce, your beneficiary (wife) will remain the same.*

### **WHAT HAPPEN WHEN WIFE PASSES AWAY BEFORE ME?**

*If your beneficiary (wife) passes away before you, the legal heir of the policyholder shall be eligible to receive the claim amount. However, it is advisable to mention more than one beneficiary at the time of taking the policy.*

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### **CAN I HAVE MORE THAN ONE PLAN UNDER MWP ACT ?**

*Yes you can have more than one plan under the MWP Act. But you have to register each one of them separately under MWP Act.*

### **CAN MY PARENTS CAN BE ADDED AS BENEFICIARY UNDER POLICY IN MWP ACT?**

*No, parents cannot be added as the beneficiaries under the MWP Act. Only your wife/kid/kids can be chosen as beneficiaries.*

### **CAN I ASSIGN AN EXISTING LIFE INSURANCE POLICY UNDER THE MWP ACT?**

*No, you cannot. Once a policy has been issued, it cannot be assigned under the MWP Act later. You have to opt for the MWP Act at the time of purchase.*

### **LET'S CONSIDER SOME ILLUSTRATIONS;**

**Example I** - Mr. Mathur, a salaried individual, took a home loan few years ago. He bought a term insurance policy online and endorsed it under MWP Act with his spouse and child as the beneficiaries. After Mr. Mathur's sudden demise, the bank approached the court to clear the home loan with the policy proceeds. The case got ruled out against them and the proceeds went to his wife and child as they were protected under the MWP Act , 1874.

**Example II** – Mr.Verma is a businessman who borrowed some capital to expand his business. He bought a term insurance policy online under MWP Act 1874 with his spouse as the beneficiary. After his sudden demise, his creditors approached the court and sought their right to get paid out of the proceeds of the term insurance policy. Since the policy was covered under MWP Act, the creditors lost the case and the sum assured benefit was ordered to be paid to his wife.

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**CONCLUSION:** *In both the above scenarios, the MWP Act 1874 played a crucial role in protecting the future of the families. In today's world, 'buying on credit' and 'building assets on loan' have become a common trend. Employed individuals or people in business, alike rely on credit (home loan, personal loan, business loan, consumer loan, etc.) to achieve goals. In this kind of scenario, how do you make sure that only your dependents receive the insurance policy claim proceeds in case of your uneventful death? This is where the MWP Act 1874 helps you in protecting your family's future financially. Please note that your existing insurance policy will not be converted under MWP Act, 1874 policy. In case you are buying a new insurance policy then at the time of buying the same you have to opt the option of MWP Act, 1874.*

**DISCLAIMER:** *the article presented here is only for sharing important knowledge with the readers. The views are personal and same should not be taken as professional advice. In case of necessity do consult with insurance professionals for more understanding and clarification on subject matter.*

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