
Efficacy of the Indian Legislative and Judicial Mechanism with reference to Nomination of Personal Assets: An Important Constituent of Financial Capability

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ABSTRACT

Increasing complexities in the financial system has shifted the onus of personal financial planning on to the consumer, thereby necessitating financial education initiatives to enhance the financial literacy or financial capability levels of the people. Financial Capability is a concept embraced by a few countries like Canada, UK, etc. comprising within its fold components of internal capabilities i.e. financial literacy and external capabilities i.e. opportunities in the form of financial products, financial institutions, legislations, procedures and the like. The former becomes functional on the existence of the latter. Rather existence of and accessibility to external capabilities is a pre-requisite for the success of the internal capabilities.

This study attempts to highlight the external capabilities issue in terms of legislations and their interpretations in the context of nomination laws with reference to distinct personal assets like bank deposits, life insurance, etc.

The study further reveals intricacies created in the minds of all concerned parties owing to the distinct construal's of nomination rules by the judiciary in different contexts relating to the same as well as distinct assets, and also due to the phraseology of the different Statutes, leading to mystification of the construct among the consumers as well as time-consuming and costly litigations. The author has attempted to draw upon some solutions for the same.

The desk method of research has been adopted by the author by analysing varied lawsuits in the context of nomination in India.

Key Words: Judiciary, Legislation, Nomination, Personal Assets, Financial Capability.

1. INTRODUCTION

"Life is really simple, but we insist on making it complicated" – Confucius¹

"Judges have to have the humility to recognize that they operate within a system of precedent, shaped by other judges equally striving to live up to the judicial oath". John Glover Roberts Jr.²

The aforesaid statements are highly relevant in the Indian context, as they demonstrate the reality of the Indian legislative and judicial machinery, especially true in the context of laws and judicial interpretations relating to Nomination for distinct personal assets be it life insurance, mutual funds, equity, realty, etc.

In this era of complex financial markets consumers are expected to make intricate financial decisions pertaining to Insurance Planning, Budgeting, Investment Management, Succession Planning, etc. enabling them to lead fulfilling lives and ensuring peaceful transfer of legacies to their legatees. This demands enhancing their financial literacy or financial capability (latter concept adopted by Canada and UK) to aid in optimal financial decision making.

¹ A Chinese philosopher

² Current Chief Justice of U.S. Supreme Court

Thus in the international arena the respective governments, researchers, financial planners, and academicians voice opinions pertaining to enhancing financial literacy of consumers – an important component of human capital. Studies are being undertaken to understand the financial literacy levels of individuals and efforts at the State level to devise policies and means to enhance the same.

However what needs to be understood is that enhancing financial literacy (knowledge, skills and abilities) is internal to the individual, which may even warrant optimal financial decisions. But the moot question is - are these internal abilities sufficient, or are other pre-requisites also essential for the same? The answer lies in conceptualising the construct of financial capability.

1.1. Financial Capability - Concept

The construct 'capability' has its roots in the works of the Nobel Laureate Amartya Sen, supplemented by Martha Nussbaum and others, popularly known as the "Capability Approach" (CA), accentuating development of individuals' functional capabilities which includes: (a) "human functionings", comprising of 'beings' (what individuals actually turn out to be) and 'doings' (what they actually do to accomplish or achieve); and (b) "opportunities" (capabilities or freedoms made available to them to achieve those 'beings' and 'doings') (2011) [1]. Thus functionings are what an individual makes out of the means at his disposal, whereas capabilities refer to a set of opportunities available/accessible to him to be able to achieve those functionings (2013) [2]. According to Nussbaum (2000) [3] this implies developing 'combined capabilities' (internal and external), i.e. not just innate individual abilities, but also opportunities in the form of conducive political, social and economic environment (policies, laws, regulations, practices), enabling individuals to capitalise on their potential.

In the financial arena people's financial functionings are highly essential for attaining individual economic welfare, necessitating a financial capability approach i.e. developing combined capabilities in the form of enhancing financial literacy coupled with an encouraging economic environment enabling them to act (Sherraden, 2010) [4].

Thus the President's Advisory Council on Financial Literacy (2010) [5] defines financial capability as, "the capacity, based on knowledge, skills and access, to manage financial resources effectively".

The term "to manage financial resources effectively" denotes the need for financial knowledge coupled with financial institutions, products and regulations for consumer welfare. Assuming all these ingredients of financial capability existent in the financial system, does it warrant individual's financial well-being? This is a million dollar question in the context of laws regarding nomination of distinct asset classes in India.

For instance re-considering Capability Approach in the context of a financial system – Financial Capability comprises of - Functionings ('being' and 'doings'). Example of 'being' - an individual is financially literate and therefore 'doings' includes undertaking financial planning. Capabilities imply opportunities/freedoms to realize those functioning's e.g. accessibility to varied financial products and services, enabling them to undertake financial planning for their families, opportunity in the form of Succession Laws, like Nomination or Wills, essential for bequeathing one's assets to one's legal heirs (i.e. being in a position to love and care for one's family - one among the ten fundamental opportunities to be made accessible to its populace by the State) (Nussbaum, 2010) [6].

Undoubtedly the Indian government has enacted Succession Laws and provided Nomination facility for distinct personal assets, like life insurance under Insurance Act, bank deposits under Banking Regulation Act, etc. However does nomination warrant an opportunity to pass on the legacy to the successors after one's demise, in the true sense, especially in the light of distinct interpretations of nomination laws by different courts? The problem is further compounded against the backdrop of **low levels of consumer financial literacy**, warranting instantaneous consideration.

2. Objectives of the Study

With the aid of distinct lawsuits relating to nomination for diverse asset classes, the study aims:

1. To appreciate the legal position of a nominee and realize significance of nomination to respective parties.
2. To comprehend the intricacies in nomination laws, owing to its terminology and distinct interpretations by judiciary and recommend solutions for the same.

2.1. Problem Statement

Paradoxical construal's by different courts relating to legal position of a nominee (trustee or legatee) in relation to different asset classes, has led to perplexities thereby questioning the opportunities/freedoms of consumers in undertaking their functionings, as well as the efficacy of nomination as a tool to bestow legacy on one's legal beneficiaries. This has also reflected on the legislature's role in framing laws where phraseology leaves room for varied interpretations, thereby demanding clarity of the same.

2.2. Scope of the Study

This study will deliberate on the legal position of a nominee under various asset classes with reference to distinct civil court cases in India and also attempt to devise plausible solutions to resolve this issue ('opportunities' essential for effective consumer functionings).

2.3. Research Methodology

An analytical method of research is adopted to understand the interpretations given by different courts on the legal position of a nominee, by considering prime litigations.

3. Meaning of a Nominee

No Act in India; be it The Insurance Act, 1938 or the Banking Regulation Act, 1949 or others have articulated the definition of a nominee.

The term is derived from a Latin word 'nominare', which means "to name" [7]. Other definitions state, "A nominee is a person or entity who is requested or named to act for another, such as an agent or trustee" [8]. "A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others" [9].

One commonality is observed in the definitions given by different dictionaries - "a nominee is the one who is appointed to a job, position, task or function". What is the job/task/function to be undertaken by a nominee and what is his legal status?

4. Legal Position of a Nominee

In the context of succession planning, the legal position of a nominee relating to different assets remains an unsettled issue, considering following court judgements:

4.1. Legal Position of a Nominee under the Insurance Act, 1938

Sec. 39 of the Act provides for nomination. Conflicting verdicts have been expressed by distinct courts relating to legal position of a nominee for life insurance. In case of Ramballav Dhandhanian v. Gangadhar Nathmal³, D. Mohanavelu Mudaliar v. Indian Insurance Insurance and Banking Corporation Ltd.⁴, Sarojini Amma v. Neelakanta Pillai⁵, Life Insurance Corporation of India v. United Bank of India Ltd. and

³ A.I.R. 1956 Cal. 275

⁴ A.I.R. 1957 Mad. 115

⁵ A.I.R. 1961 Ker. 126

Ors.⁶, Raja Ram v. Mata Prasad and Anr.⁷, Malli Dei v. Kanchan Prava Dei⁸ and Lakshmi Amma and Anr. v. Saguna Bhagathi & Ors.⁹, Atmaram Mohanlal Panchal v. Gunavantiben and Ors.¹⁰, it was decided that nominee being a mere trustee of the policy holder cannot claim any succession rights. Conversely in Kesari Devi v. Dharma Devi¹¹, Karuppa Gounder & Ors. v. Palaniammal & Ors.¹², S. Fauza Singh v. Kuldip Singh and Ors.¹³, Uma Sehgal and Anr. v. Dwarka Dass Sehgal and Ors.¹⁴, ruling was given that nominee is a beneficiary.

A milestone judgement was passed by the Supreme court in 1983, in *Sarbati Devi v. Usha Devi*¹⁵ case that nomination does not confer any beneficial rights on the nominee, and therefore not synonymous to a testamentary disposition (Khilnani, 2011)[10], unless a Will or an assignment of the policy has been made by the insured in favour of the nominee, (Dharmasi 2009) [11] and therefore assumes the role of a guardian/trustee (Deore, 2010) [12], whose obligation is to pass on proceeds to successors of the deceased (Mehta, 2014) [13]. Thus Sarbati Devi (supra) declared a nominee as a mere trustee, not a legatee, the main objective of nomination being to avoid legal hassles and economise on the costs and time of beneficiaries of the deceased, by enabling a valid discharge of proceeds to them by the insurance company. While interpreting Sec. 39 of the Act, the court held, "We are of the view that the language of this section is not capable of altering the course of succession under law". Nevertheless this must not be construed as settling the position of a nominee at rest in general, applicable to other assets as well. However as observed in major leading cases as follows relating to nomination of distinct personal assets this historical verdict did set precedence categorising nominee as a mere trustee.

4.2. Legal Position of a Nominee under the Banking Regulation Act, 1949

Sec. 45ZA - Sec. 45ZB were introduced via amendments to the Act in 1985; stating the rights of a single/joint depositor(s) to appoint a nominee to whom in the event of death of depositor(s) money may be returned by the bank, to the exclusion of all other persons, which serves as a non-obstante clause. Interpreting Sec. 45ZA the Allahabad High Court in *Smt. Parvati v. Central Bank Of India & Anr.*¹⁶ directed the bank to return a pre-mature deposit to the nominee on depositor's death (contesting the latter's right to discontinue the deposit while alive). However does a right to collect a deposit before maturity tantamount to giving a beneficiary status to a nominee?

In *Mrs. Leelawati Singh And Anr. v. State And Ors.*¹⁷ the Delhi High Court stood at variance by concluding that the position of a nominee is no more *res integra* due to the verdict given by Supreme Court in *Sarbati Devi* (supra) and in other instances by distinct High Courts and therefore the deceased's customers deposit became a part of his estate distributable among his beneficiaries as per the Hindu Succession Act.

Analogous verdicts were given by Kolkatta High Court in *Arnab Kumar Sarkar v. Smt. Reba Mukherjee And Ors.*¹⁸ and Karnataka High Court in *Smt Lakshmi Priyadarshini v. Smt Kamamma* (2014)¹⁹ stating

⁶ A.I.R. 1970 Cal. 513

⁷ A.I.R. 1972 All. 167

⁸ A.I.R. 1973 Ori. 83

⁹ I.L.R. 1973 Kant. 827

¹⁰ A.I.R. 1977 Guj.134

¹¹ A.I.R. 1962 All. 355

¹² A.I.R. 1963 Mad. 245

¹³ A.I.R. 1978 Del. 276

¹⁴ A.I.R. 1982 Del. 36

¹⁵ A.I.R. 1984 S.C. 346

¹⁶ AIR 1990 All 103

¹⁷ 4 (1998) CLT 165, 75 (1998) DLT 694

¹⁸ AIR 2007 Cal 79, IV (2007) BC 134

¹⁹ <https://indiankanoon.org/doc/73053370/>

that, "nomination for a bank deposit cannot confer the status of testamentary disposition on a nominee but only that of a fiduciary, who cannot impinge on the rights of a successor(s) to obtain a succession certificate, as per Sec. 45ZB of the Act".

4.3. Legal Position of a Nominee under the Co-operative Societies Act

The respective States in India have framed nomination laws for co-operative societies. For instance, the Maharashtra Co-operative Societies Act, 1960 and Sec. 25 of the Maharashtra Co-operative Societies Rules, 1961 govern provisions relating to nomination, which states, "The Society will transfer the deceased's members share to a nominee and in his absence to such other person as may appear to the Committee to be the legal heir/ representative of the deceased member, provided he is duly admitted as a member by the Society".

In *Ramdas Shivram Sattur v. Popatlal Shah and Ors.*²⁰ (2009) it was contended that "Section 30 of the Maharashtra Co-operative Societies Act, 1960 does not provide for a special rule altering the rule of succession laid down under the personal law" i.e. does not supersede succession laws. This verdict was based on an earlier hearing given by the same Court in *Gopal Vishnu Ghatnekar v. Madhukar Vishnu Ghatnekar*²¹ (1982), which laid that "the purpose of nomination is to enable the Society to know with whom to deal and avoid confusion and disputes among interested parties and not to deal with devolution of immovable properties of deceased members", thereby explicating the legal position of a nominee as a collector and not beneficiary.

However a rather contradictory view was taken by the Kolkata High Court in *Abinash Chandra Chakraborty v. The State of West Bengal and Ors.*²² by interpreting Sec. 69 and 70 of the West Bengal Co-operative Societies Act, 1973 to pass on beneficial rights to the nominee by stating that, "any member of the Society may, nominate a person in whose favour the society shall transfer the share and interest of a deceased member in the Society and in whom the title shall vest (confer beneficial rights) thereby excluding all the other concerned, unlike nomination under Sec. 39 of the Insurance Act, 1938, wherein the insurance proceeds do not vest in the nominee".

The second proviso to Sec. 30 of the Maharashtra Co-operative Societies Act, which states, "Provided further that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society", can be interpreted as conferring a beneficiary status on the nominee (Patwardhan, 2011) [14]. However circumspectly studied this provision is only an attempt to bring these individuals at par with a sane or a major person as regards inheritance or nomination rights – an issue of enhancing capabilities, and not of conferring beneficial rights.

The Supreme Court in *Usha Ranjan Bhattacharjee v. Abhinash Chandra Chakraborty and Ors.*²³ (1997) with reference to Chakraborty (supra), stated that Sec. 69 and 70 of the West Bengal Co-operative Societies Act, 1973, does not confer any right on the Co-operative Tribunal to determine title related disputes among parties and the Kolkata High Court's conclusion that a valid nomination bestows title on the nominee is an impugned judgement, open to be decided by an appropriate forum if a challenge is made before it".

However the differing interpretations under the West Bengal Co-operative Societies Act, 1973 and the Maharashtra Co-operative Societies Act, 1960 might be due to different dictions of the Sections pertaining to nomination.

²⁰ <https://indiankanoon.org/doc/1794785/>

²¹ AIR 1982 Bom 482, (1982) 84 BOMLR 41

²² 1 CALLT 423 HC (1991)

²³ T 1997 (10) SC 356, (1997) 10 SCC 344

4.4. Legal Position of a Nominee under the Government Saving Certificates Act, 1959

Sec. 6 of the Act with a non-obstante proviso governs rules relating to nomination for a National Saving Certificate, which considers the position of a nominee as a collector and not a legatee, clarified by the verdict in case of *Shri Vishin N. Khanchandani & Anr v. Vidya Lachmandas Khanchandani & Anr.*²⁴ (2000) by the Supreme Court, in response to the contention put forth by the advocate for the appellants that nomination tantamounts to a testamentary disposition similar to the one's as in case of *Uma Sehgal* (supra), *Fauzia Singh* (supra) and *Kesari Devi* (supra). The apex court stated that Sec. 39 of the Insurance Act does not amount to a third kind of succession, same being the interpretation of Sec. 6 of the Government Saving Certificates Act, 1959, although the language of both Sections varies. Thus payment to the nominee gives a valid discharge to the Post Office, making the nominee a trustee.

4.5. Legal Position of a Nominee under the Employees Provident Fund and Miscellaneous Provisions Act, 1952

Para 61 Chapter VIII of the Employees' Provident Funds Scheme, 1952 requires a member to make a declaration appointing his nominee(s) indicating their respective shares against their name(s). Similarly Sec. 10 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for nomination, wherein sub-section 2 of the section states that, "any amount standing to the credit of the member in the fund at the time of his death and payable to the nominee under the Scheme or the rules of the provident fund, shall vest in the nominee and be free from any debt incurred by the member". The Calcutta High Court while examining these provisions of the Act in *Usha Majumdar v. Smriti Basu*²⁵ (1987) concluded that, "the nominee under the Provident Fund Act has a right to the money (unlike a nominee under the Insurance Act) since the word "vest" appears in Section 10(2) of the Act and states that the amount due on death of the member shall be free from any liability, which implies that it becomes a part of the assets of the nominee.

However a completely opposing stand was taken by the Madhya Pradesh High Court in *Pushpa Wd/O Virendra Kumar Yadav v. Jiya Bai Wd/O Babulal Yadav*²⁶ (1997), similar to the one in *Sarbati Devi* (supra), that nominee being a mere trustee does not have over-riding powers over the legal heirs.

The Madras High Court in *Narammal (Died) And Anr. v. Kanthamani And Ors.*²⁷ (1991), Madhya Pradesh High Court in *Brij Lal Singh v. The Regional Provident Fund*²⁸ (1991) and Delhi High Court in *Smt. Om Wati v. Delhi Transport Corporation, New Delhi*²⁹ concluded that, "the nominee cannot claim absolute title to the amount but gets only a right to receive and distribute the same to the heirs of the deceased, in accordance with the law of succession governing them".

The Bombay High Court in *Mr. Antonio Joao Fernandes v. The Assistant Provident Fund Commissioner & Ors.*³⁰ relying on *Sarbati Devi* (supra) held that "the word "vests" is a word of variable import and does not clothe a nominee with a beneficial title in respect of the provident fund amount lying to the credit of the deceased".

However the Law Commission of India (1990) in its 137th Report upheld the view of the Calcutta High Court owing to the terminology of Sec. 10(2) of the Act and para 2(g) of the Scheme which makes a provision for appointing a family member(s) only as nominee(s). Nevertheless this controversy being interminable till the Supreme Court determines the issue, which again is a protracted process, yet leaving the question unanswered (from past experiences) as to who are the real beneficiaries of

²⁴ <https://indiankanoon.org/doc/1179329/>

²⁵ AIR 1988 Cal 115, (1988) 1 CALLT 35 HC

²⁶ III LLJ 1113 MP, 1998 (2) MPLJ 522

²⁷ (1992) 2 MLJ 539

²⁸ (1995) III LLJ 111 MP

²⁹ 1987 61 CompCas 801 Delhi 1988 I CLR 595

³⁰ 2010 (4) Bom. C.R. 208

“nomination”, the Commission proposed three recommendations: a) Nominee to be given a beneficiary status; or b) a trustee status; or c) the most rational approach (satisfying the demands of social justice) would be to provide an option to the investor of appointing a “beneficiary” or a “collector nominee”.

4.6. Legal Position of a Nominee under the Companies Act, 1956 (New Companies Act, 2013)

Transition to e-trading in the Indian Capital Market necessitated issuing and holding shares in a dematerialised mode, requiring amendments to the Companies Act.

Accordingly Sec. 109A and 109B were introduced by the Companies (Amendment) Act, 1999 providing nomination facility to corporate investors (single/joint), in addition to bye-law 9.11 of the Depositories Act, 1996. Sec. 109A (Sec. 72 of the New Companies Act, 2013) states that every shareholder or debentureholder in a company may nominate any person to whom the securities shall vest in the event of his death. Secondly a non-obstante clause over-riding any other law in force for that time period or any disposition (testamentary or otherwise) was also introduced by virtue of which such a nominee shall become entitled to all the rights of the beneficial owner of corporate securities. Thus in *Harsha Nitin Kokate v. The Saraswat Co-Op. Bank Ltd. & Ors.*³¹ (2010), the Bombay High Court held that the wordings of this section, especially “vest” and “entitled”, confer beneficial title on the nominee, in contrast to Sec. 39 of the Insurance Act or Sec. 30 of the Maharashtra Co-operative Societies Act, whose main intention is to pay proceeds to the nominee without beneficial rights.

4.7. Legal Position of a Nominee under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996

Amendments to the SEBI (Mutual Fund) Regulations, 1996 introduced in 2002 by inserting Regulation 29A(1) and (2) provide a right to unit holders (single/joint), to nominate a person(s) as per the procedure given in fourth schedule, in whom all the rights shall vest in the event of death of the unit holder(s).

What needs to be realized is that these are regulations (i.e. subordinate legislations laid down by SEBI), which cannot overrule provisions of the Act passed by the Parliament and therefore has to acknowledge the plenary legislation and authority. Accordingly nomination cannot confer on the nominee a beneficial right in the units of a mutual fund as per SEBI regulations, but only that of a fiduciary, which has been made clear by a recent verdict of the Bombay High Court in *Jayanand Jayant Salgaonkar vs Jayashree Jayant Salgaonkar And Ors.*³² 2015.

5. Conclusion

5.1. Challenges

Post *Sarbati Devi* (supra) it was assumed that the Supreme Court verdict has ended intricacies relating to nomination. However the apex Court itself did not exclude potential conflict probabilities under other laws of nomination. This calculation turned out to be true as is clear from the aforesaid lawsuits in this study, by resting the arguments on the basis of *res integra*, for instance *Kokate* (supra) case. Further the reversal of the verdict took place in the *Salgaonkar-Ghatalia*³³ case that the verdict in case of *Kokate* (supra) was passed *per incuriam*, thereby retaining the stand given by the historical verdict in *Sarbati Devi* (supra) that nominee is a mere fiduciary and not a legatee. Thus the journey of legal status of a nominee from *Sarbati Devi* (supra) to *Kokate* (supra) to *Salgaonkar-Ghatalia* (supra) is that of a trustee-legatee-trustee. In such a scenario what is the legislature and judiciary expecting from the consumer? To be financially literate or not taking up succession planning or leaving one's beneficiaries to the mercy of the judicature or waiting timelessly for the legislature to make required amendments to the law to overcome such convolutions in the nomination laws?

³¹ A.I.R. 2010 159 Comp Cas 221 (Bom)

³² <https://indiankanoon.org/doc/95245152/>

³³ <https://indiankanoon.org/doc/135886875/>

Thus nomination remains a bone of contention due to its imprecise legal status leaving the investors confused, leading to inordinate delays in claiming and benefitting from the proceeds and increased litigation expenses.

Additionally nominations under subordinate legislations are more prone to be confronted. For instance, in Kokate (supra), the court erroneously considered the regulations as Sections of the Depositories Act, 1996, and concluded that a nominee has an overriding right over the beneficiaries of the deceased (Sundaresan, 2010) [15]. Further nomination for physical shares is regulated by Companies Act to be registered with the company, whereas for dematerialised shares with the Depository Participant under Depositories Act. Secondly the latter Act permits only one nominee per demat account, increasing complexities for an investor wishing to appoint multiple nominees, by having to open multiple demat accounts (Fazelbhoj, 2015) [16].

The problem is further aggravated for a layman (having exposure basically to bank deposits and life insurance) who lives with a notion that a nominee is a legatee for all asset classes.

Thus the Salgaonkar-Ghatalia (supra) judgement can be hailed on the grounds of eradicating controversies regarding nominee's status especially in the context of corporate securities. However whether this verdict can be applied to nomination for other assets is a moot issue, especially considering the language of the respective Statutes. For instance, amendments to Sec. 39 of the Insurance Act, 1938 and enactment of the Insurance Laws (Amendment) Act, 2015, have introduced a concept of beneficiary and collector nominee, whereby former can claim title to proceeds of an insurance policy on death of the policy holder to the exclusion of all other legal heirs. This becomes highly debatable as it contradicts with the succession laws (testamentary or otherwise), further leaving room for diverse interpretations, and shifting onus to other beneficiaries to prove the rightful intention of the policy holder (Agarwal, 2015) [17].

However not only the language of nomination laws under distinct statutes but also those of succession laws need consideration. For instance, Sec. 30 of the Hindu Succession Act, 1925 reads: "Any Hindu may dispose of by **Will or other testamentary disposition** any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925 **or any other law** for the time being in force and applicable to Hindus".

The terms "other testamentary disposition" may be interpreted as a statutory/third mode of succession and "any other law" can be construed as for instance Depositories Act or the like, which happened in case of Kokate (supra) case.

5.2. Recommendations

In the aforementioned scenario spreading consumer awareness of nomination and succession laws and simplifying these to aid clarity towards a common interpretation and avoid contentious legal issues is imperative.

Further the judicature should remember that Parliament exercises a lot of heed while drafting legislations, especially its wordings and thus no term or proviso should be inferred vaguely, but in a particular context. For instance, as was rightly stated in the Kokate (supra) case the aim of nomination is not on vesting but on whether the legislation considers it as a third mode of succession and if so interpreted it will contradict the provisions of the Indian Succession Act, 1925. Secondly reference can be made to Article 14 of the Indian Constitution which advocates the concept of 'reasonable classification'. On these lines interpreting Sec. 109A as in Kokate (supra) case will inflict injustice on the legatees by classifying nominees as beneficiaries and giving them succession rights (Ghuriani, 2015) [18]. Further as recommended by the 137th Report of Law Commission of India (1990) of making beneficiary nomination a third/statutory mode of succession over-riding other kinds of succession, on the lines of countries like Malaysia [19], Singapore [20], Canada [21], Bangladesh (Mian et al, 2013) [22] may be considered. However these changes have to be effected by the legislature by considering provisions of

the Indian Succession Act, 1925, Hindu Succession Act, 1956, the Mohammedan Law of Inheritance, to avoid unnecessary lawsuits, (Manekar, 2010) [23] as well as educating investors to change nominations simultaneously while effecting changes in their Will, (Sundaresan, 2010) [24] preferably appointing one's legal heirs or beneficiary in the Will as nominee (Sunita et al, 2014) [25] and passing nomination through the same rigour of complying with testamentary succession like getting it registered, requiring witnesses' signatures, and the like.

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