Lords used in case like *Bonsor v. Musicians' Union or Rookes v. Barnard.* In the end the law was changed by legislative reform. Such questions as the joint liability of tortfeasors, the immunity of public authorities (in the United States) from liability for negligence, or the rights of a married woman to occupancy of a matrimonial home could be and have been the subject of judicial as well as legislative reforms[34].

It is time the State moves in a positive direction and bring about a legislation for assigning land for the purpose of agriculture and for residence (House sites) conferring rights of full ownership.

PORTRAYAL OF INSURANCE POLICY AS PROPERTY

By

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Property is anything that can be owned. It is divided into reality and personality or chattels. Reality consists of all free hold interest in land. Personality is sub-divided into a) Chattels real, *i.e.*, Leasehold interest in land and b) Chattels Personal. These are further sub-divided between (i) Chooses in possession *i.e.*, tangible, movable objects such as a car, Wrist Watch or the family pet. It is possible to enjoy a right over such objects by physical possession (ii) Chooses in action, *i.e.*, rights such as debts, patents and copyrights which may only be enforced or protected by bringing legal action. The holder of a life policy can deal with it like any other property by way of sale, mortgage or create trust out of it or bequeath it. In *Grigsby v. Russel,* 223 U.S. 149 (1911) Justice *Holmes* observed that "life insurance has become in our day one of the best recognized forms of investment and so far as reasonable safety permits it is desirable to obtain for life policies, the ordinary characteristic of property and to deny the right to sell is to diminish the value of the contract in the owners hands".

Assignment of Life Policies :—An assignment is nothing but the legal transfer of one person's interest in an insurance policy to another person. Indian Law as to assignment of the life policies prior to the Insurance Act, 1938, was typified in Sections 130 to 135 of the Transfer of Property Act. The transfer of an actionable claim could be affected only by an instrument in writing signed by the assignor or by his duly authorized agent and ergo all rights and remedies of the assignor vests in the assignee. The Insurance Act 1938 which came into force on 1st July, 1939 by Section 38 laid down an exclusive method of effecting assignment of life policies. The assignment of life policies is now governed by Section 38 of the Insurance Act and not by the Transfer of Property Act which was amended to that effect in 1938. Section 38(1) of the Insurance Act dogmatizes that any kind of transfer or assignment of a life policy by mere delivery of possession as imparted in the English policies of Insurance Act 1867. A life policy can be transferred to anyone who is not a person legally precluded to be a transferee. It is therefore inapt that the assignee has no insurable interest in the life assured or privity of contract as held in *M. Farlane v. Royal London Friendly Society,* (1986) 2 TIR 755. Section 2(2) of the Insurance Act as amended by the Act 6 of 1946, defines a

34. *W. Friedman* "Legal Theory" Page 501

policy holder as including a person to whom the whole of the interest in the policy is assigned, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition. Thus where as policy holder assigns his policy to another liegeman to the condition that it will revert to the assignor on the assignee predeceasing him, the assignee is not a policy holder and hence are not entitled to the rights of a policy holder. An assignee of a life policy could not sue in his own name if the assignor died, the later's personal representative would be a necessary party to a suit by the assignee as held in *Dawood v. Mohammad Begum*, AIR 1985 AP 321.

Life Policy as a Trust Property :— Section 6 of the Married Women's Property Act, 1874 declares that a policy taken by a married man on his life for the benefit of his wife or children shall apropose to be a trust. The policy as trust property is governed by the provisions of the Indian Trusts Act of 1882. The policy shall not be subject to the control of the husband or of his estate. A person who hankered after to create a trust out of his policy for the benefit of his wife or children has to comply with the procedure laid down by the Indian Trusts Act as held in *Shanti Devi v. Ram Lal*, AIR 1958 All. 569. Only a married man can take a policy under the Act where as any man or any woman may take such a policy under the English Act of 1882. Thus a widower may take a policy but not a bachelor. Only the wife and children of the insured may be appointed beneficiaries under the policy. If any other relative's name is shown as beneficiary the policy will not come under the purview of the Married Women's Property Act and hence will not be deemed a trust for their benefit as held in *Re Oakes,* (1950) 2 ALL. ER 851. Section 11 of the Trusts Act 1882 laid down that a trustee is bound to fulfil the purpose of the Trust. But the object can be modified by the consent of all the beneficiaries if they are not competent with the permission of concerned Court. By Section 77 a trust is stifled when its purpose is completely fulfilled or when being revocable it is expressly revoked.

Title to Life Policy :—Life Insurance Policy is also a property which a member of a joint Hindu family may acquire a) as his separate property in which the other coparceners have no interest or (b) as joint family property for the benefit of the joint family. Anything obtained with the succor of joint family funds would belong to the joint family. Where the policy on the life of the insured belonged to the joint Hindu family of which he was a member and the policy is assigned or nominated, the surviving coparceners succeed to it by Survivorship and hence no Succession Certificate is DE RIGUER to recover the amount as held in *Sital Prasad v. Kaiful,* AIR 1922 Cal. 149.

A person is deemed to die intestate in respect of all his property of which he has not made a testamentary disposition, succession to movable property of a person deceased is regulated by the Indian Succession Act, 1925. Insurance Policy and proceeds of the policy are movable properties. There is no distinction in the policy in the order or manner of succession to the property of a male or a female. Male and female relatives of equal degree take equally. There is no distinction between those related (a) through the father or mother or (b) by full blood or half blood or (c) between those who are born when the inheritance opens and those who are only conceived in the womb but who have been subsequently born alive as provided under Section 27 of the Act 38 of 1925. The provisions of Part VI of the Indian Succession Act, 1925, comprising Sections 57 to 191 constitute the law of India pertinent to all cases of testamentary succession except as provided in Section 58(1) and any other law in force. Section 58(1)

articulates that the provisions of Part VI shall not apply to the property of any Mohammedan and to any property of Hindu, Buddhist, Sikh or Jain except as provided by Section 57. That apart Section 30 of the Hindu Succession Act, 1956 enables a Hindu to make a testamentary disposition of his undivided share also in the family property. Thus if a policy of a life insurance is held as a Hindu Joint family asset, each coparcener can dispose of his share in it by testamentary disposition. When a deceased policy holder made an assignment of policy to the Life Insurance Corporation against is loan before death, his heirs could not claim the outlay of amount under the policy without production of a Succession Certificate as held in *Madhu Gar v. LIC of India*, (1999) Company Cases 939 (Delhi).

CHILD LABOUR - AN INSIGHT

By

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Childhood is a period of wonder and an era of true freedom. But in India this is not true for nearly 13.5 million children between the age group of 5 to 14 years, receive very unusual and alarmingly strange introduction to their lives. They lack basic amenities and are forced to labour at a very young age and spend major part of the day sweating most of the time under a crooked master for a meager pittance. This child labour still vastly persists though Constitutionally, ethically, and legally undesirable. Children in most cases are scapegoats of poverty. They bring income though small would supplement their parents income. According to me the menace of child labour is prevalent in two forms.

a. Exploitative child labour,

b. Hazardous child labour

There are many family enterprises which are non-exploitative but hazardous. On the other hand there is child labour prevalent everywhere which is non-hazardous but exploitative. Once the above types of child labour is eliminated, almost ninety per cent of the childhood trauma is removed from the society. Then the only one kind of child labour remains that is non-exploitative and non-hazardous. This one is erased gradually as the society is enlightened.

According to 43rd National Sample Survey (1987) report the estimated number of child labour is 17 million which is gone up to 20 millions at present.

Constitution and Child Labour :

Indian Constitution is one of the few and one of the foremost Constitutions to specifically refer and respect rights of children. The Constitution provides for the prohibition of the employment of children in any form. The Constitution contains provisions in respect of children under Part III that is under the very Fundamental Rights and Part IV as well, that is Directive Principles of State Policy.

Abolition of child labour has been held to the obligation of the State and the practice of the same has been held to be a violation of basic human rights.