

Summary of Spotlight

This set of spotlight papers focuses on following:

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Different laws, different timing and periods of enactment, schemes framed under such laws, as well as clarifications or case laws have resulted in variance and inconsistent treatment of nominations across these sets of financial assets that are similar in intent and purpose to a large extent. It should be mentioned that certain variations are quite progressive, and certain provisions downright discriminatory.

This class of financial asset requires review and reconciliation of the inconsistencies, and upgrading to incorporate the recommendations made in the ARIA White Paper on **Reimagining Nominations: Making Succession Smoother and Simpler**.

Foreword

Mr. K V Kamath

Former-President
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The Covid-19 pandemic has brought us face to face with mortality. Many of us have suffered the loss of loved ones which is truly saddening and stressful for spouses and families. At such times, engaging with and completing the formalities for transmission of assets to the rightful heirs translates into an unbearable experience.

The transmission process is neither centralised nor uniform, nor does it have defined turnaround times. As a result, the bereaved family has to deal separately with individual institutions, each with their own set of forms, processes and procedures. If nominations have been made by the deceased person, then the nominees can get control of the assets in a reasonable time frame. But in all cases such transmission needs to be validated through an overburdened court or legal process.

Some of the constraints and authentication requirements laid down in the nominations process may indeed have been required at a time when technology was not developed and KYC and other processes were not present. But today, India is at the leading edge of technology with the India Stack allowing everyone from governments to commercial enterprises to seamlessly provide benefits and services to the billion plus Indian population. The recent launch of the account aggregator framework also signals that a new era of interconnectedness and interoperability among financial institutions is here.

There is no reason why the same technology stack and these emerging platforms cannot be used to reduce the friction points and streamline nominations and transmission of assets on the death of a person.



All that this needs is a short and coordinated effort of say six months, from all the parties involved, and if required, facilitated by the Regulators who could consider modifying the regulations to enable the institutions to use these new approaches. Where necessary, in just a few areas, the government might need to modify the governing law to give primacy to the wishes of the deceased as expressed in her nominations.

Pramod¹ had written a brilliant paper analysing nominations and joint ownership of financial assets and spelt out the need to make the whole succession process smoother and simpler. When Harsh² approached me for support for the #ARIATrulycares initiative, I requested him to work with Pramod to collaborate in this effort. Pramod has since written the white paper with inputs from ARIA and has also helped draw up spotlight papers on bank accounts, safe deposit lockers, dematerialised securities and mutual fund units. Specific recommendations on other assets such as NPS, provident funds, small saving schemes and immovable property are likely to be added soon.

A smoother and simpler succession process will provide quick transmission of assets. It will also relieve the courts of the unnecessary burden of uncontested and undisputed succession matters. Financial institutions will also get discharge from their liability and this will go a long way in mitigating the pain and sorrow of the family and heirs.

I hope and trust that financial institutions and supervisory bodies would consider the suggestions outlined in the White Paper on the nomination facilities and do a quick reset of the process.

¹ Pramod Rao is the Group General Counsel of ICICI Bank and a leading thinker on legal and governance matters

² Harsh Roongta runs an investment advisory firm and is the Vice chair of Association of Registered Investment Advisers (ARIA) – a section 8 not for profit company

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Executive Summary of the White Paper

Reimagining Nominations: Making Succession Smoother and Simpler

For multiple reasons as outlined in the paper, the process of claims by successors of deceased financial consumers remains difficult to navigate, especially at a time when the family and those surviving the individual are coping with the loss of a loved one and still grieving.

Nomination facilities have provided a level of succour to the successors. However, these reflect an outdated point-of-view that was more relevant when the facilities were instituted and require a fresh review and update as per the needs of the financial consumers and citizenry. Both the level of unclaimed funds or the tedious and time-consuming legal process and the current situation brought on by Covid-19 signal that a deeper review and recast is all too necessary.

The white paper proposes the expectations for updated, revised and revamped nomination facilities in terms of three policy objectives:

- Convenience to financial consumers and to their successors
- Due discharge for financial services providers upon providing access to and an ability to transact in the financial assets or transmission of the financial assets to the successors
- Eliminating or reducing references to an overburdened judiciary, where litigants face considerable costs and delays

The white paper reimagines the nomination facilities keeping the three policy objectives paramount and also uses the lens of providing ease and convenience harnessing the technological advancements and frameworks which are available today.

The paper outlines 15 measures for financial services providers, financial sector regulators and lawmakers to consider in respect of nomination facilities, more succinctly captured in the Annexure.

Spotlight Papers in Volume 1 Version 1:

1. Current Accounts, Savings Accounts and Fixed Deposits with Banks and Safe Deposit Lockers	
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SPOTLIGHT¹ ON:

Employees' provident fund, Employees' Deposit Linked Insurance and Employees' Pension Scheme

The aggregate of balances held by the Employees' Provident Fund Organization (EPFO) stands at Rs 15 trillion as of March 31, 2021, representing a pooled retirement savings mechanism created through a contributory provident fund. It is available for an organized workforce across 187 classes of establishments with over 0.68 million contributing establishments in the last financial year². Do bear in mind there are also a select set of exempted establishments that operate private provident fund trusts for their employees³.

The Employee Provident Funds and Miscellaneous Provisions Act, 1952 (Act)⁴ requires the Central Government to frame the Employees' Provident Fund Scheme (EPF Scheme) and establish the Fund to be operated in accordance with the Act and the Scheme. Schedule 2 contains the elements to be specified in the scheme, which includes the nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination. By and large, the approach adopted on nominations (or on lack of nominations) in the EPF Scheme extends to the Employees' Deposit Linked Insurance Scheme⁵ (EDLI) also framed under the Act and with elements drawn from Schedule 4 of the Act. The Employee Pension Scheme (EPS), also created under the Act, has a different approach and is called out in the relevant portion of this spotlight.

Nominations

Paragraph 61 of the EPF Scheme specifies that every contributor (member) must make a declaration specifying the nominees to whom the monies standing to the credit of the member in the Fund would be paid in event of the death of member. Family plays an important role in nominations and is dealt with in a separate subsection of this spotlight.

There is no limit as to the number of nominees. There is also complete discretion in specifying the allocation of the monies among the nominees. Hence percentage allocation among multiple nominees is completely feasible.

EPFO has also facilitated e-nominations⁶. Making, changing or updating nominees is available electronically.

If the nominee is a minor, the member can choose while making the nomination to appoint another individual (who is a major and requires being a member of the family⁷), to receive the amounts on behalf of the nominee (during the minority of the nominee) in the event of the death of the member.

Every contributor (member) must make a declaration specifying the nominees to whom the monies standing to the credit of the member in the Fund would be paid in event of the death of member

- 1 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA
- 2 See EPFO dashboard for statistics around establishments, members etc here: <https://mis.epfindia.gov.in/ChartDashboard/>
- 3 For the curious, here's the link to list of exempt establishments: https://www.epfindia.gov.in/site_docs/exmpted_est/exempted_est_list.pdf?id=sm1_index. An individual who is part of an exempted establishment, should review the EPF scheme terms of such employer w.r.t nomination and succession
- 4 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf
- 5 See para 23 of EDLI, 1976, accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EDLI_1976.pdf
- 6 See here for process flow: https://www.epfindia.gov.in/site_docs/PDFs/UAN_PDFs/UAN_ForMembers/ProcessFlow_FilingOnlineNominationForm.pdf; or this YouTube video: <https://t.co/91gAey9WZ0?amp=1>
- 7 Proviso to para 61(4A) does specify that "...where there is no major person in the family, the member may, at his discretion, appoint any other person to be a guardian of the minor nominee". Definition of family is examined subsequently

Consequences of no nominations

Typically for financial assets without nominations, the law of inheritance applies⁸. However, in the case of the EPF Scheme, EDLI and EPS, there are separate designs for the release of funds.

So, in the case of EPF Scheme and EDLI, when no nomination subsists, or nomination is only for a part of the money (for eg., if the member said 50% to mother, and failed to specify anyone else for the balance), then the money standing to the credit of the member when no nomination subsists or the part on which no nomination subsists, is payable to the members of the family⁹ in equal shares.

However, when there are other family members, the following individuals are not entitled to a share:

- sons who have attained maturity
- sons of a deceased son who have attained maturity
- married daughters whose husbands are alive,
- married daughters of a deceased son whose husbands are alive
- A person convicted of murder or abetting the murder of the member (- during the trial/proceedings, right to receive stands suspended)¹⁰

Even the widow(s) and children of a deceased son can receive between them in equal parts only the share which that son would have received **if** he had survived the member **and** had not attained the age of majority at the time of the member's death.

A further scenario is also contemplated in the EPF Scheme: situations when the above doesn't apply, then the person legally entitled to such money, shall receive the money.

For EPS, do see the [Annexure](#), with the last two bullet points dealing with situations of no family.

Table 1: **Employees' Provident Fund and EDLI**

In the event of:	Transmission in favour of:	
	Nomination provided	Nomination not provided
Death of member	Nominees, per the allocation, specified	<p>Equal share to family members¹¹, and when there are other family members, the following individuals are not entitled to a share:</p> <ul style="list-style-type: none"> • sons who have attained maturity • sons of a deceased son who have attained maturity • married daughters whose husbands are alive, or • married daughters of a deceased son whose husbands are alive • A person convicted of murder or abetting the murder of the member <p>If the above doesn't apply: the person legally entitled receives the money</p>

Incapacity

While the EPF Scheme contemplates the release of sums of money when the member is fully or totally incapacitated¹² guidance could be provided to nominees or family members on how to do so smoothly and simply.

Family centrality & circumstances for invalidation

A unique aspect of nominations under the EPF Scheme is the importance it places on 'family, which is a defined term in the EPF Scheme.

⁸ For a brief recap, of the two situations (with will or intestate), see the relevant portion of the ARIA White Paper: https://aria.org.in/wp-content/uploads/2021/09/ARIA_White-Paper_Spotlight_Combined_V2.pdf

⁹ An explanation adds that a member's posthumous child, if born alive, shall be treated in the same way as a surviving child born before the member's death.

¹⁰ Para 70A of the EPF Scheme

¹¹ Defined term - see below section

¹² Para 69 of the EPF Scheme

Take a few specifications:

- If a member has a family at the time of making a nomination, the nomination is required to be **only** in favour of one or more persons belonging to her family. Any nomination made by such a member in favour of a person not belonging to her family is invalid.
- If at the time of making a nomination the member has no family, the nomination may be in favour of **any** person or persons. If the member subsequently acquires a family, the earlier nomination becomes invalid. The member then has to make a fresh nomination in favour of one or more persons belonging to her family.
- Similarly, a fresh nomination is required to be made by the member on her marriage. Nomination made before such marriage becomes invalid.

≡ Legally recognized adoption by another person of a child of a member (or child of a deceased son of the member) results in such a child being excluded from the family of the member for purposes of the EPF Scheme

Invalidity impacts the persons previously nominated adversely as also the family members when no fresh nominations have been made by a member.

Who, then, comprises 'Family'?

In terms of para 2(g) of the EPF Scheme, "family" means:

- In the case of a male member,
 - his wife¹³,
 - his children, whether married or unmarried,
 - his dependant parents and
 - his deceased son's widow and children:
- in the case of a female member,
 - her husband¹⁴,
 - her children, whether married or unmarried,
 - her dependant parents,
 - her husband's dependant parents¹⁵ and
 - her deceased son's widow and children.

Legally recognized adoption by another person of a child of a member (or child of a deceased son of the member) results in such a child being excluded from the family of the member for purposes of the EPF Scheme.

In the case of EPS, 'family' has a different definition¹⁶. An outline of what type of pension is paid to whom in terms of the EPS is outlined in the [Annexure](#).

It's complicated

For a large set of the workforce governed by the EPF Scheme, perhaps the limitations placed on nominees having to be family members or of invalidation in certain circumstances probably do work or have no visible impact.

It may, however, not be so for everyone.

Take the most commonplace situation: An individual at the start of her career would make the EPF nominations at the time of joining the establishment. If she's unmarried, more often than not, the nominees would be her parents. Upon marriage, such nomination is rendered invalid. If she fails to update the nominations, her legal heirs would be hamstrung in receiving the monies without judicial process.

¹³ A member can exclude his wife, if he **proves** that she's ceased being entitled to maintenance under the personal law or community customary law which governs the couple. Then she stops being recognized as a member of the family for the purposes of the EPF Scheme; the member can subsequently reinstate her recognition as a family member by notifying EPF Commissioner

¹⁴ A member can exclude her husband (and consequently his dependent parents) by giving a notice to such effect to the EPF Commissioner; she can also cancel such exclusion subsequently by giving notice to the EPF Commissioner

¹⁵ If the member has excluded her husband, then husband's dependent parents also stand excluded; see footnote above. Presumably, canceling the exclusion of the husband also will result in re-inclusion of his dependent parents

¹⁶ In terms of para 2(vii) of the EPS, 'family' means: wife in the case of male member; husband in the case of a female member; and sons and daughters of a member and include children legally adopted by the member

Situations of separation (as a prelude to divorce) that may cause an individual to reconsider nominations could be curtailed due to the requirements of the EPF Scheme. Perhaps the exclusion of spouses, as contemplated in the EPF Scheme may assist. But again, think of how many individuals consider nominations or their validity/invalidity when passing through such situations.

Morbidity in the current circumstances of Covid-19 can also play spoilsport.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family.

Consider also the situations of domestic relationships or live-in relationships¹⁷ (termed as common law partners in certain jurisdictions), when couples choose to cohabit or stay together: if either or both of them want to specify the other as a nominee, they would be stymied due to lack of fulfilling the definition of 'family'.

Finally: unlike any other financial asset, and due to lack of fulfilling the definition of 'family', individuals belonging to the LGBTQ+ community who incidentally no longer face criminality in India, and have gained a wider acceptance in the society, the requirements of the EPF Scheme still prevent their partner from being a nominee or from being considered family. Members of this community would require either the ability to marry to be recognized in the law (which will also require a recast of the definition of 'family' in the EPF Scheme) or the requirements of a nominee having to be a member of the 'family' being reconsidered.

Concluding remarks

Hence, while in many aspects EPF (and EDLI) are progressive (*no limit as to several nominees, or percentage allocation being permissible, or e-nominations facility*), the limitation posed due to the requirement of nominees having to be family members, requires to revisit. For EPS, the design of the scheme reckons only a family comprising spouse and children, and merits an evaluation of whether it fulfills the underlying objectives. The overall scheme or approach, if also embeds or encourages nomination as the fulcrum, then those that the member considers appropriate would be the beneficiaries rather than a pre-set flow among persons specified by the scheme.

At a broader level, for all three - EPF, EDLI and EPS, need for review and reforms is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory.

At a broader level, for all three - EPF, EDLI and EPS, need for review and reforms is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or dispensing with linkage to 'family' altogether when making nominations

The invalidity of nominations that occurs on the happening of life events also could be recast: perhaps, the approach could be to treat the nominees prior to the life event as trustees or custodians, and hence who can receive the money in trust or custody for the legal heirs.

All in all, if references to the judiciary can be avoided or reduced, and the provisions updated to reflect the societal changes and progressive approach, to enable the rightful individuals as per the member's desire to receive the money, the broader objectives will be achieved.

¹⁷ Recognised by the Supreme Court in *Kushboo v Kanniammal* <https://indiankanoon.org/doc/1327342/>, also see *Indra Sarma v VKV Sarma* <https://indiankanoon.org/doc/192421140/> for a further analysis of live-in relationships

Assessment of measures recommended for Employees' Provident Fund, EDLI and EPS

	Who can implement the recommended measures	
	Central Government/EPF Organisation	Parliament
<i>Easy, uniform and simple process to check status of nominations and to make or change nominees</i>	Available - however nominees are limited to 'family' members as defined, which requires revisit	
Simple, common nomination form/e-form across EPF, EDLI & EPS	✓	
Ability to specify any number of nominees	Available	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	✓	
Ability to make single scrip/folio/security level nominations	N.A.	
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such providers that facilitate financial transactions Option for completing or updating KYC of nominees at any time	Available Available	
Extending nomination facilities for addressing situations of incapacitated financial consumer	✓ exists partially - to be simplified	
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) Ability to defer the age of vesting (as regards minor nominees)	✓ ✓	
Making nominations mandatory for all EPF/EDLI/EPS (including with respect of legacy accounts in a time bound manner)	✓	
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees	✓	
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on the advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	✓	
Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with the concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	✓	

Annexure on EPS:

Employees' Pension Scheme¹⁸

In the event of death of the member, who opted for deferring the age of drawing pension under this sub-paragraph, after attaining the age of fifty-eight years and before the commencement of the pension so deferred: the family of the member will be entitled to a pension under EPS from the date following the date of death as if the member monthly pension had commenced on the date of death.

Subject to certain conditions applicable to the member, pension to the family is payable from the date following the date of death of the member. EPS outlines the payments as follows:

- Monthly widow/widower pension
 - payable upto the date of death of the widow/widower or remarriage, whichever is earlier
 - If there are 2 or more widows, pension shall be payable to the eldest surviving widow. On her death, it shall be payable to the next surviving widow, if any. "Eldest" means seniority with reference to the date of marriage
- Monthly children pension
 - Any surviving children, within the definition of family, shall be entitled to a monthly children pension (in addition to the monthly widow/widower pension)
 - Such pension for each child is equal to 25% of the amount payable to the widow
 - Such pension is payable until the child attains the age of 25 years
 - Such a pension is payable to a maximum of two children at a time and runs from the oldest to the youngest child in that order
 - If the son or daughter of the deceased member is permanently and totally disabled, such son or daughter shall be entitled to payment of monthly children pension or orphan pension, as the case may be, irrespective of age & of number of children in the family
- Monthly orphan pension
 - If the member is not survived by any widow and is survived by children within the definition of family, or if the widow pension is not payable, the children shall be entitled to a monthly orphan pension equal to 75% of the amount of the monthly widow pension
 - Such pension is payable to each orphan till such orphan attains the age of 25 years
 - Such pension shall be payable to an orphan beyond the age of 25 years, if such orphan is suffering from a disorder or disability of mind or who is physically crippled or disabled.
 - In the event of death or remarriage of the widow/widower after sanctioning of widow/widower pension, the children shall be entitled in lieu of the monthly children pension, to a monthly orphan pension from the date following the date of death/remarriage of the widow/widower
- A member who is not married or who does not have any living spouse and/or an eligible child, may nominate a person to receive benefits as laid down hereinafter provided that in the event of his/her acquiring a family subsequently, the nomination so made shall become void. Such a nominee is entitled to the monthly widows pension in accordance with EPS terms.
- If a member dies leaving behind no spouse and/or an eligible child falling within the definition of family, and no nomination exists, the widow pension shall be paid either to the dependent father or dependent mother as the case may be. On grant of pension to such a dependent father, in the event of death of the father, the pension shall be extended to the surviving mother for her lifetime¹⁹.

¹⁸ See https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPS95_update102008.pdf

¹⁹ If the deceased member had not rendered pensionable service on the date of exit from the employment which would have made him entitled to a monthly members pension, but had opted to retain the membership of EPS, the nominee or the dependant father or the dependant mother, as the case may be, shall be entitled to a withdrawal benefit as provided in the EPS terms

SPOTLIGHT²⁰ ON:

Provident funds governed by Employee Provident Funds Act, 1925

The Employee Provident Fund Act, 1925²¹ governs provident funds for those in the government sector, including the government provident fund, the railway provident fund as well as provident funds of notified government institutions and of local authorities.

It contemplates nomination in a manner that merits a special callout.

Rights of nominees

A key right that is conferred on the nominees is that the nominees are entitled to the sums held in the EPF to the exclusion of all other persons, and notwithstanding anything specified in any law, or in any disposition, testamentary or otherwise²². Hence in respect of the sums released from the EPF, the nominees become legal and beneficial owners of the sums, and are not subject to the concept of regarding nominees as trustees or custodians for legal heirs in respect of such sums.

The above right is subject to the nomination being validly made, not being varied or canceled, or becoming invalid due to a specified contingency. Further, if the nominee predeceases the subscriber or depositor, then the nomination becomes void and is of no effect.

This makes EPF (of the category specified) a financial asset that devolves without reference to a will or the personal laws of the deceased, sidesteps the need for judicial reference, and simplifies the entire inheritance process. It may be mentioned that it is not entirely free from doubt on whether the judiciary gives the effect as contemplated in the statute in this respect.

A key right that is conferred on the nominees is that the nominees are entitled to the sums held in the EPF to the exclusion of all other persons, and notwithstanding anything specified in any law, or in any disposition, testamentary or otherwise

Successive nominees

The EPF Act also recognizes the concept of successive nominees²³. It states that when provision has been made in the nomination, in accordance with the rules of the fund, conferring upon some other person such right in the stead of the person deceased, such right shall, upon the death as aforesaid of the said person, pass to such other person.

Such a concept of successive nomination enables individuals to plan for contingencies, and smoothes the process considerably. It extends the benefit of devolution or disposition to a second set of nominee/s without reference to a will or the personal laws of the deceased, sidesteps the need for judicial reference, and simplifies the entire inheritance process even for the contingency.

Consequence of no nomination

Briefly, the statute outlines the approach to release of sums standing to the credit of a subscriber or depositor in any fund, subject to the rules of the fund, as follows, in sequential order:

- the sums shall be payable to a dependent²⁴ or such person authorized under law to receive the sums

20 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA

21 Accessible here: <https://legislative.gov.in/sites/default/files/A1925-19.pdf>

22 Section 5(1) of the EPF Act, 1925

23 See proviso to section 5(1) of the EPF Act, 1925

24 See section 2(c) of the EPF Act, 1925: "...means the following relatives of a deceased subscriber or depositor...namely: a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child, and, where no parent of the subscriber or depositor is alive, a paternal grand-parent"

- subject to a cap of Rs 5000/-, and when sums not payable to dependent or person authorized under law, then:
 - any person nominated to receive the sums under the rules of the fund,
 - If no person is nominated, then any person appearing to be entitled to the sums
- When the above two scenarios are not applicable, then the sums shall be payable to:
 - any person nominated to receive the sums under the rules of the fund, subject to furnishing the probate or letters of administration (granting administration of the estate of the deceased) or succession certificate entitling the holder to receive the sums
 - where no person nominated, to any person who produces probate, letters of administration or succession

It will be noted that the above also describes or refers to nominees and hence could be confusing on the status of nominees and their entitlement. Such a reference or the amounts specified in the provision is part of the statute since 1925. Given that the separate provision on 'rights of nominees' (as outlined earlier) has a non-obstante clause - which means it has an overriding effect - and was added/substituted in 1946 (hence is a later addition to the 1925 statute), would mean that a valid nomination will prevail over the above described sequence. In the absence of a nomination, or an invalid nomination or if the nomination becomes void, then the above sequence has relevance.

The rules of the provident fund governed by the EPF Act, 1925 and case law require a closer look and a deeper review on whether they reflect the above, or continue to specify the sequence described and utilize the enabling framework that the EPF Act, 1925 specifies.

Concluding remarks

The subscribers or depositors (or members) of the Government provident fund, railway provident fund and provident funds of other notified institutions and of local bodies can specify nominees who would receive the sums accumulated and saved upon death of the subscriber or depositor.

In terms of the statute atleast, such nominees receive the sum overriding testamentary disposition or personal laws of succession when a person dies intestate. This is a laudatory measure as it doesn't put the nominees through the rigors of seeking recourse to the judiciary for probate or letters of administration or succession certificate, and completes the inheritance process right away.

The law governing such provident funds is also progressive in terms of recognizing the concept of successive nominees, and addresses the unfortunate circumstances of demise of both the subscriber/depositor/member and of the first set of nominee/s. These measures should be reflected in the rules of the provident fund, as the statute enables the same. Such rules should be reviewed and if required revised to take full benefit of the enabling provisions.

The subscribers or depositors (or members) of the Government provident fund, railway provident fund and provident funds of other notified institutions and of local bodies can specify nominees who would receive the sums accumulated and saved upon death of the subscriber or depositor

The enabling provisions in the EPF Act 1925 - of conferring legal and beneficial ownership on nominees, and recognition of successive nominations - are a part of the 15 recommendations made in the *ARIA White Paper on Reimagining Nominations: Making Succession Smoother and Simpler* as measures that should extend to all financial assets. For the regulators and policymakers, the EPF Act provides strong legislative precedent and as something available for employees of various governments, railways and various governmental authorities, boards and institutions, and which can also become available to and extend to financial consumers in respect of all financial assets.



Assessment of measures recommended for Employees' Provident Fund (under EPF Act, 1925)

	Who can implement the recommended measures	
	Central Government	Parliament
Easy, uniform and simple process to check status of nominations and to make or change nominees	✓	
Simple, common nomination form/e-form across financial assets	✓	
Ability to specify any number of nominees	Available	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	Available	
Ability to make single scrip/folio/security level nominations	N.A.	
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions <ul style="list-style-type: none"> Option for completing or updating KYC of nominees at any time 	✓ ✓	
Extending nomination facilities for addressing situations of incapacitated financial consumer	✓	
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) <ul style="list-style-type: none"> Ability to defer the age of vesting (as regards minor nominees) 	✓ ✓	
Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)	✓	
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees	✓	
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	✓	
Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	Available	

*nominees limited to 'family' members as defined, which requires revisit

SPOTLIGHT²⁵ ON:

Public Provident Funds

Unlike Employee Provident Fund Act, 1925 or Employee Provident Funds and Miscellaneous Provisions Act, 1952 which provide for a mandatory provident fund for government employees and corporate employees respectively, Public Provident Fund is a voluntary contribution provident fund system.

The Public Provident Funds Act, 1968 (PPF Act)²⁶ required the Central Government to frame the Public Provident Fund Scheme (PPF Scheme) and establish the Fund to be operated in accordance with the Act and the PPF Scheme.

In 2018, the PPF Act was repealed and the PPF Scheme was brought under the purview of the Government Savings Promotion Act, 1873 (the GSP Act)²⁷.

Having regard to the savings clause of the GSP Act when repealing the PPF Act, both sets of provisions and PPF schemes established and operative under the PPF Act and GSP Act are referenced and specified in this spotlight. Under the GSP Act, there are also GSP General Rules, 2018: Given the specification of nominations, consequences of no nominations, etc in the GSP Act, reflected in the PPF Scheme and its Form 1, and having regard to the following para 16, the General Rules may not be applicable: *Provisions of the General Rules shall, so far as may be, apply in relation to the matters for which no provisions have been made in this Scheme.* Do see [Annexure](#) for a short synopsis of General Rules re nominations and related provisions.

Specification in the PPF Scheme (& clarifications thereto!)²⁸

A subscriber may specify one or more nominees. When there are more than one nominee, the subscriber can mention the percentage allocation to each nominee. If this is not mentioned, the amounts will be payable in equal shares to all the nominees after the death of the subscriber. It is noteworthy, that when there is more than one nominee, and either or any of them is dead, the amounts are payable to the surviving nominee/s.²⁹

Nominations can be cancelled or varied. In the case of a single nominee predeceasing the subscriber, or where there are two or more nominees, and all of them predecease the subscriber, the nomination becomes void.

If any nominee is a minor, the subscriber may appoint any person to receive the amount due under the account in the event of the death of the subscriber during the minority of the nominee³⁰. Where there is no such person appointed or specified, the amounts can be received by the guardian of the minor for the use of the minor³¹.

When there are more than one nominee, the subscriber can mention the percentage allocation to each nominee. If this is not mentioned, the amounts will be payable in equal shares to all the nominees after the death of the subscriber

On the death of a subscriber, the nominees are required to make an application in a prescribed form, together with proof of death. The amounts, net of any loan or interest on loans taken by the subscriber, is released to the nominees. The PPF account is itself closed and cannot be continued.

When there are more than one nominee, they are required to give a joint discharge on the prescribed form at the time of receiving payment. However, in case some nominee/s are not available or are not interested to take payment,

25 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by [Pramod Rao](#) and incorporate inputs from [ARIA](#)

26 Accessible here: <https://legislative.gov.in/sites/default/files/A1968-23.pdf>

27 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=148

28 PPF Scheme under PPF Act is accessible here: <http://www.nsiindia.gov.in/writereaddata/FileUploads/PPF.pdf>; PPF Scheme 2019 under GSP Act is accessible here: https://www.indiapost.gov.in/VAS/DOP_PDFFiles/Savings%20Bank/Public%20Provident%20Fund%20Scheme%202019%20English.pdf

29 See section 4A(3) of the GSP Act; it is not clear how the percentage allocation is redone in such situations

30 See section 4(3) of the GSP Act; It will also be of interest to note that in section 8(2) of the PPF Act, it was specified that where the nominee is a minor, the amounts shall be payable to any guardian of the property of the minor appointed by a competent court, or where no such guardian has been so appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

31 See section 4A(2)(b) of the GSP Act

payment may be made to the nominee/s who want to take payment of her share/s leaving the share of other nominee/s in the account. This is a laudable measure, as it doesn't hold up the payment on account of the unavailability of one or more nominees (*for example, if they are non-resident Indians, or as in the current Covid-19 circumstances, cannot travel*).

It is noteworthy that under the PPF Act, though there could be any number of nominees, or even percentage allocation among them, the nominees didn't get the right of ownership. Nominees were only authorized to collect the money on the death of the subscriber and keep it as a trustee for the benefit of the persons entitled to it under the law of succession. This position changed under the GSP Act. The subscriber can specify the nature of entitlement of nominees and whether receives the amounts as an owner or a trustee³². Such entitlement however is subject to rights of an executor or an administrator or legal representative of the deceased to recover from the person receiving the amounts³³, as also as the right of recovery by every creditor or the claimant against the estate of the deceased³⁴.

A Minor Complication

PPF Account can be opened on behalf of minors. However, in terms of the PPF Scheme under the PPF Act no nomination was permissible for accounts opened for minors. Accordingly, in the event of death of the minor, the guardian was not entitled to the amounts, and the amounts were payable to the legal heirs of the minor.

This changed under the GSP Act. For a PPF Account of a minor, the guardian³⁵ can designate the nominees³⁶. Furthermore, for legacy PPF Accounts of minors, for which no nominations were being accepted, the amounts are payable to the guardian³⁷.

There can also be the situation of death of the guardian. The account of the minor remains operative and unaffected by such demise. The surviving natural guardian or a guardian appointed by a competent court may continue the account of minors after producing necessary guardianship certificates.

PPF Account can be opened on behalf of minors. However, in terms of the PPF Scheme under the PPF Act no nomination was permissible for accounts opened for minors

Consequence of no nomination

As such, the usual judicial process of probate (if there is a will) or of appointment of administrator when the death has been intestate (without a will) or securing of succession certificate is triggered on no nomination being in force at the time of death of the subscriber.

However, one noteworthy provision made is that if within three (3) months of death of the subscriber, if probate or letters of administration or succession certificate is not produced to the relevant bank or post office, then subject to such procedures as prescribed, the bank or post office can up to a limit prescribed, pay the same to any person appearing to be entitled to receive or administer the estate of the deceased subscriber³⁸. Such a measure, at least provides a time bound relief to the legal heirs or successors bereft of nomination in their favor since ordinarily the judicial process of obtaining probate or letters or administration or succession certificate easily exceeds the time period specified to obtain a release of amounts.

32 See Section 4(1) of the GSP Act and also see Form 1, para 13 in https://www.indiapost.gov.in/VAS/DOP_PDFFiles/Savings%20Bank/Public%20Provident%20Fund%20Scheme%202019%20English.pdf

33 See Section 5(2) of the GSP Act; it is arguable that if the subscriber designated the nominee as an owner, then the executor or administrator or legal representative should give effect to the same; it would be when the nominee is designated as a trustee, that the amounts are recoverable and applied as per the will or the personal laws governing succession in case of intestate death. These items require clarity.

34 See Section 5(3) of the GSP Act

35 GSP Act defines a guardian in section 3(h) as follows: *either of the parents; or where neither parent is alive or where neither or the only living parent is incapable of acting as such, a person entitled under the law for the time being in force to have the care of the property of a minor; or legal guardian appointed by a court*; and minor in section 3(i) as follows: *a person who has not attained the age of majority under the Indian Majority Act, 1875*

36 Proviso to section 4(1) of the GSP Act

37 See Section 4A(3A) of the GSP Act

38 See Section 4A(4)(a) of the GSP Act; Such judicial process rarely concludes within 3 months, and hence may be seen as authorizing release ahead of conclusion of the judicial process as means of relief to the legal heirs. Presumably, the balance amounts, over and above the prescribed limit, would be released against the production of probate, letters of administration or succession certificate

Concluding Remarks

The Public Provident Fund is a very popular savings instrument, especially given the voluntary nature of contributions, minimum level of contribution necessary (Rs 100/- in a financial year) for keeping the PPF account operational and tax benefits (*Exempt-Exempt-Exempt*) which accrue to the subscriber.

As such, the changes that have been made to matters of nominations, including the choice of specifying whether a nominee is entitled as an owner or trustee, ability to specify percentage allocation among multiple nominees, or in guardian being able to specify nominees for PPF accounts of minors are all laudable measures.

There are however elements requiring further clarity or removal of inconsistencies which have been noted above, including reconciling the provisions of the GSP Act, the GSP General Rules and the PPF Scheme 2019. The rigor of legal draughtsmanship also appears to be absent in the GSP Act, which is necessary to ensure due certainty for subscribers and their nominees and legal heirs. In addition to providing clarity and removing inconsistencies, incorporating the various measures outlined in the recommendations in the ARIA White Paper will provide huge comfort, confidence and certainty to the subscribers of PPF, and their nominees and legal heirs.

The rigor of legal draughtsmanship also appears to be absent in the GSP Act, which is necessary to ensure due certainty for subscribers and their nominees and legal heirs



Assessment of measures recommended for Public Provident Fund (under GSP Act, 1873)

	Who can implement the recommended measures	
	Central Government	Parliament
Easy, uniform and simple process to check status of nominations and to make or change nominees	✓	
Simple, common nomination form/e-form across financial assets	✓	
Ability to specify any number of nominees	Available ³⁹	
Ability to specify percentage allocation among nominees	Available	
Ability to specify successive nominees	✓	
Ability to make single scrip/folio/security level nominations	N.A.	
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions <ul style="list-style-type: none"> Option for completing or updating KYC of nominees at any time 	✓ ✓	
Extending nomination facilities for addressing situations of incapacitated financial consumer	✓	
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) <ul style="list-style-type: none"> Ability to defer the age of vesting (as regards minor nominees) 	✓ ✓	
Making nominations mandatory for all financial assets (including in respect of legacy financial assets in a time bound manner)	✓	
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees	✓	
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	✓	
Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	Available	

39 However: GSP General Rules limit the number of nominees to 4

Annexure: GSP General Rules 2018

The GSP General Rules⁴⁰ anticipate both single and joint accounts, as savings schemes under the GSP Act can comprise either type. For purposes of PPF Accounts, the treatment will be as a single account. As noted, the General Rules have applicability when no provision has been made in the PPF Scheme. Whilst several of the nominations related matters are specified in the GSP Act or the PPF Scheme and its Form 1, the General Rules also contain certain specifications which may differ and hence merit a review.

Summary of Nominations under GSP General Rules 2018

Limit on number of nominees ⁴¹	A Depositor in a Single Account is required to nominate one or more individuals as nominee but not exceeding four individuals
Ability to specify percentage allocation and nature of entitlement ⁴² :	the General Rules and form thereunder contemplates specifying: <ul style="list-style-type: none"> Percentage share each nominee shall be entitled to Whether the nominee shall receive the amount as a beneficiary with absolute and exclusive right of ownership, or as a trustee for the benefit of the legal heirs of depositor
Where the nominee is a minor ⁴³	Depositor can appoint an individual to receive payment of the eligible balance during the minority of the nominee (<i>in event of death of depositor</i>)
Mandatory Nomination ⁴⁴	The General Rules require that in case of accounts where no nomination has been made, the depositor shall do so immediately and in any case before the maturity of the account <ul style="list-style-type: none"> This does not apply to accounts of minors or persons of unsound mind opened before April 1, 2018: in the event of death of the depositor, the payment is required to be made to the guardian⁴⁵ Nomination in accounts of minors or of persons of unsound mind, opened on and after April 1, 2018 is to be made by the guardian, and can be any individual including the guardian⁴⁶
Variation or Cancellation of Nominations ⁴⁷	Nominations can be varied any time before the maturity of the account. Nominations stand cancelled ⁴⁸ on: <ul style="list-style-type: none"> Death of all nominees Pledge or transfer of the account as security
Witnesses for making or varying nominations ⁴⁹	No witnesses are required for literate depositors 2 witnesses are required for illiterate depositors affixing thumb impression

40 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=149

41 See Rule 14(1) of the GSP General Rules

42 Ibid

43 See Rule 14(2) of the GSP General Rules

44 See Rule 14(4) of the GSP General Rules

45 See proviso to Rule 14(5) of the GSP General Rules

46 See Rule 14(5) of the GSP General Rules

47 See Rule 14(3) (- for variation) and Rule 14(6) (- for cancellation) of the GSP General Rules

48 In Rule 14(7) of the GSP General Rules, it has been specified that a fresh nomination is required to be made. Presumably, this has effect on death of all nominees, and when the pledge is released or the transfer by way of security is reversed

49 See Rule 14(8) of the GSP General Rules

<p>Payment on Death of Depositor⁵⁰</p>	<p>Payment to Nominees if nomination is in force. Application required to have proof of death of depositor (and of any nominee if has died).</p> <p>When 2 more nominees: payment in the proportion specified, and if no proportion specified, then payment in equal proportions.</p> <p>When 2 more nominees and a nominee has died: the specified share in the eligible balance of the deceased nominee is distributed among the surviving nominees in the same proportion as their specified shares</p> <p>When a nominee is minor: payment to the person specified by depositor, and in absence of specification, to guardian of the minor</p>
	<p>When no nomination is in force, and grant of probate, letters of administration or succession certificate is not produced within 6 months of the death of a depositor, then payment upto Rs 5 lacs can be made against certain documents being submitted⁵¹. Amounts exceeding Rs 5 lacs released on submission of succession certificate and certain documents⁵².</p>

Certain of the above specifications may be inconsistent with or in variance with provisions of the GSP Act, earlier PPF Schemes and PPF Scheme 2019, and requires reconciliation.

50 See Rule 15 of the GSP General Rules; It may be noted that vide Rule 17 of the GSP General Rules, if the depositor is serving in the Army, Air Force or Navy dies or deserts, the Commanding Officer of the Corps, department, detachment, unit or ship to which the depositor belonged, or the Committee of Adjustment, can requisition the amounts (under the applicable Act governing the Service/Force) requiring payment to the CO or the Committee of Adjustments, which shall be complied with regardless of whether a nomination is in force or not.

51 See Rule 15(6)(i) of the GSP General Rules, which specifies furnishing of Death certificate, Pass Book or deposit receipt/ statement of account in original, and following documents in prescribed format Affidavit, Letter of disclaimer and Bond of Indemnity. *Among these, furnishing of the original passbook or statement of account in original could pose a challenge to the legal heirs making the claim.*

52 See Rule 15(6)(i) of the GSP General Rules, which specifies furnishing of the following along with the Succession Certificate: Death certificate, Claim form, and the Pass Book or deposit receipt or statement of account in original. *As mentioned above, furnishing of the original passbook or statement of account in original could pose a challenge to the legal heirs making the claim.*

SPOTLIGHT⁵³ ON:

Approach of Provident Funds in Dealing with Ill-health, Incapacitation or Disability

Provident funds, mandatory or voluntary, are largely to ensure that an individual is able to undertake savings for and towards her retirement. An important contingency - of death of the member / account holder / depositor / subscriber⁵⁴ - is addressed by nominations facility, as analyzed in separate spotlight papers.

A further contingency which requires review is when the contingency of ill-health, incapacitation or disability of the member or her family occurs: Accordingly, this spotlight paper examines how the laws governing provident fund or schemes thereunder address these situations.

The **Employee Provident Fund Miscellaneous Provisions Act, 1952**⁵⁵ (the Act) deals with the corporate sector, and administers the schemes for Employees' Provident Fund (EPF Scheme), Employees' Pension (EPS) and Employees' Deposit-Linked Insurance Scheme 1976 (EDLI) for the employees of the establishments to which the statute applies.

In respect of EPF Scheme, Schedule 2 of the Act which specifies the matters for which provision may be made in a scheme makes this brief mention: *'the conditions under which withdrawals from the Fund may be permitted'*. In respect to EPS, there's a brief mention of permanent total disablement pension⁵⁶ and also in Schedule 2, specifies the matters for which provision can be made in EPS includes: *The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, and Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme*. Finally, in respect of EDLI, Schedule 3 specifies the matters that can be made in EDLI includes: *'The scales of insurance benefits and conditions relating to the grant of such benefits to the employees', and 'Any other matter which is to be provided for in the Employees' Deposit-linked Insurance Scheme or which may be necessary or proper for the purpose of implementing that Scheme'*.

In the **EPF Scheme**⁵⁷ there are several measures for people with disabilities. The below analysis is however focused on accessing the sums standing to the credit of a member in the EPF in situations of ill-health, incapacitation or disability. In this behalf following is relevant:

A member may withdraw the full amount standing to her credit in the EPF on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment, or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment⁵⁸. Specific situation of mass or individual retrenchment, and manner of dealing with medical certification has been elaborately dealt with as well⁵⁹.

A member may withdraw the full amount standing to her credit in the EPF on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity duly certified by the medical officer of the establishment, or where an establishment has no regular medical officer, by a registered medical practitioner designated by the establishment

53 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA

54 Different legislations or schemes thereunder use these different terms. For this spotlight paper, for ease of reading and consistency, the term 'member' is used here onwards.

55 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf

56 Section 6A (1)(a) of the Act

57 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFScheme.pdf

58 Para 69(b) of the EPF Scheme, also similar provision specified for International Workers

59 Para 69(1A) of the EPF Scheme

Measures, for certain situations, by way of provision of non-refundable advances, have also been specified in the EPF Scheme. These include:

- Certain cases of illness of a member or her family⁶⁰
- In case of abnormal circumstances including calamities⁶¹
- In case of members who are physically handicapped⁶²

Issues with above: Adequacy of such measures or provisions requires a rethink, along with the expansion of list of illnesses or diseases such as additional critical illnesses or strokes.

Review of the period of hospitalization with a strong bias towards reducing the time currently specified could be undertaken given the advancement in medical technologies, treatment standards and level of care.

The permitted levels of withdrawals as well as frequency of withdrawals require review. For instance, the extent of money withdrawable in case of calamity appears grossly inadequate in today's day and age.

There is also a need for the scheme to deal with situations of incapacitation, and empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

In terms of **Employee Pension Scheme**⁶³ the following has been specified:

"Permanent total disablement" has been defined to mean such disablement of permanent nature as incapacitating an employee for all work which she was capable of performing at the time of disablement, regardless whether such disablement is sustained in the course of employment or otherwise.

A member, who is permanently and totally disabled during the employment, is entitled to pension as admissible notwithstanding the fact that she has not rendered the pensionable service entitling her to pension if she has made at least one month's contribution to the Pension Fund. The monthly member's pension in such cases is payable from the date following the date of permanent total disablement and shall be tenable for the life-time of the member. The member applying for benefits is mandated to undergo such medical examination as may be prescribed by the Central Board to determine whether or not she is permanently and totally unfit for the employment which she was doing at the time of such disablement.

The **EDLI Scheme**⁶⁴ does not have any provision focused on ill-health, incapacitation or disability.

The **Employee Provident Fund Act, 1925**⁶⁵, which deals with government provident fund, railway provident fund and funds of other notified government institutions and of local bodies, does not have any provision focused on ill-health,

The permitted levels of withdrawals as well as frequency of withdrawals require review. For instance, the extent of money withdrawable in case of calamity appears grossly inadequate in today's day and age.

60 Para 68-J of the EPF Scheme, which specifies the following : (1) A member is allowed non-refundable advance from her EPF account in cases of: (a) hospitalisation lasting for one month or more, or (b) major surgical operation in a hospital, or (c) suffering from T.B., leprosy, paralysis, cancer, mental derangement or heart ailment and having been granted leave by her employer for treatment of the said illness, (2) deleted (3) A member may be allowed non-refundable advance from her EPF account for the treatment of a member of her family who has been hospitalised, or requires hospitalization, for one month or more- (a) for a major surgical operation, or (b) for the treatment of T.B., leprosy, paralysis, cancer, mental derangement or heart ailment, (4) The amount advanced under this paragraph shall not exceed the member's basic wages and dearness allowance for six months or her own share of contribution with interest in EPF, whichever is less.

61 Para 68-L of the EPF Scheme, which specifies that on an application from a member whose property, movable or immovable, has been damaged by a calamity of exceptional nature, such as floods, earthquakes or riots, authorise payment to her from the provident fund account, a non-refundable advance of rupees five thousand or fifty per cent of her own total contribution including interest thereon standing to her credit on the date of such authorisation, whichever is less, to meet any unforeseen expenditure. This requires the State Government to have declared that the calamity has affected the general public in the area; the member produces a certificate from an appropriate authority to the effect that her property (movable or immovable) has been damaged as a result of the calamity; and the application for advance is made within a period of 4 months from the date of declaration made by the State Government

62 Para 68-N of the EPF Scheme, which specifies that a member, who is physically handicapped, may be allowed a non- refundable advance from her EPF account for purchasing an equipment required to minimize the hardship on account of handicap. Advance is made on the basis of a self-declaration to that effect. The amount advanced under this paragraph shall not exceed the member's basic wages and dearness allowance for six months or her own share of contributions with interest thereon or the cost of the equipment, whichever is the least. No second advance under this paragraph shall be allowed within a period of three years from the date of payment of an advance allowed under this paragraph

63 Accessible here https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPS95_update102008.pdf

64 Accessible here: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EDLI_1976.pdf

65 Accessible here: <https://legislative.gov.in/sites/default/files/A1925-19.pdf>

incapacitation or disability. However, the rules of the provident fund governed by the EPF Act, 1925, may deal with such situations.

In relation to **the Public Provident Fund Scheme, 1968**⁶⁶, the guidance issued stated:

Only those cases of extreme compassionate ground such as medical support in life-threatening diseases or cases, death cases, etc. deserve consideration for granting permission for premature closure. In other non-deserving cases, the members should avail of the facility of loans and withdrawals available under Rule 9 and 10 of the PPF Scheme.

In the **Public Provident Fund Scheme 2019**⁶⁷, the following has been specified⁶⁸:

A member shall be allowed premature closure of her account for treatment of life threatening disease of member, her spouse or dependent children or parents, on production of supporting documents and medical reports confirming such disease from treating medical authority. In case of a member who is a minor or person of unsound mind, the guardian can make such an application.

Issues with above: Removal of the threshold of requiring a disease to be 'life threatening' may be considered. Addition of mental illnesses can also be considered. Overall, given that costs of hospitalization and medical treatment have increased and hence access at times of need should be enabled.

There is also a need for the scheme to deal with situations of permanent or temporary incapacitation or disabilities, and in such situations, empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

In the **GSP General Rules, 2018**⁶⁹ (which have applicability for matters not dealt with in the PPF Scheme⁷⁰), the following has been specified⁷¹:

If in case a member suffers from physical infirmity, or if the member is a differently-abled person⁷² which makes her incapable of operating the account herself, may through any literate individual she authorizes for this purpose operate (including making withdrawals) the account. This can be done at the time of opening the account or subsequently. Such authorization has to be made in writing by the member, together with attested specimen signature and photograph of authorized individual, and can be withdrawn or varied at any time.

There is also a need for the scheme to deal with situations of permanent or temporary incapacitation or disabilities, and in such situations, empowering the nominees or family members to approach or apply on behalf of an incapacitated member.

Furthermore, it has been specified that a member suffering from physical infirmity, including blindness, that renders her incapable of operating her account, may avail the facility of loan or partial withdrawal through the authorized individual⁷³.

Finally, in case of a member who is a minor or a person of unsound mind, the guardian may avail the facility of loan or partial withdrawal⁷⁴.

Issues with above: It appears fallacious and illogical to require the member to give the authorization in writing if and when the member is incapable of operating the account. Separately events may happen when no such authorization as outlined is in place, and hence, a change that could be considered is specifying that the nominee can operate the account on behalf of the member.

Further, provision for partial withdrawal or obtaining a loan could be dispensed with, and withdrawals be by way of non-refundable advances.

66 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=79

67 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=169

68 Para 13 of the PPF Scheme, 2019, accessible here:

69 Accessible here: http://www.nsiindia.gov.in/InternalPage.aspx?Id_Pk=149

70 Para 16 of the PPF Scheme, 2019

71 Rule 11 of the GSP General Rules, 2018

72 Which includes persons with autism, cerebral palsy and mental retardation

73 Rule 20(4) of the GSP General Rules, 2018

74 Rule 20(2) of the GSP General Rules, 2018. Also, the guardian is required to furnish a certificate that states: "Certified that the amount sought to be withdrawn is required for the use and welfare of Shri/Smt./Master/ Kumari..... who is a minor/ a person of unsound mind/ a person incapable of operating his account due to physical infirmity and is alive on this.....the day of.....(month),(year)."




Concluding remarks

As would be noted from the above, there is no uniformity across different types of provident funds schemes in dealing with situations of ill-health, incapacitation or disabilities.

Certain designs and approaches require rethink. For instance, specification in the relevant scheme can be on these lines:

- If the member or family member is incapacitated, temporarily or permanently, the nominee/s or family member/s is/are authorized to access the funds:
 - this can draw on the precedent of guardians doing so in case of members who are minors or persons of unsound mind
- Uniformity in specifying the diseases, disabilities and specific cases of ill-health: *this will serve to remove doubts, discretion or disparate treatment across different types of provident fund*
- Ability to make Non-refundable advances (or withdrawals) for ill-health, incapacitation or disabilities (temporary, permanent, total or partial) should be balanced against the primary objective of such accounts (i.e. towards old age and retirement savings)



Uniformity in specifying the diseases, disabilities and specific cases of ill-health: *this will serve to remove doubts, discretion or disparate treatment across different types of provident fund*

SPOTLIGHT⁷⁵ ON

National Pension System Accounts & Annuities

National Pension System (NPS) is a voluntary defined contribution pension scheme administered by the NPS Trust, and is regulated by the Pension Funds Regulatory and Development Authority.

NPS started with the decision of the Government of India to stop defined benefit pensions for all its employees who joined after 1 April 2004. While the scheme was initially designed for government employees only, it was opened up for all citizens of India in 2009, and for OCI card holders and PIOs in October 2019. The entry age originally had been between 18 and 65, which has since been revised to be between 18 and 70⁷⁶.

One key aspect to bear in mind is that there are two distinct stages of an NPS relationship: Firstly, the creation of the accumulated pension wealth in the NPS Permanent Retirement Account (NPS Account), and secondly, the culmination of NPS Account at retirement or thereafter, with the purchase of annuity and commencement of monthly pension. The nomination facility for the first stage is outlined in the section titled 'Nominations for NPS Accounts', and for the second stage is outlined in the section titled 'Approach for Annuity'.

Nominations for NPS Accounts⁷⁷

A subscriber, at the time of joining NPS, is required to make a nomination conferring on one or more persons the right to receive the amount that may stand to her credit in the accumulated wealth or fund in the event of her death before that amount becomes payable or having become payable has not been paid. *Family plays an important role in nominations and is dealt with in a separate subsection of this spotlight.*

In the Regulation there is no limit as to the number of nominees. *However, the FAQs specifies that a subscriber can appoint up to 3 nominees⁷⁸.* When there is more than one nominee, the subscriber is required to specify the percentage allocation of the amounts among the nominees, which has to collectively aggregate 100%.

Successive nominees are also recognized. Ordinarily, if the nominee predeceases the subscriber, the nomination becomes void and of no effect. A provision can be duly made conferring upon some other person the right to receive all the amounts in the event of the nominee predeceasing the subscriber.

Nominations can be modified by the subscriber at any time by submission of the prescribed form⁷⁹. The modifications take effect, to the extent that it is valid, on the date on which it is received by the intermediary under the NPS.

NPS Trust has also facilitated e-nominations⁸⁰. Adding or updating nominees is available electronically.

If the nominee is a minor, the subscriber can choose while making the nomination to appoint another individual (who is a major and requires being a subscriber of the family), to receive the amounts on behalf of the nominee (during the minority of the nominee) in the event of the death of the subscriber. Where there is no major person in the family, the

75 Spotlight sections draw upon <https://bit.ly/2WeoH2P> written by Pramod Rao and incorporate inputs from ARIA

76 See here <https://www.pfrda.org.in/writereaddata/links/circular%20to%20cras%20on%20increase%20of%20entry%20age%20up%20to%2070%20years%20under%20nps%201fe102dd-e5cd-475a-920b-b303f23aeee7.pdf>

77 Specified in Regulation 32 of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015, accessible here: [https://npscra.nsdl.co.in/download/pdf/Pension%20Fund%20Regulatory%20and%20Development%20Authority%20\(Exits%20and%20Withdrawals%20under%20National%20Pension%20System\)%20Regulations,%202015.pdf](https://npscra.nsdl.co.in/download/pdf/Pension%20Fund%20Regulatory%20and%20Development%20Authority%20(Exits%20and%20Withdrawals%20under%20National%20Pension%20System)%20Regulations,%202015.pdf)

78 See relevant bullet on page 5 here: <https://www.pfrda.org.in/writereaddata/links/faqsallcitizensmodelbf322a1a-be90-4eba-9356-4258f4bdfafd.pdf>

79 It is noted that the FAQs mention that if the subscriber at the time of opening the NPS Account or at the time of registering for PRAN, no charges will be levied. However, a subsequent request for nomination update is considered as a service request and a charge of Rs. 20/- plus applicable service tax for each request is payable

80 See here <https://www.pfrda.org.in/writereaddata/links/circular%20on%20nomination%20facility%20for%20nps%20subscribers934fdd52-02ec-4906-a70c-0084dd5de56c.pdf>

subscriber may, at her discretion, appoint any other person to be a guardian of the minor nominee for this purpose.

The nominees are entitled, on the death of the subscriber, to receive, to the exclusion of all other persons. This is when the death of the subscriber occurs before the obligation to purchase the annuity becomes applicable.

Approach for Annuity

A variety of permutations and combinations of situations and circumstances are contemplated or specified for the different categories of subscribers when they are reaching or have reached their retirement age. Given the variance and not necessarily being linked to death of the subscriber, these situations and circumstances have been considered out of scope for the analysis of nominations⁸¹. Hence, for the purposes of this analysis, the following have not been considered: the categories of subscribers, the age specified for mandatory purchase of annuity, ability to defer the annuity purchase, situations when annuity need not be purchased (including on account of withdrawal of accumulated pension wealth to the extent specified) or the lump sum amounts (if any) paid to the subscriber.

Rather, this section focuses on when an annuity has been purchased from an Annuity Service Provider (ASP) empaneled by PFRDA. There can be several types of annuity contracts provided by a variety of ASPs. In this spotlight section, we take a look at the default annuity scheme⁸² and the default annuity contract terms specified in PFRDA Regulations.

As noted by PFRDA⁸³, the default option (of the default ASP, and default annuity scheme) has been purely provided in the subscribers' interest and to avoid any delay in claim processing and is not with a view to endorse/promote any particular ASP or annuity variant being offered by the ASP.

The default ASP is LIC of India. The default annuity scheme has been outlined as follows:

- Payment of monthly annuity for life of the annuitant
- On death of the annuitant, payment to her spouse during his lifetime
- Payment ceases on death of the annuitant and the spouse (or after death of the annuitant if the spouse predeceases the annuitant)
- No return of purchase price.

By limiting the payment to the annuitant and spouse during their lifetime, and doing away with return of purchase price of annuity, the need to deal with any further aspect is avoided in the default annuity scheme.

The other key item specified in the regulations is 'default annuity contract' (different from the default annuity scheme above). Ordinarily, the subscriber is required to purchase the default annuity contract from one of the annuity service providers empaneled by PFRDA. It may be suggested that the default annuity scheme for the default ASP be kept the same as that for the default annuity contract for simplicity as well as the fact that the return of purchase price option tends to be the most popular option.

In the construct of the default annuity contract and regulations, the following has been specified⁸⁴:

- The designated percentage of the accumulated pension wealth will be utilized for annuity purchase from an Annuity Service Provider
- Annuity Service Provider shall provide for monthly or periodical pension for life of the subscriber and her spouse (if any), with provision for return of purchase price of the annuity
- Upon the demise of such subscriber and her spouse, the annuity is to be re-issued

Ordinarily, the subscriber is required to purchase the default annuity contract from one of the annuity service providers empaneled by PFRDA. It may be suggested that the default annuity scheme for the default ASP be kept the same as that for the default annuity contract for simplicity as well as the fact that the return of purchase price option tends to be the most popular option

⁸¹ While outside the scope of this spotlight, the complexity and differential treatment among the various categories of subscribers can contribute to a lot of issues. These should ideally be simplified and uniform (to the extent possible) across the categories of subscribers

⁸² In Regulation 10(5) of the PFRDA (Exits and Withdrawals under the NPS) Regulations 2015, PFRDA has been empowered to specify a 'default annuity service provider' and a 'default annuity scheme'; interestingly, it notes that such default annuity scheme shall not be available or applicable in the case of government subscribers covered under regulation 3.

⁸³ See page 8 of FAQs accessible here: <https://www.pfrda.org.in/writereaddata/links/faqsallcitizensmodelbf322a1a-be90-4eba-9356-4258f4bdfafd.pdf>

⁸⁴ See proviso (i) to Regulation 3(a) or proviso to Regulation 3(b) or proviso (i) to Regulation 3(c) of PFRDA (Exits and Withdrawals under the NPS) Regulations 2015

to the following family members (in the order specified) @ the premium rate prevalent at the time of purchase of such annuity by utilizing the (otherwise returnable) purchase price of the annuity contract (until all the family members in the order specified below are covered) :

- living dependent mother of the deceased subscriber
- living dependent father of the deceased subscriber
- Thereafter, the purchase price or the amount which was to be utilised for purchase of annuity shall be returned to the surviving children of the subscriber
- In the case of absence of children, the purchase price or the amount which was to be utilised for purchase of annuity shall be returned to the other legal heir(s) of the subscriber, as the case may be

In certain situations of demise of certain categories of subscribers (including before retirement or after retirement and during a deferral availed to purchase the annuity), the onus of purchasing the annuity has been placed on the spouse (if any), and thereafter, on the spouse's death, the above mentioned sequence applies.

Situations have also been specified where it is optional on the family to purchase the annuity, without specifying the consequences of demise of annuitant.

Critique of default annuity scheme and of default annuity contract: There are certain inbuilt inflexibilities in the default annuity contract that are noteworthy:

- **Subscriber and her spouse as one unit:** The regulation treats the subscriber and her spouse as one unit during their respective lifetimes for receipt of pension from the annuity service provider and the pension continues even when one predeceases the other. However, certain situations where marriage has not occurred (such as live-in relationships or common law partnerships) or cannot occur (such as of LGBTQ+ couples under current legal framework) or where the married couple are separated, remains unaddressed and unattended to. *This critique is also applicable for the default annuity scheme.*
- **Mandatory re-issuance of annuity for designated dependents:** The regulation has chosen the dependents (living mother of the subscriber and after her, the living father of the subscriber) for whom the annuity is required to be repurchased on death of the subscriber and her spouse. No flexibility exists for the subscriber or the annuitant to specify whether re-issuance is required and if so, who the re-issuance should be for.
- **Return of purchase price:** The regulation has specified that the surviving children of the subscriber shall receive the purchase price. In absence of any surviving children, the legal heirs are to receive the purchase price. No flexibility exists for the annuitant selecting or specifying the nominee to whom the purchase price for the annuity should be paid/returned.
- **Obligation to purchase annuity:** In certain situations, the regulation places an obligation on the spouse of the subscriber to purchase the annuity. Furthermore, on death of such an annuitant, mandatory re-issuance is required - in favor of the subscriber's dependents (and not of the annuitant). There is no flexibility available to the subscriber to determine whether annuity is necessary, and if so on who should constitute the annuitant (and whether the designated annuitant is amenable to do so as a matter of choice). Separately, no flexibility exists for the annuitant to specify whether re-issuance is required and if so, who the re-issuance should be for.

Certain situations where marriage has not occurred (such as live-in relationships or common law partnerships) or cannot occur (such as of LGBTQ+ couples under current legal framework) or where the married couple are separated, remains unaddressed and unattended to

The terms, as above, of the default annuity contract require a rethink and provision of choice and flexibility to the subscriber or annuitant. In the default annuity scheme, the first issue - of only treating the subscriber and her spouse as a unit - with the inflexibilities noted merit review.

Consequences of no nomination

A measure made for government sector subscribers and corporate sector subscribers, is the specification that in absence of a valid nomination on account of death while in service, the nomination, if any existing in the records of such subscriber with her employer for the purpose of receiving other admissible terminal benefits shall be treated as nomination exercised for the purposes of receiving benefits under the National Pension System. In such situations,

the employer is required to send a confirmation of such nomination in its records, to the NPS Trust or the central recordkeeping agency, while forwarding the claim for processing⁸⁵.

(Presumably) subject to the above, for citizens and corporate sector subscribers: if in case the nomination has not been registered by the subscriber, the accumulated pension wealth is paid to the family members on the basis of the legal heir certificate issued by the competent authorities of the State concerned or the succession certificate issued by a court of competent jurisdiction.

For NPS Lite and Swavalamban subscribers: if in case the nomination has not been registered by the subscriber, the accumulated pension wealth is paid to the family members on the basis of the legal heir certificate issued by the revenue authorities of the State concerned or the succession certificate issued by a court of competent jurisdiction⁸⁶.

In respect of default annuity contracts, where the last eligible set for return of purchase prices are legal heirs: there is no issuing authority specified for identifying legal heirs. Presumably, the general law for identifying legal heirs is considered sufficient.

There is no issuing authority specified for identifying legal heirs. Presumably, the general law for identifying legal heirs is considered sufficient

Incapacitation

During the period of operating the NPS Account, there are situations specified when the subscriber can make withdrawal from her NPS Account. Financial limits⁸⁷, purpose limitations as well as certain criteria⁸⁸ and frequency⁸⁹ at which withdrawals can be made are specified in the regulations⁹⁰ in relation to

In respect of ill-health, incapacitation or disability, withdrawal is permitted for the following:

- treatment of the subscriber, her legally wedded spouse, children (including a legally adopted child) or dependent parents, and comprising hospitalization and treatment of the specified diseases⁹¹
- meeting medical and incidental expenses arising out of the disability or incapacitation suffered by the subscriber⁹²

The regulation contemplates the request for withdrawal being submitted through any family member of the subscriber where a subscriber is suffering from any specified illness or disease⁹³.

Moving to the stage of exit from NPS, for citizen and corporate sector subscriber or NPS Lite and Swavalamban subscriber who is physically incapacitated or has suffered a bodily disability leading to her incapability to continue with her NPS Account, exit is contemplated as follows:

The subscriber is required to submit a disability certificate from a Government surgeon or Doctor (treating such

85 See proviso (xii) of Regulation 32 of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

86 This reflects differential treatment across the three categories: for **government sector subscribers**, there is no prescription for situations of no nominations - presumably the specification of nominees for other admissible benefits cited above or the general law for identifying legal heirs is considered sufficient for them (additionally they are also governed by the Central Civil Services (Implementation of National Pension System) Rules, 2021); for **citizens and corporate subscribers** see Regulation 4(c)(ii) of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015 (who die before attaining the age of 60 years or the age of superannuation as prescribed by the respective service rules applicable) which by an amendment updated the reference from 'revenue authority' to 'competent authority' of the state concerned for issuance of legal heir certificate and who also benefit from specification of nominees for other admissible benefits cited above; for **NPS Lite and Swavalamban subscribers** (who die before attaining the age of 60 years): see proviso to Regulation 5(c) which continues to refer to "...Revenue authorities of the State concerned...." - such inconsistency can create challenges and hardship for legal heirs of such subscribers; Such differences again serve to highlight need for uniformity and simplification in the regulations

87 Partial withdrawal of upto 25% of the contribution of the subscriber, and excluding contributions by her employer - Regulation 8(1) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015; for Tier 2 accounts partial or full withdrawal is permitted without purpose or other limitations - see Regulation 8(2) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015 (unless is a tax saver scheme, withdrawal from which can be after completion of specified lock-in period)

88 the subscriber shall have been in NPS at least for a period of 3 years from the date of her joining

89 Set a maximum of 3 times during the entire tenure of subscription under the NPS

90 See Regulation 7 and 8 of the PFRDA (Exits and Withdrawals under the NPS) Regulations 2015

91 Specified diseases are Cancer; Kidney Failure (End Stage Renal Failure); Primary Pulmonary Arterial Hypertension; Multiple Sclerosis; Major Organ Transplant; Coronary Artery Bypass Graft; Aorta Graft Surgery; Heart Valve Surgery; Stroke; Myocardial Infarction (xi) Coma; Total blindness; Paralysis; Accident of serious/ life threatening nature; any other critical illness of a life-threatening nature as stipulated in PFRDA circulars, guidelines or notifications issued from time to time; from Regulation 8(1)(A)(d) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

92 Regulation 8(1)(A)(e) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

93 See proviso to Regulation 8(C) of PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015

disability or incapacitation⁹⁴ of the subscriber) stating the nature and extent of disability and also certifying:

- that the affected subscriber shall not be in a position to perform her regular duties and there is a real possibility of the subscriber not being able to work for the remaining period of her life; and
- Percentage of disability is more than seventy five percent.

In case of a government sector subscriber⁹⁵, the employer is required to certify that the subscriber has been discharged from the services of the concerned office on account of incapacitation or disability.

Family centrality & circumstances for invalidation

An aspect of nominations under the NPS (which appear to have been drawn from the provisions of the EPF Scheme governing the corporate sector) is the importance it places on 'family', which is a defined term in the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015.

Take these few specifications:

- If a subscriber has a family at the time of making a nomination, the nomination is required to be **only** in favour of one or more persons belonging to her family. Any nomination made by such a subscriber in favour of a person not belonging to her family is invalid.
- If at the time of making a nomination the subscriber has no family, the nomination may be in favour of **any** person or persons. If the subscriber subsequently acquires a family, the earlier nomination becomes invalid. The subscriber then has to make a fresh nomination in favour of one or more persons belonging to her family.
- Similarly, a fresh nomination is required to be made by the subscriber on her marriage. Nomination made before such marriage becomes invalid.

Invalidity impacts the persons previously nominated adversely as also the family members when no fresh nominations has been made by a subscriber.

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Who, then, comprises 'Family'?

In terms of *Explanation 1 of Regulation 32* of the PFRDA (Exits and Withdrawals under the NPS) Regulations, 2015, "family" means:

- In the case of a male subscriber,
 - his legally wedded wife⁹⁶,
 - his children, whether married or unmarried,
 - his dependant parents and
 - his deceased son's widow and children:
- in the case of a female subscriber,
 - her legally wedded husband⁹⁷,
 - her children, whether married or unmarried,
 - her dependant parents,
 - her husband's dependant parents⁹⁸ and
 - her deceased son's widow and children.

Legally recognized adoption by another person of a child of a subscriber (or child of a deceased son of the subscriber) results in such a child being excluded from the family of the subscriber for purposes of NPS.

⁹⁴ The regulation in this context uses the word 'invalidation'; it is felt the appropriate word can be 'incapacitation'

⁹⁵ Reference may also be made to Rules 10, 16, 17 and 20 of Central Civil Services (Implementation of National Pension System) Rules, 2021 for individuals governed by such Rules

⁹⁶ A subscriber can exclude his wife, if he proves that she's ceased being entitled to maintenance under the personal law or community customary law which governs the couple. Then she stops being recognized as a part of subscriber's family; the subscriber can subsequently reinstate her recognition as a family member by express notice in writing to the designated intermediary

⁹⁷ A subscriber can exclude her husband (and consequently his dependent parents) by express notice in writing to the designated intermediary; she can also cancel such exclusion subsequently by giving notice to such designated intermediary

⁹⁸ If the subscriber has excluded her husband, then the husband's dependent parents also stand excluded; see footnote above. Presumably, canceling the exclusion of the husband also will result in re-inclusion of his dependent parents



It's complicated

For a large set of subscribers within the NPS framework, perhaps the limitations placed on nominees having to be family members or of invalidation in certain circumstances probably does work or has no visible impact.

It may, however, not be so for everyone.

Take the most commonplace situation: An individual could choose at any time to join the NPS including at the start of her career, and would make the NPS nominations at that time. If she's unmarried, more often than not, the nominees would be her parents. Upon marriage, such nomination is rendered invalid. If she fails to update the nominations (or have a will - which is highly unlikely at this age), her legal heirs would be hamstrung in receiving the monies without judicial process.

Situations of separation (as a prelude to divorce) which may cause an individual to reconsider nominations could be curtailed due to the requirements governing NPS Accounts. Perhaps the exclusion of spouses, as contemplated in the relevant regulation may assist. But again, think of how many individuals consider nominations or their validity/invalidity when passing through such situations. Morbidity in the current circumstances of Covid-19 can also play spoilsport.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family.

Consider also the situations of domestic relationships or live-in relationships⁹⁹ (termed as common law partners in certain jurisdictions), when couples choose to cohabit or stay together: if either or both of them want to specify the other as nominee, they would be stymied due to lack of fulfilling the definition of 'family'.

Finally: unlike any other financial asset, and due to lack of fulfilling the definition of 'family', individuals belonging to the LGBTQ+ community who incidentally no longer face criminality in India, and have gained a wider acceptance in the society, the requirements of NPS Accounts still prevent their partner from being a nominee or from being considered family. Members of this community would require either the ability to marry being recognized in law (which will also require recast of the definition of 'family' in the PFRDA Regulations) or the requirements of a nominee having to be a member of the 'family' being reconsidered.

Certain portions of the definition of 'family' itself could be considered sexist. For a woman member, the husband's dependent parents are family. For the man, the wife's dependent parents are not. Widows and children of a deceased son are family. A widower and children of a deceased daughter are not family.

Concluding remarks

Hence, while in many aspects NPS is progressive (*percentage allocation being permissible, or e-nominations facility or successive nominations*), the limitation posed due to the requirement of nominees having to be family members, requires revisit. There is also inconsistency in the regulation not limiting the number of nominees, while its FAQs do so.

For NPS, the design reckoning only a 'family' comprising spouse and children, merits an evaluation of whether it fulfills the underlying objectives. The overall scheme or approach, if also embeds or encourages nomination as the fulcrum, then those that the member considers appropriate would be the beneficiaries rather than a pre-set flow among persons specified by NPS and for default annuity contracts.

At a broader level, the need for review and reforms to NPS Regulation is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or of dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory.

The invalidity of nominations that occurs on happening of life events also could be recast: perhaps, the approach could be to treat the nominees prior to the life event as trustees or custodians, and hence who can receive the money in trust or custody for the legal heirs.

⁹⁹ Recognised by the Supreme Court in *Kushboo v Kanniammal* <https://indiankanoon.org/doc/1327342/>, also see *Indra Sarma v VKV Sarma* <https://indiankanoon.org/doc/192421140/> for a further analysis of live-in relationships

It is also noteworthy that while the three distinct categories of subscribers may be necessary, a huge need to ensure consistency, uniformity and simplicity is required. This is especially so on the death of a subscriber, but also in various other respects. The situations and circumstances for the various types of subscribers are resulting in differing, and often inconsistent treatment. *For instance, there are situations when an NPS Lite and Swavalamban subscriber or citizen and corporate sector subscriber have to purchase annuity. However, consequences upon death of an annuitant, akin to how the same has been specified for default annuity contract, are not specified.* This can cause avoidable hardship or strife. Review and revision of the PFRA (Exits and Withdrawals under the NPS) Regulation is warranted to ensure due uniformity, consistency and simplification. It is also important to have clarity on when annuities have to be purchased and when providing for flexibility in several different aspects noted and choices that the annuitant or subscriber can exercise.

All in all, if the life leading up to retirement (*when NPS Account can be harnessed*) and the post retirement life (*when the annuity is purchased*) are eased, situations that can create hardship or strife removed or reduced, references to the judiciary avoided or reduced, and the provisions updated to reflect the societal changes and progressive approach, NPS and Annuities will be important and attractive to the citizenry, subscribers and annuitants.

At a broader level, the need for review and reforms to NPS Regulation is necessary - whether it be in the form of updating the definition of 'family' for making it non-discriminatory or of dispensing with linkage to 'family' altogether when making nominations. Similarly, the consequences of no nominations and who are entitled (or disentitled) could also be reviewed and made non-discriminatory

Table 1: **Assessment of measures recommended for NPS Account**

	Who can implement the recommended measures
	PFRDA
Easy, uniform and simple process to check status of nominations and to make or change nominees	✓
Simple, common nomination form/e-form	✓
Ability to specify any number of nominees	✓ Since Form S2 ¹⁰⁰ and FAQs limit to 3 nominees
Ability to specify percentage allocation among nominees	Available
Ability to specify successive nominees	Available
Ability to make single scrip/folio/security level nominations	Not Applicable
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions <ul style="list-style-type: none"> Option for completing or updating KYC of nominees at any time 	Available ✓
Extending nomination facilities for addressing situations of incapacitated financial consumer	✓
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) <ul style="list-style-type: none"> Ability to defer the age of vesting (as regards minor nominees) 	Available ✓
Making nominations mandatory for NPS (including in respect of legacy accounts in a time bound manner) consider do away with automatic cancellation of nominations on occurrence of life events.	Already mandatory
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees	✓
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	✓
Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	✓

100 See https://npscra.nsdl.co.in/download/non-government-sector/all-citizens-of-india/forms/S2-Subscriber_Details_Change.pdf and https://npscra.nsdl.co.in/download/Nodal%20Office/NPS_FAQ%27s.pdf (FAQ 23 and response thereto)

Table 2: **Assessment of measures recommended for Annuity**

	Who can implement the recommended measures
	PFRDA
Easy, uniform and simple process to check status of nominations and to make or change nominees	available
Simple, common nomination form/e-form	available
Ability to specify any number of nominees	available
Ability to specify percentage allocation among nominees	available
Ability to specify successive nominees	✓
Ability to make single scrip/folio/security level nominations	not applicable
Mandating comprehensive e-nomination facilities, especially within the website or mobile apps of such provider that facilitate financial transactions <ul style="list-style-type: none"> Option for completing or updating KYC of nominees at any time 	available Available
Extending nomination facilities for addressing situations of incapacitated financial consumer	✓
Ability to specify minors as nominees (with or without specifying an adult or guardian during the minority of the nominees) <ul style="list-style-type: none"> Ability to defer the age of vesting (as regards minor nominees) 	✓
Making nominations mandatory for Annuity contracts (including in respect of legacy accounts in a time bound manner) consider do away with automatic cancellation of nominations on occurrence of life events.	✓
Centralized Reporting of demise or incapacitation of a financial consumer + reliance upon the information reported and documents uploaded + trigger proactive outreach by financial services providers to the nominees	✓
Unclaimed funds and accumulations thereon that are earmarked for education, awareness or welfare of financial consumers should spread awareness and educate on advantages and benefits of nomination. On reimagined nomination facilities becoming operational, further awareness campaigns can also take place	✓
Elevating or equating nominees to being legal and beneficial owners of the financial asset (upto to the percentage allocation as specified) and doing away with concept of regarding nominees as trustees or custodians for legal heirs in respect of financial assets	✓



Mr. Pramod Rao

Pramod is serving as an Executive Director at the Securities and Exchange Board of India, handling the Department of Debt and Hybrid Securities (DDHS), and Enquiries and Adjudication Department (EAD). The white paper — “Reimagining Nominations: Making Succession Smoother and Simpler” was written by Pramod in his personal capacity prior to joining the Securities and Exchange Board of India.

Pramod has extensive experience in the Indian financial services sector, having served as Group General Counsel at ICICI group, General Counsel for Citi South Asia cluster, as a partner at IndusLaw and as General Counsel of ICICI Bank, with many professional accomplishments in such roles.

He has also served as a member of the Board of Directors of ICICI Securities Ltd, ICICI Prudential Trust Ltd, ICICI Trusteeship Services Ltd, and as a member of the National Committee for Regulatory Affairs of the Confederation of Indian Industry (CII), of the Advisory Council of Sahamati & of the SEBI Subcommittee for Regulatory Sandbox.

Pramod has a deep interest in Fintech, LawTech & startups: He has co-founded a LawTech enterprise, & served as a Board member of 2 startups. He also advised & mentored startups under the aegis of ICICI Bank’s Startup Engagement Team & its Innovation Lab, NSRCEL of IIM Bangalore, SINE of IIT Bombay & of No Changemaker Left Behind program by Agami. He has also led piloting and adoption of innovative approaches and technology-led solutions for various business, operational and legal requirements. He has collaborated on certain iSPIRT projects including Sahay-GeM and the Sahamati AA Ecosystem.

He has played a pivotal role in conceptualizing & adoption of online dispute resolution (ODR) at ICICI Bank & digital ecosystems such as Sahamati, Sahay GeM, Sahay GST and ONDC. He also engaged with policy makers, the government & the judiciary on ODR, which culminated in the Niti Aayog constituted committee report on Designing the Future of Dispute Resolution: The ODR Policy Plan for India, available at <https://bit.ly/3AVS247>, & in the launch of ODR Handbook, available at www.disputeresolution.online

Pramod has also been associated with IDIA – Increasing Diversity by Increasing Access – an NGO dedicated to assisting students from underprivileged backgrounds in attending premier law schools in India. He has served as a founding member of the Governing Board of the NLSIU Alumni Association from 2015-2020.

He has participated in & contributed to various law and regulatory reform initiatives of the government, regulators & industry forums, and written or contributed to several papers containing his personal view and opinions on matters of law and policy including for SCC Blog, IndiaCorplaw Blog, ARIA and for reputed digital business news platforms.



About ARIA

The Association of Registered Investment Advisers (ARIA) was born out of the need to support the development of the investment adviser community post the introduction of the investment adviser regulations by SEBI in 2013. ARIA was set up as a part of the inaugural RIA summit in 2017 from where an RIA Task force emerged to enable the development of the RIA profession, and bring it to the standards of other established professions that have been in existence since multiple decades. ARIA members come from different parts of the country and are a mix of individuals and corporates who are focussed on doing what is right for the investor without conflict of interest or high levels of disclosure.

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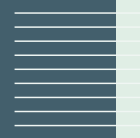


Association of
Registered Investment Advisers

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