



The Status Of Nominees And Legal Heirs In The Statutory Laws Of Bangladesh With Reference To The Islamic Legal Principles

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Abstract:

A nomination is a facility provided to depositors of commercial banks, insurance companies and other financial institutions in Bangladesh and it is essential for the account or policy holder to nominate one or more persons as a nominee under both the statutory laws of Bangladesh and the Islamic law. If a depositor opts for a nomination facility for his deposit, it will be very easy to claim the deposit amount in the event of the death of the depositor. The question arises as to the legal position or right of a nominee in a bank or financial institution or insurance policy, for example, whether a nominee could be regarded as the owner of the account or policy; or a mere trustee to receive the benefits accordingly from the bank or financial institution or insurer and to distribute them to the right beneficiaries. In this research, an attempt has been made to analyze and compare the legal position and the rights of the nominee under both the statutory laws of Bangladesh and the Islamic legal principles by adopting qualitative and analytical research methods.

Keywords: *Nominee, Legal Heirs, Statutory laws, Islamic legal principles, Bangladesh.*

1.Introduction

At one time, it was a practice under the common law that a person who would be nominated as a beneficiary under a policy had no right to claim from the insurer as there was no privity between the nominee and the insurer. In the later stages of the development of the insurance industry, the attitude towards this issue has changed, and the nominee, whose name is included in the proposal form, would be regarded as an absolute beneficiary under the policy. Usually, the property of a deceased person is distributed among his/her legal heirs according to his/her personal law. However, in some cases, in particular when a person takes a life insurance, he needs to have a nominee to receive the money as well as the liabilities after the death of that person. In this case, only the person nominated is entitled to receive the money which is controlled by the Insurance Act, 2010 but what, the position of the legal heirs will have, has not been cleared whether the legal heir will be excluded by the nominee or not. What will be the position of a nominee, whether he has the exclusive right over the money or will he act as a trustee or an executor on behalf of the legal heirs? If a nominee has an exclusive right over the property, it will be completely in contradiction with the Muslim personal law. Therefore, the above circumstantial situation becomes a complex and ambiguous concept regarding the law of nomination.

If one does not make a nomination in his insurance policy, saving bank account, or post office, then those institutions are not obligated to release the policy money or savings money until the legal heir obtains a Grant of probate or Letter of Administration or Distribution Order which may take a long time to process. However, if a nomination is made, the policy money can be disbursed much faster without the need to obtain the Grant of Probate or Letter of Administration or Distribution Order.

A nominee is a person who is named (nominated) in an insurance policy by the policy owner. Most of the statutory laws of Bangladesh have not defined the word “nominee” but the Wage-earner Development Bond Rules, 1981 has defined the word *nominee*.¹ According to the legislation, ‘nominee’ means the person named by the purchaser of the Bond to receive the amount(s) due against the Bond in the event of the death of the holder of the Bond and to receive the death risk benefit in the event of the death of the wage-earner who purchases the Bond(s).²

¹ Section 2(5) of the Wage-earner Development Bond Rules, 1981

² *Ibid.*

According to the law of India, a nominee is a trustee not the owner of the assets. In other words, he is only a caretaker of the assets. The nominee will only hold one's money/asset as a trustee and will be legally bound to transfer it to the legal heirs. For most investors, a legal heir is entitled to the deceased's assets. For instance, the Insurance Act says that the nominee will be paid, though he may not be the legal heir. The nominee, in turn, is supposed to hold the proceeds and the legal heir can claim the money.³

A legal heir will be the one who is nominated in the will. However, if a nominee is not made, then the legal heir of the assets are decided according to the succession law, where the structure is predefined on who gets how much. For example, if a man, during his lifetime, makes a will mentioning his wife and children as his legal heirs, then after his death, his wife and children are the legal owners of the assets, hence, it is essential that one needs to execute a will. If it is the ultimate source of truth to replace the succession law, a nominee can also be one of the legal heirs.

There is a difference of law as applied to a nominee between Bangladesh and India. In Bangladesh, a nominee is absolutely entitled to the money deposited in the event of the death of the depositor excluding the rights of others. On the other hand, in India, a nominee is right conferred on the holder of a policy of life on his own life to appoint a person/s to receive the policy money in the event of the policy becoming a claim on the assured's death. The nominee does not get any other benefit except to receive the policy money on the death of the life assured.

2.The Legal Position Of Nominee And Legal Heir Under The Government Savings Banks Act, 1873

The Government Savings Banks Act, 1873 has not fully defined the words "nominee and legal heirs". It provides that a depositor shall nominate a nominee who will receive the deposits in the event of the death of the depositor wherein a legal heir will be excluded by the nominee according to this Act. It provides that the nominee will have an exclusive right to receive the deposits on the death of the depositor. A legal heir is entitled to the deposits when the depositor dies without making any nomination. Section 4 of the Government Savings Banks Act, 1873 has incorporated the position of the nominee and legal heirs. The provision regarding the nominee and legal heir under the said act is given below:

³ Section 39 of the Insurance Act 1938

2.1.Payment On Death Of Depositor

A depositor may make a nomination conferring upon any person or persons the right to receive on the death of the depositor the whole or any part of the deposit standing to his credit in such manner and form as may be prescribed by the rules of the government savings bank. The nominated person shall be entitled to receive the deposit or part of it to which the nomination relates.⁴ This provision shall not affect any other law in force or any deposition whether testamentary or otherwise by the depositor.⁵

Where any person nominated under the Act dies before the death of the depositor or before he has received any sum, there under the nomination shall cease to have any effect.⁶ A depositor may, by a notice to the postmaster concerned in such form as may be prescribed for the purpose, at any time vary or cancel any nomination made by him.⁷

In any case where-

- A depositor dies without making any nomination under this Act in respect of the whole of the deposit standing to his credit or after any such nomination, if made, has ceased to have effect.
- The deposit or the part of the deposit in respect of which no nomination has been made does not exceed twenty-five thousand take; and
- the probate of the will of the depositor, or the letters of administration of the estate, or a succession certificate under the Succession Act, 1925 is not, within three months of the death of the depositor, be produced to the Secretary of the Government Savings Bank concerned.

Payment of the deposit, or the part of aforesaid, may be made to the person appearing to be entitled to receive it or to administer the estate of the deceased by the Secretary or be any officer employed in the management of the Government Savings Bank who is empowered in this behalf by a general or special order of the Government to the extent to which he is so empowered and subject to any general or special order of the Secretary in this behalf.⁸

⁴ Section 4 (1) of the Government Savings Banks Act, 1873

⁵ Section 4 (2) of the Government Savings Banks Act, 1873

⁶ Section 4 (3) the Government Savings Banks Act, 1873

⁷ Section 4 (4) of the Government Savings Banks Act, 1873

⁸ Section 4 (5) of the Government Savings Banks Act, 1873

3.The Legal Position Of Nominee And Legal Heir Under The Post Office National Savings Certificate Ordinance, 1944

3.1.Payment On Death Of Holder Of Savings Certificate

Section 4 of the post office National Savings Certificate Ordinance, 1944, deals with the nominee in the case of savings in the post office. According to this section, a nomination in a post office national savings certificate will be made in the manner provided in the Government Savings Banks Act 1873. That means the depositor shall make a nomination at the time of opening the savings certificate to receive the money at the death of the depositor. The provision of this section shall not affect the disposition of the money by testamentary or other ways. The nomination can be cancelled by the death of the nominee before the death of the depositor or by giving notice to the Post Master General, cancelling the nomination made by him. Where no nomination is made or if a nomination is made but has ceased to have effect or and the deposit does not exceed three thousand taka or the probate of the will of the depositor, or the letters of administration of the estate, or a succession certificate under Succession Act 1925 is not within three months after the death of the depositor, be produced to the Post Master General concerned the payment of the deposit may be made to the person appearing to be entitled to receive if or to administer the estate of the deceased. The power conferred by the provisions on the Secretary of a Government Savings Banks shall be exercisable by the Postmaster-General for the area within which the post office of issue of such savings certificate is situated or if that area is in India or Pakistan, by the Postmaster-General for such area in Bangladesh specified by the Government by a general or special order.

Where in any one case payment is to be made from savings certificates issued from more post offices than one, the said powers shall be exercisable by the Postmaster-General for the area in which any of the said post offices is situated.⁹

4.The Position Of Nominee And Legal Heir Under The Insurance Act, 2010

4.1.Nomination By The Policy Holder

⁹ Section 4 of the Post Office National Savings Certificate Ordinance, 1944

Before the enactment of the Insurance Act, 2010, the activities of the insurance company would be governed by the Insurance Act, 1983. Section 57 of the Insurance Act 2010 “deals with the nominee made by a policy holder. The holder of the policy of a life insurance on his own life may, when affecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. This is known as a nomination by the policy-holder. The person nominated by the policy holder is called the Nominee. The Insurance Act contains the following rules regarding nomination.

4.2.Procedure

Section 57 of the Insurance Act 2010, provides that the nomination may be incorporated in the text of the policy by the insurer to receive the money in the event of the death of the insured before the maturity of the policy. The nomination can be made to one or more persons. A minor may be made a nominee and in this case a person shall be appointed to receive the money in case of the death of the insured during the minority of the nominee.¹⁰ If a nominee is not made in the above process it can be made by an endorsement on the Policy. In the latter case, the fact of the nomination must be communicated to the insurer. A written acknowledgement of such communication shall be made by the insurer upon payment of a certain fee.¹¹

4.3.Discharge From Liabilities

The insurer is discharged from his liabilities under the policy by paying to the recorded nominee or nominees.¹² But if the policy matures for payment during the life time of the insured, the insurer shall pay the money to the policy-holder. If the nominee or all the nominees die before the policy matures the insurer shall pay the money to the policy-holder or his heirs or legal representatives or the holder of the succession certificate as the case may be.¹³

4.4.Cancellation And Change

¹⁰ Section 57 (1) of Insurance Act, 2010

¹¹ Section 57 (20) of Insurance Act, 2010

¹² Section 57(6) of Insurance Act, 2010

¹³ Section 57 (5) of Insurance Act, 2010

A nomination can be cancelled or changed by a further endorsement on the policy or by a will. The insured will be bound in such cases only after giving notice to the insurer of the cancellation or change. If the insurer is not duly served a notice of cancellation by the insured and subsequently the insurer gives the payment to the nominee in good faith, whose name is mentioned in the policy, then the insurer will not be held responsible for that payment.¹⁴

4.5. Automatic Cancellation

A transfer or assignment of a policy automatically cancels a nomination (except an assignment to the insurer to secure a loan).¹⁵ Where in any life insurance if the provision of Married Women's Property Act, 1874, is applicable, in this case the rules of section 57 of the Insurance Act, 2010 will not be applicable and it is not applicable in any life insurance of a person or his wife or child which is taken before the enactment of this Act and where the nominee is his wife.¹⁶

5. The Position Of Nominee And Legal Heir Under The Co-Operative Societies Act, 2001

The Co-operative Societies Act, 2001 does not define the word "nominee" and "legal heir". The act only deals with the nomination of a receiver. What will be the rights and responsibilities of the legal heirs in the shares of the members has not been stated. It has excluded the legal heirs in shares in the societies in case of the death of the members. It provides all the rights and liabilities in the shares to the person nominated. The Act has conferred an exclusive right on the nominee to receive the shares as well as the liabilities in case of the death of the members.

Section 40 provides that every member of the Co-operative Society will nominate an individual who is not the member of the society and who will acquire the shares, rights and liabilities incurred from that share in case of the death of a member. The law of inheritance will not be applicable to the provision of the Act and the person nominated

¹⁴ Section 57(2) of the Insurance Act, 2010

¹⁵ Section 57(4) of the Insurance Act, 2010

¹⁶ Section 57 (7) of the Insurance Act, 2010

by the members will hold shares and the rights derived from the shares and he will also hold the responsibilities of the shares.¹⁷

6.The Position Of Nominee And Legal Heir Under The Wag-Earner Development Bond Rules, 1981

Section 7 of the above mentioned Rule provides that the purchaser, where he himself is a wage-earner intends to purchase the Bond shall mention in his name and address of the person who shall be his nominee to receive the value of the Bond and interest payable thereon in the event of death of the Bond-holder before redemption of the Bond and to receive the death-risk-benefit in the event of his death and the death of the Bond-holder. The purchaser who is a beneficiary of the wage-earners' remittance shall similarly mention in the application the name and address of the person who shall be his nominee to receive the value of the Bond and the interest payable thereon in the event of his death before redemption of the Bond. In every case the nominee shall not be more than one.¹⁸

A nomination made under this Rule will cease to have any effect if the nominee dies before the death of the holder or before the nominee has received the maturity value of the Bond(s) or the death-risk benefit (if he is entitled to the same due to the death of the wage-earner).¹⁹

7.Cancellation Of Nomination

A Holder of a bond may cancel or vary the nomination made under Rule 7 at any time by a notice to the Issuing Authority.²⁰ Death of Bond-holder- In the event of the death of the Bond-holder, the nominee shall be entitled to draw the interest and the maturity value of the Bond.²¹

7.1.Death of Nominee

¹⁷ Section 40 of the Co-operatives Societies Act, 2001

¹⁸ Section 7 (2) of the Wage-earner Development Bond Rules, 1981

¹⁹ Section 7(3) of the Wage-earner Development Bond Rules, 1981

²⁰ Section 8 of the Wage-earner Development Bond Rules, 1981

²¹ Section 9 of the Wage-earner Development Bond Rules, 1981

When the nominee dies before the death of the Bond holder, the heirs of the deceased Bond holder shall be entitled to the interest and the maturity value of the Bond.²²

7.2. Payment To The Heir(S) Of The Deceased Holder

The heir(s) of the deceased Bond holder shall produce the probate of the will of the Bond holder or the letters of administration of his estate or a succession certificate under the Succession Act, 1925 within 6 (six) months after the death of the holder. In the event of failure to produce the above documents(s) in support of the claims under the Bond, the issuing authority shall pay the sums due in the Bond to the person(s) who appear(s) to be entitled to receive the same under the law.²³

8. The Position Of Nominee Under Islamic Law

It is important for the account or the policyholder to nominate one or more persons as a nominee under both the Bangladeshi law and the Islamic law. The question arises as to the legal position or right of a nominee in a account or in an insurance policy, for example, whether a nominee could be regarded as the owner of the account or policy; or a mere trustee to receive the benefits accordingly from the bank or insurer and distribute them to the right beneficiary. In this section an attempt has been made to analyze the legal position and the rights of a nominee in an account or in an insurance policy under the Islamic law.²⁴

There are several authorities under the Islamic law that justifies the nomination of a person as a trustee to hold a trust for personal properties and commercial transactions. The nominee is a trustee and it is governed under the Islamic law according to the doctrine of al-Amanah which means reliability, trustworthiness, good faith, faithfulness, honesty, and fidelity. The word al-Amanah means the trustee, guardian, agent, authorized representative, and safe keeper.²⁵ According to Al-Murghninani a nominee is

²² Section 10 of the Wage-earner Development Bond Rules, 1981

²³ Section 11 of the Wage-earner Development Bond Rules, 1981

²⁴ Professor Dr. Mohd. Ma'sum Billah, "Wffect of 'Nomination in Life Policy Insurance vs. Takaful Practices". <<http://www.takaful.coop.>>; accessed on 25 January 2013.

²⁵ Cowen. J Miltoon, a Dictionary of Modern Written Arabic, Hanssowitz, Wiesbadean, 1961, p. 278.

a person who is empowered by another to undertake the responsibility of his property as a trustee.²⁶

There are some Qur'anic verses dealing with the law relating to a nomination. They are as follows: "And those who faithfully observe their trusts and covenants."²⁷ There are situations whereby if a person is being entrusted or nominated to hold the minor's property as a trustee; it is the nominee's responsibility to hand over the property upon confirming the maturity of the minor. *Allah* says "make trial of orphans until they reach the age of marriage; if then you find sound judgment in them, release their property to them; but consume it not wastefully."²⁸ In another ayat Allah commanded not to betray the trust. *Allah (s.w.t.)* says "O you who believe betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you."²⁹ Again *Allah* commanded the trustee to return the trust to the right beneficiary "Verily Allah doth command you to render back your trust to those to whom they are due."

In other place also *Allah* warned against those who breach their trust. *Allah* says "Contend not on behalf of such as betray their own souls; for Allah loveth not one given to perfidy and crime."³⁰ Verily Allah will defend (from ill) those who believe: verily, Allah loveth not any that is a traitor to faith or shows ingratitude.³¹ If thou feareth treachery from any group, throw back (their covenant) to them, (so as to be) on equal terms: for Allah loveth not the treacherous.³²

There are different opinions, among the practitioners as well as the Islamic scholars, on the nomination. Some claim that a nominee, in an account or in an insurance policy, should be regarded as the owner of the account or policy who must have the absolute right to be the beneficiary over the account or policy. Some think that the nomination in an account or in a policy is necessary and the benefits would be obtained by the nominee in the account or policy as a gift.

²⁶ Ibid.

²⁷ Al-Quran, Surah Al-Mumimun 23:8

²⁸ Al-Quran, Surah Al Nisa 4:6.

²⁹ Al-Quran, Surah Al Nisa 4:58.

³⁰ Al-Quran, Surah An Nisa 4:107.

³¹ Al-Quran, Surah Al Hajj 22:38.

³² Al-Quran, Surah AL Anaf 8:58

However, most of the people deny the above views because it is a clear contradiction with the Islamic succession law. The account or policy holder is the one who should be regarded as the owner of the account or policy and after death of the account or policy holder, the nominee will receive the property as a trustee and will distribute them among the legal heirs of the account or policy holder according to the Islamic law.

Based on the Qur'anic verses it is proven that a nominee is a trustee, and, therefore, a nominee shall not have any right to benefit from trust, but he should be under an obligation to hold the trust properly and render it back to the right beneficiary accordingly without demanding any interest over the trust.

9.Criticism And Recommendations

The laws dealing with a nomination should be very clear, sufficient and exhaustive but the existing laws relating to nomination in Bangladesh, such as the Insurance Act, 2010, the Government Savings Bank Acts, 1873, the Post Office National Savings Certificate Ordinance, 1944, the Co-Operative Societies Act, 2001, are not exhaustive because they do not cover all the aspects of the law of nomination. The existing laws in Bangladesh as mentioned above have not given any definition of the term "nominee" which is very highly necessary to understand the concept of nominee. The Acts also have not specified the name of the person and their qualifications who will be eligible to be a nominee.

Some of the Acts have mentioned that if a depositor dies without making any nomination the payment will be delivered according to rule of the Succession Certificate under *the* Succession Act, 1925. Some acts have not mentioned detailed legal prescriptions, such as, the Co-Operative Societies Act, 2001, on what if any depositor dies without making any nomination. This has created a conflicting situation with other laws relating to a nominee in Bangladesh.

From a critical analysis of the laws relating to a nominee, it has been observed that the laws are not clear and not enough to deal with the matter of nomination. Therefore, an exhaustive and uniform Act should be enacted which will provide the following provisions:

- An acceptable and clear definition of a nominee.
- Mention the persons who become nominees.
- Qualification and disqualification of a nominee.
- Power and function of a nominee will have to be clearly mentioned.

- Grounds for the cancellation of a nomination.
- Who will be entitled to the deposited money if the depositor dies, without nominating a nominee, should be mentioned.
- Portion of the deposited money to the nominee should be clearly mentioned.
- Powers and duties of the institutions working with the nominee should be clearly mentioned without any ambiguity.

10. Conclusion

Based on the judicial decisions, *Fatwa*, and views expressed by the judges and the Islamic scholars, it is summed up here that, in a bank account or in an insurance policy, there is nothing wrong for the account or policy holder to nominate someone for the security and fair distribution of the benefits over the policy. The nomination shall not constitute a gift or an ownership over the benefits of the account or policy but only a mere trust in which the nominee is under an obligation to receive the benefits from the policy and to distribute them among the beneficiaries of the account or policy holder according to the Islamic legal principles. If the nominee is among the heirs of the account or the policyholder, then the nominee is entitled only to the portion of the benefits according to the Islamic legal principles, but if the account or the policyholder makes a will for the nominee, he may get only up to one-third of the benefits, and if the nominee is among the heirs of the account or the policyholder; and the account or the policyholder makes a will for the nominee, he may be entitled only up to one-third of the benefits, subject to the consent of the other heirs of the account or the policy holder.

On the other hand, a Nomination is also legally accepted under the statutory laws of Bangladesh and various Acts have framed rules relating to the nomination. It is significant to note that all the acts recognize the importance of a nomination, but some Acts provide for the nomination expressly overriding succession laws. Further, it is really a matter of great regret that there is no exhaustive statutory law regarding a nominee in Bangladesh. As a result, most of the people of our country do not have a clear concept regarding the nominee and usually it creates a misconception among the people regarding the nominee and it also creates complexities among the people when they have to deal with the matters of nominee. So, the government should be prompt to make a uniform law relating to the matter of a nominee where a clear definition of the nominee, the formation and the functions of the institution working with the nominee

and the position of the nominee should be clearly mentioned for the purpose of removing all the complexities and ambiguities among the various laws relating to the matter of the nominee.

11.Reference

1. Ahmed, A. (2001). Mohammedan Law. Allahabad: Law Publisher.
 2. Al-Quran.
 3. Rahman, T. (1980). A Code of Muslim Personal Law. Karachi: Islamic Publishers.
 4. Sen, A. K. (2006). Commercial Law including Company Law and Industrial Law. Kolkata: The World Press Limited.
 5. The Wage-earner Development Bond Rules, 1981
 6. The Wage-earner Development Bond Rules, 1981
 7. The Government Savings Banks Act, 1873
 8. The Post Office National Savings Certificate Ordinance, 1944
 9. The Insurance Act, 2010
 10. The Co-operatives Societies Act, 2001
 11. The Insurance Act 1938
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