



## Clearing up the legal position of a nominee in the statutory laws of Bangladesh

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### Abstract

This article is about the specific legal position of nominee in statutory laws of Bangladesh. The actual role of nominee they play in various spheres of our life. This article focuses not only on the status of nominee but also recommendations regarding the matter of nominee in a word and exclusion of legal heirs by nominee in some statutory laws. Though the topic of nomination is an important concept but the actual position of it in different laws is not clear to us. This article is an attempt to specify the position of nominee in our country under different laws. This study is a step to develop the concept of nominee by considering some recommendation included in this article. It also states that how nominee plays its role in the present context of Bangladesh.

**Keywords:** Nominee, statutory laws, The Insurance Act 2010, The Government Saving Banks Act 1873, The Post Office National Saving Certificates Ordinance 1944, The Cooperative Societies Act 2001

### Introduction

Nominee is one of the most common concepts in several statutory laws of Bangladesh as well as our daily life. In Bangladesh, this topic is used in many sectors. Nominee is very much related to Bank account, life insurance policies, accident insurance policies, general provident fund, and pension of government employee or other assets. Nominee is widely used as a beneficiary of the asset of the deceased person. A nominee must be nominated by the person who is the owner of that asset. He must be selected during the lifetime of a deceased person. Like many other countries nominee is the most essential topic in Bangladesh. It has legal value declared by the various laws of Bangladesh. The concept of nominee includes various statutes covering the matter related with banking <sup>[1]</sup>, insurance <sup>[2]</sup>, co-operative societies <sup>[3]</sup>, post office saving certificate <sup>[4]</sup> etc. But the basic concept of nominee is almost same in those statutes.

If any person dies and he has an account in Bank or insurance company concerning life or he was a member of co operative society then his nominated person will receive the money of the account of policy. And he will also receive all the liabilities of dead person according to the laws. A nominee is not a legal heir and as such, is not entitled to any money left by the deceased nominator, he is merely entitled to withdraw the money and to distribute the said withdrawn money amongst the legal heirs of the deceased. The entitlement of share of the legal heirs of the deceased as per section 103(1) and 103(3) of the Bank Companies Act, 1991 curtailed the right of inheritance of the legal heirs of the deceased in the case where the deceased had appointed nominee <sup>[5]</sup>.

### Definition of Nominee

In wider sense nominee includes a potential successor to another's rights under a contract or any other document. So, nominee means that person who is nominated to enjoy any property by the death of the owner of that property. It signifies the concept of representation apart from the doctrine of representation under Muslim Law <sup>[6]</sup>. The rights and liabilities accrued from the property of a deceased

belong to the nominee in accordance with the laws. In Bangladesh, however, nominee is used for the beneficiary of the assets. If a person dies leaving a bank account or pension or general provident fund then the nominee will be the owner of the asset. The *Cooperative Societies Act, 2001* depicts nominee as an owner as well as representative. So, it can be said that in Bangladesh the word nominee is used as both as an owner and a representative.

It is a common question that what is the position of nominee in statutory laws of Bangladesh? It has been already stated that the concept of nominee in India and Bangladesh is almost different. So, there is bewilderment about the actual position of nominee. Another question is that what are the roles played by nominee? Many of us in our society do not know the actual function of nominee. It should be made clear whether there is really any conflict between statutory laws and Muslim Law of Succession. It is very normal that there may be perplexity about the function of a nominee. The reason is that In India and Bangladesh the function of nominee is not same. So, the position, function, activities of nominee in the context of Bangladesh should be made clear.

### Who can be a nominee?

Generally, a person may be a subject matter of nomination. Even a minor may also be a subject matter of nomination. Where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee <sup>[7]</sup>.

### Position of nominee under statutory laws of Bangladesh

There are some statutory laws which include the idea of nominee and legal heir. These acts notify that how nominee excludes the legal heir in Bangladesh context. The concept of nominee in Bangladesh is not the same as India. The function of nominee in India is almost different from Bangladesh. In India, nominee is treated as a trustee not the owner of the property of a deceased person. But in Bangladesh, nominee is always treated as owner of the estate of the deceased person.

The acts dealing with the matter of nomination are The Insurance Act 2010, The Government Saving Banks Act 1873, The Post Office National Saving Certificates Ordinance 1944, The Cooperative Societies Act 2001, and Rajshahi University Act, 1973.

### **Nominee under Insurance Act 2010**

The concept of nomination sets up a clear title to the policy. Section 57 of *the Insurance Act 2010* provides for nomination of a person (nominee) who would receive the benefits of the claim on the death of the life assured. It prevents dispute and also prevents delay in settlement of a death claim.

The nomination can be done at the beginning of the policy, by providing details of the nominee in the proposal form. If the nomination is not given at the beginning, it can be done at any time during the term of the policy. This nomination has come into operation by giving a notice in a prescribed form to any insurance company. *The Insurance Act 2010* denoted nominee by notifying the topic called "nomination by policy holder." Here it is stated that-

The holder of a policy of a life insurance on his own life may when effecting 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 called nomination by policy holder. The person named is called nominee. The Insurance Act contains the following rules regarding nomination:

#### **1. Procedure**

Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer. The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one Taka for registering such cancellation or change<sup>[8]</sup>.

#### **2. Discharge from liabilities**

The insurer is discharged from his liabilities under the policy by paying to the recorded nominee or nominees. But if the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees, than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be<sup>[9]</sup>.

#### **3. Cancellation or change of nominee**

A nominee can be cancelled or changed by a further endorsement on the policy or by a will. The insurer will be bound in such cases only after notice is given to him of the cancellation or charge<sup>[11]</sup>.

#### **4. Automatic termination**

A transfer or assignment of a policy automatically cancels a nomination (except an assignment to the insurer to secure a loan<sup>[11]</sup>.)

#### **5. Effect of Nomination**

Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors. It means if the person to whom life is insured is dead the amount secured will go to the surviving nominee or nominees<sup>[12]</sup>.

#### **6. Inapplicability of nomination**

The provisions of section 57 shall not apply to any policy of life insurance to which section 6 of *the Married Women's Property Act, 1874*, applies or has at any time applied<sup>[13]</sup>. *The Married Women's Property Act, 1874* denoted that a policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing. Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors<sup>[14]</sup>. This section denoted that if any married person makes any insurance for the benefit of his wife and children then it will be treated as a trust and it shall not remain under control of him or his creditors. But if the insurance is made to defraud the creditors then this section shall not have any effect upon this circumstance.

#### **7. Death of nominee**

If the nominees or nominee die before the policy matures for payment section 57(5) of *the Insurance Act 2010* denotes the procedure. Here it is stated that-Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees, than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be<sup>[15]</sup>. Provided that where a nomination made whether before the commencement of *the Insurance Act 2010*, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy<sup>[16]</sup>.

#### **Difference between the position of nominee in insurance in India and Bangladesh**

There are some basic differences between the position of nominee in India and Bangladesh. In India, nominee is treated as a trustee not the owner of the assets. He is only a

caretaker of one's assets. In India, there are a lot of case laws regarding the matter of nominee. It is stated in a leading case regarding nomination in India that-

"So far as nomination is concerned we do not see any appreciable difference between the English and American law on the one hand, and what obtains in our country. According to the English law the payee or the nominee is nothing more than an agent to receive the money, which money remains as the property of the assured and at his disposal during his life time and on his death forms part of the estate. The result is that the payee or the nominee takes no beneficial interest in it [17]."

In another leading case it is stated that in another case which is treated as the most significant judgment of the Supreme Court of India on the position of a nominee in the context of life insurance policy the finding is quoted below-

"A mere nomination made under section 39 of *the Insurance Act 1938* does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them [18]."

The judgment of that clearly indicates that the nominee plays a role of only a representative of the assets who will hold the liabilities to distribute the properties among the legal heirs after the death of insurer. But the recent decision of the Bombay High Court as differentiated from the decision of *Sarbati Debi* held that-

"On the death of the shareholder the nominee would become entitled to all rights in the shares to the exclusion of all other person [19]."

The latter judgment [20] of Bombay High Court shows similar concept of nominee what Bangladesh holds. In Bangladesh, the law of insurance has declared nominee as an owner by the death of the insurer. Though there are no notable case laws in Bangladesh but there is a statutory law which declares the nominee as an owner. Nominee can enjoy every rights and liabilities of the estate on the death of the insurer. The statutory law is- *the insurance Act 2010*.

#### **Position of Nominee under the Insurance Act**

Section 57(1) of the Insurance Act 2010 clearly delineates the position of nominee apart from the position of mere a trustee. This section subject to the conditions permits minor as a nominee. But during the minority if the policy holder dies an appointed person will receive the money secured by the policy. So the position is clear that the expression of nominee used in the statute and the person appointed to receive money is not same. This section described that Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors. It means if any nominee stays alive at the time of the death of the policy holder nominee will get the money ascertained by the policy holder. When the policy money becomes due for payment on the death of policy holder, it can be paid only to the person who is legally entitled to give a valid discharge to the corporation.

For quick settlement of claims, it is in the interests of the policyholders to effect a nomination in respect of their policy. So, nomination is a right conferred on the holder of a policy of life assured on his own life to appoint a person/s to receive policy moneys in the event of the policy becoming a claim by the assured death. A nomination may be changed or cancelled by the life assured whenever he likes without the consent of nominee. And ensure nomination exists in the policy for easy settlement of claims [21].

A life insurance policy is also generally accepted as security, even it encourages thrift. Saving through life insurance guarantee is full protection against risk of death of the saver. The reason is that if the saver dies money will go to the nominee elected by him. In case of death; life insurance assures payment of the entire amount assured to the nominee. A policy that has a suitable insurance plan or a combination of different plans can be effectively used by the nominee to meet certain monetary needs that may arise from time to time. Children education, start in life or marriage or even periodical needs for cash over a stretch of time can be less stressful with the help of this policies. Policy money can be made available at the time of one's retirement from service and used for any specific purpose such as purchase of house or for other investments [22].

#### **Nominee under the Government Savings Banks Act, 1873**

Section 4 of the Government Savings Banks Act 1873 depicts regarding the matter of nominee. This section deals with nomination and payment on death of depositor. It gives a clear conception regarding the matter of nomination.

##### **a. Appointment of nominee**

A depositor may, in such manner and form as maybe prescribed by rules of the Government Savings Bank, make nomination conferring upon any person or persons the right to receive on the death of depositor the whole or any part of the deposit standing to his credit [23]. By this section a depositor can appoint a nominee for receiving his deposit in death of him. It may be whole or any part of the deposit.

##### **b. Exclusion of all other person by nominee**

The person or persons nominated under sub section (1) shall notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, by a depositor of the deposit of any part thereof, be entitled, to the exclusion of all other persons or receive the deposit or part which the nomination relates [24]. This section clearly narrates the position of nominee in the statutory laws of Bangladesh. Here it is said that notwithstanding anything contained in any other law no one exclude the nominee to receive his money in the death of depositor.

##### **c. Cancellation of Nomination**

Where any person nominated under subsection (1) dies before the death of the depositor or before he has received any sum thereunder, the nomination shall cease to have any effect [25]. This sub section denotes the cancellation of nomination. It is stated that if the nominee dies before the death of the depositor or before receiving money the nomination will be cancelled.

#### **d. Alteration or cancellation of nomination by depositor**

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 under subsection (1) <sup>[26]</sup>. This section gives the power to the depositor to alter or cancel the nomination at any time while he is alive. A notice should be given to the postmaster for this alteration or cancellation.

#### **e. Where there is no nomination**

In any case, where a depositor dies without making any nomination under sub section (1) in respect of the whole of the deposit standing to his credit, or after any such nomination, if made, has ceased to have effect under sub section (3) <sup>[27]</sup>. This subsection denoted that when a depositor dies and there is no nominee or after any such nomination, if made, will be cancelled.

#### **f. Limitation of money where there is no nominee**

In any case where the deposit or the part of the deposit in respect of which no nomination has been made does not exceed twenty-five thousand taka <sup>[28]</sup>. This subsection depicts that the limitation of money where there is no nominee is twenty-five thousand taka.

#### **Position of Nominee under the Government Saving Banks Act**

This Act noticeably denoted the position of nominee. Section 4(2) of this Act clearly depicted that notwithstanding anything contained in any other law, for the time being in force or in any disposition, testamentary or otherwise, by a depositor of the deposit or any part thereof, entitled to the exclusion of all other person by nominee. This section gives a clear right to the nominee in the matter of bank deposit. Nominee will exclude all other person in matter which the nomination relates. So, it can be said that nominee always act as an owner of the property in the death of the depositor. He enjoys all the rights and benefits at the death of the owner of the deposit.

#### **Exclusion of Legal Heir by nominee under the Government Savings Banks Act**

The nominee will exclude all persons whether he is a legal heir or not in the context of getting the deposit. If there is a nominee and notwithstanding anything contained in any other law for the time being in force or in any deposition, whether testamentary or otherwise will be excluded from getting the deposit. So, it can be clearly said that in this Act if nominee is alive he will leave out all the legal heirs <sup>[29]</sup>.

#### **Nominee under the Post Office National Saving Certificates Ordinance 1944**

*The Post Office National Saving Certificates Ordinance, 1944* also depicted in the matter of nomination. This act positively maintained or followed the Government Saving Banks Act, 1873 concerning the matter of nominee. This ordinance denotes the matter that payment on death of holder of saving certificate. It stated that if a person dies and is at the time of his death the holder of a saving certificate, payment of the sum for the time being due thereon may be made in the manner provided in *the Government Savings Banks Act, 1873* for the payment of deposits belonging to the estate of deceased person and the provision of section 4

to 9 of the said Act shall apply accordingly as if the holder of the savings certificate were a depositor in a Government Saving Bank and the sum for the time being due on the certificate were a deposit in such a bank <sup>[30]</sup>. This section followed section 4 of the Government Saving Banks Act, 1873. Actually, the subject matter of the both Acts is almost same. One deals with bank saving and another is saving certificate. In this Ordinance nominee is used as an owner of the saving certificate of the deceased person. If the person dies nominee will be owner of his saving certificate.

#### **Nominee under the Co-operative Societies Act 2001**

*The Co-operative Societies Act 2001* denoted the matter of nomination. And it gives a clear conception to the nominee. This act clearly deals with the matter of nomination in sections 40 and 41. It is stated in the Act that every member of a primary co-operative society shall nominate an individual who is not a member of that co-operative society and shall acquire all rights and liabilities and share in the death of the member and no law relating to inheritance will not be effective and such nominated person will acquire all rights and liabilities relating to share <sup>[31]</sup>. It is also stated in Co-operative Societies Act that if any member of the co-operative Society loses his membership his acquired interest relating to share will be surrendered to him or his nominated person <sup>[32]</sup>.

#### **Position of Nominee under the Co-operative Societies Act**

The history of cooperatives in Bangladesh is more than a century old. Recognizing the role played by cooperatives in the improvements of socio-economic conditions of the people in the past, the constitution of Bangladesh has given a special importance to them. While lying down the principles of ownership, Article 13 of the Constitution has placed cooperatives in second position of ownership preceded only by state ownership. Now, the activities of cooperatives in the country are directed by Samabay Samity Ain 2001 (the Cooperative Societies Act 2001).

Sections 40 and 41 of *the Co-operative Societies Act 2001* clearly stated the status of nominee. It also stated nominee will be preferred at first and no law of inheritance will be effective in this regard. If the member of co-operative society dies the nominee will achieve the rights and liabilities of share. Section 41 of the said act also depicted the position of nominee. It is stated that if any member loses his membership his acquired interest regarding share will be surrendered to him or his nominee. So, this Act gives a clear conception regarding the matter of nominee.

#### **Position of Nominee under the Rajshahi University Act, 1973**

Nomination of Group Team Insurance scheme is directed according to *the Rajshahi University Act 1973*. Section 56 deals with the pension and provident fund, group insurance, benevolent fund etc. The position of nominee under this act is a little different than any other nomination process. Here nominee can be cancelled by certain acts indicated by the related teacher or employee. If the nominee dies before the teacher or employee legal heirs will not get the money if the last column is fulfilled.

### Conclusion

Finally, it can be said that the word nominee possessed a significant place in some statutory laws in Bangladesh. But most of the people of this country don't have any clear conception regarding the matter of nominee. Though nominee has placed an important place but there is no separate law regarding nomination where definition, qualities and cancellation of nominee will be depicted. So, if the Government take steps to enact any act regarding nomination it will be helpful for the general people to understand the notion of nominee. The concept of nomination is almost same in all statutory laws of Bangladesh. So, there is no scope to conflict among the laws. It will be easy for the legislator to make a unitary law in the matter of nomination. The government should take necessary steps to make a unitary law regarding the matter of nomination.

### References

1. The government Saving Banks Act, 1873
2. The Insurance Act, 2010
3. The Cooperative Societies Act, 2001
4. The Post Office National Saving Certificate Ordinance, 1944
5. Judgment of the Hon'ble High Court Division reported in 73 DLR (HCD) Page-227 and also the judgment reported in 71 DLR (HCD) Page-137.
6. Section 4 of Muslim Family Laws Ordinance, 1961
7. Section 57(1) of The Insurance Act 2010
8. Section 57(2) & (3) of the Insurance Act 2010
9. Section 57(5) Ibid
10. Section 57(2) Ibid
11. Arun Kumar Sen and Jitedra Kumar Mitra, Commercial Law including Company and Industrial Law, 26 ed P 421
12. Section 57(6) Ibid
13. Section 57(7) Ibid
14. Section 6(1) of the Married Women's Property Act, 1874
15. Section 57(5) of the Insurance Act 2010
16. Section 57(7) Ibid
17. D. Mohanavelu Mudaliar and Anr. vs Indian Insurance And Banking AIR 1957 Mad 115
18. Sarbati Devi v. Usha Devi AIR (1984) Supreme Court 346.
19. Harsha Nitin Kokate v. The Saraswat Cooperative Bank Ltd. And others, Notice of Motion no 2351 of 2008 in suit no 1972 of 2008
20. ibid
21. Nomination of life insurance, [Lifeinsuranceno1.blogspot.com/2011/07/nomination-in-life-insurance.html](http://Lifeinsuranceno1.blogspot.com/2011/07/nomination-in-life-insurance.html)
22. Benefits of life insurance, [Lifeinsuranceno1.blogspot.com/2011/06/life-insurance-benefit.html](http://Lifeinsuranceno1.blogspot.com/2011/06/life-insurance-benefit.html), (June 2011)
23. Section 4(1) of the Government Savings Banks Act, 1873
24. Section 4(2) ibid
25. Section 4(3) ibid
26. Section 4(4) ibid
27. Section 4(5)(a) of the Government Saving Banks Act, 1873
28. Section 4(5)(b) ibid
29. Section 4(2) of the Government Saving Banks Act 1873
30. Section 4(1) of The Post Office National Saving Certificates Ordinance, 1944
31. Section 40 of The Co-operative Societies Act ,2001
32. Section 41 of The Co-operative Societies Act ,2001