Law and Society Students' Journal, Vol 2, No. 1 [2024] Article
DOI: 10.5281/zenodo.10784241
ISSN (Online): 2959-6297
ISSN (Print): 2959-6289

Legal Status of Nominee: The Dilemma in the Context of Bangladesh

Tahsin Bin Zafar*

Abstract

In the Indian sub-continent, the idea of a nominee has been introduced by the British Colonial rulers. This concept has prevailed in Bangladesh for more than a century. This is one of the basic concepts related to financial transactions and asset distribution. A nominee is essential for the disbursement of the deceased's assets e.g. money deposited in a bank, provident fund, insurance money, etc. However, different views prevail in Bangladesh related to the legal status of a nominee. Some existing legal statutes as well as judicial decisions compare the role of a nominee with a trustee. According to this view, a nominee only receives the benefits and is obliged to distribute them among the legal heirs of the deceased. Just like a trustee, a nominee holds the assets for the benefit of others. At the same time, some legal statutes and judicial decisions consider a nominee as an absolute owner of the nominated assets. There is hardly any consistency among the existing legal statutes related to the status of a nominee. Differences in judicial decisions while determining the status of a nominee create further anomalies. This study aims to find out the drawbacks and shortcomings of the current legal framework in this regard. The study further explores the possible solutions to mitigate the confusion concerning the legal status of a nominee. In doing so, the author applies qualitative research methodology along with document analysis for the understanding of existing laws related to nominees.

Keywords: Nominee, Bangladesh, financial institution, ambiguous legislation, and shariah law.

Introduction

Nominee in general terms denotes a person who is nominated by another to receive a legal benefit or right upon the fulfillment of some certain condition.[1] However, the plain definition of a nominee does not clarify the exact legal status of a nominee. There are several interpretations of the term. Some[2] characterize the nominee as a mere receiver and

* LL.M Student, Department of Law, University of Rajshahi, Rajshahi

[1] Abul Kasem. "RESEARCH MONOGRAPH: Position of Nominee and Legal Heir in Statutory Laws of Bangladesh and Muslim Law of Succession" (June 2, 2016). *Bangladesh Journal of Law Studies*, Chapter 2, ISSN 2415-136X (online) Available at BDJLS < https://bdjls.org/position-of-nominee-and-legal-heir-in-statutory-laws/3/>

[2] *Md Munjurul Hoque v Bilkis Ara Begum* [2016] civil revision no 1682 of 2015; *Sarbati Devi vs. Usha Devi* AIR 1984 SC 346

distributor of the funds of the nominator. Others[3] portray a nominee not only as the receiver of the fund of the nominator but also as a person who can personally enjoy them for his own benefit. This conflicting view could be mitigated either by clear statutory provisions or by homogenous judicial precedents. Unfortunately, in Bangladesh, the statutory provisions regarding the status of the nominee are not clear and self-explanatory. Also, the judicial decisions lack consistency among them in this regard, which ultimately creates confusion among the general people about the legal status of a nominee in Bangladesh. This inconsistency raises the question of whether the legal status of a nominee in Bangladesh is only of a mere receiver or whether he has absolute rights over such property.

This study aims to find out the anomalies in the statutory provisions and in the judicial decisions related to the legal status of nominees in Bangladesh. To identify the legal problems concerning this issue the study explores the existing laws of Bangladesh. The study further examines several judicial decisions and practices of different financial institutions to adjudge the real scenario in this regard. The research questions in the article are - is a nominee only a mere receiver of the legal rights nominated to him or does he have absolute rights over such property? What is the present legal scenario to ascertain the legal status of a nominee in Bangladesh and to what extent is the personal law of succession applicable to determine the rights of a nominee?

The study is based on qualitative information and documentary analysis. The primary data is collected by conducting individual interviews over phone calls with representatives from different banks. Data are collected using open-ended questions. This study significantly used secondary sources such as reviews of scholarly journals and newspapers. The judicial decisions of Bangladesh are reviewed in comparison to the judicial precedents of India and Pakistan.

Status of a Nominee in the Existing Legal Framework of Bangladesh

The concept of nominee is first introduced in the Indian Sub-continent by the British through legal enactments. Government Savings Banks Act, of 1873 is the first enactment in this region to introduce the concept of nominee. This Act enables a depositor to nominate any person or persons to receive the total or any part of the deposit money upon the death of the depositor.[4] This Act expressly mentions that a nominee has the right to exclude all other persons from receiving the deposit or part of which the nomination relates.[5] However, the wording of this Act does not provide clarity regarding the extent of the nominee's rights over the deposit. Whether the nominee will merely receive the money just to distribute them among the other successors of the deceased or the nominee can

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[3] *Zia Uddin v Arab Bangladesh Bank Ltd.* 6 MLR (AD) P.188, 52 DLR (HC),

[4] Government Savings Banks Act 1873, s 4(1).

[5] ibid s 4(2).

actually enjoy them for his own benefit, remains unspecified in this Act. Later, the Provident Funds Act, of 1925,[6] and the Sanchaypatra Rules, of 1977[7] also adopt similar provisions with similar ambiguity in its text.

Wage Earner Development Bond Rules, 1981 defines[8] a nominee as an individual designated by the purchaser of the bond to receive the amounts due against the bond in the event of the holder's death. Additionally, the nominee is entitled to receive the death risk-benefit if the wage-earner who purchases the bond passes away. Similar to the previously mentioned enactments, this definition of a nominee states that the nominee would receive the due amount but it does not clarify whether a nominee can enjoy them all by himself or he has to distribute the amount among the legal heirs of the deceased. The same ambiguity also prevails in comparatively modern enactments. As per the Insurance Act of 2010, a life insurance policyholder is also required to nominate an individual to whom the funds secured by the policy will be disbursed upon their death. In regular scenarios, if the policy matures during the policyholder's lifetime, he (policyholder) will be entitled to receive the payment. Similarly, in cases if the nominee(s) is predeceased before the maturity of the policy the policyholder (if alive), his heirs, legal representatives, or a holder of a succession certificate will be entitled to receive the policy money.[9]

The Bank Company Act, 1991 allows a depositor to nominate any person or persons to receive his deposited money from any banking company upon his death.[10] Though the basic concept of nominating any person is similar to the above-mentioned enactments this provision in the Bank Companies Act, 1991 has some significant changes related to the right of the nominee. It states that-

"… (nominee) attains all the rights the individual depositor had on that deposit, and every other person shall be deprived of those rights."[11]

Unlike, The Government Savings Banks Act, 1873 and the Provident Fund Act, 1925; the Bank Companies Act, 1991 expressly mentioned that a nominee shall not only have the right to receive the deposited money but also be entitled to all other rights of the depositor. But the term all the rights itself is subject to interpretation. While explaining the provisions in section 103(3)(4) of the Bank Company Act, 1991 Ms. Justice Naima Haider stated that the Act does not confer any title to the nominee over the deposit and a nominee is liable to the rightful successors of the depositor for the nominated amount.[12] Keeping the judgment in mind it can be stated that according to the Bank Company Act, 1991 a nominee's right

[6] The Provident Funds Act, 1925, s. 4
[7] Sanchaypatra Rules, 1977, rule 14,14A, 15,16, 17, 37
[8] The Wage-Earner Development Bond Rules, 1981, s 2(5)
[9] Insurance Act 2010, s. 57
[10] Bank Company Act, 1991, s. 103
[11] ibid s 103(3).
[12] *Md Munjurul Hoque v Bilkis Ara Begum* [2016] civil revision no 1682 of 2015.

to deposit amount is only limited to receiving and distributing the amount among the legal heirs of the deceased.

Another notable enactment in this regard is the Co-operative Societies Act, 2001. As per this Act, each member of the cooperative society must nominate an individual who is not a society member. This nominated individual will acquire the member's shares, along with all associated rights and liabilities, following the member's death. In this scenario, the law of succession will not be applicable, and the nominated individual will assume ownership of the shares in the society, along with all the associated rights, benefits, and obligations, after the member's passing.[13] By this enactment, the nominee enjoys the absolute right over the nominator's share in the cooperative society. This Act also expressly barred the applicability of the law of succession in this regard.

From the above discussion, it is very much visible that apart from the Co-operative Societies Act, 2001 all other existing laws of Bangladesh related to nominees have some certain level of ambiguity. These enactments are not self-explanatory and thus depend heavily upon the discretionary power of the court while settling disputes related to the nominee. Moreover, there is no homogenous pattern among these enactments. Some enactments state that the nominee has the right to receive[14] the depositor's money while other enactments state that the nominee has all the rights over the amount.[15]

Apart from these statutory provisions if the deceased is a Muslim, then The Muslim Personal Law (Shariat) Application Act, 1937 is also to be considered to understand the legal status of a nominee. This Act is applicable in the case of intestate succession only.[16] As it deals with intestate succession only, to understand its applicability in relation to a nominee, the initial is determining whether the nominated benefits should be regarded as testate or intestate property. If nomination is considered as a testate succession, then the nominee should have received the absolute right over the nominated property, and The Muslim Personal Law (Shariat) Application Act, 1937 shall not be applicable. Conversely, if it is deemed an intestate succession, the nominee's rights might be perceived as no more than those of a mere receiver who holds the amount for the benefit of others.[17]

However, some of the characteristics of a nomination are very similar to that of a will. Just like a will, a nomination becomes executable after the death of the nominator. In Islamic law, will is a legal means by which an owner of property disposes of his assets in the event of his death. Similarly, according to the existing legal texts mentioned previously in this paper, a person can nominate anyone as the nominee for his deposited money or for the insurance policy, etc. So, the nomination can be framed as an instrument that contains

[13] Co-operative Societies Act, 2001, s. 40
[14] Government Savings Banks Act, 1873, s. 4(1)
[15] Bank Company Act, 1991, s. 103(3)
[16] The Muslim Personal Law (Shariat) Application Act, 1937, s. 2
[17] The Muslim Personal Law (Shariat) Application Act, 1937, s 2

the instruction of the depositor related to the disbursement of his property after his death. Considering these similarities nomination can be considered as a testate succession. However, nomination also contradicts two of the basic principles of will. Will cannot be made in favor of a legal heir without the consent of other heirs. Also without the consent of other heirs, a person is only entitled to make a will not exceeding more than 1/3 of the whole property. But in the case of nomination, there are no such conditions.

In *Feroza Begum vs The Government of Bangladesh and others*[18] case, Mr Shameem Haider Patwary, the learned advocate for the petitioner tried to establish nomination as testate succession. In this regard, he referred to the Cambridge Dictionary[19] and Black's Law Dictionary[20] to define estate property. In the light of these definitions, the learned had forwarded some arguments to portray nomination as a testate succession. But while determining this writ petition the court observed that it is beyond the purview of the court to give an opinion in this regard.

As of consequence, while determining the right of a nominee the applicability of The Muslim Personal Law (Shariat) Application Act, 1937 is still an unsettled issue.

Judicial Precedents Related to the Legal Status of Nominee

There are some landmark judgments in relation to the status of a nominee in Bangladesh. These judgments also contain different opinions in this regard. The contradicting views among the judicial decisions make the whole thing even more complex.

In *Zia Uddin v Arab Bangladesh Bank Ltd*[21], the Appellate Division held that the nominee will be entitled to receive the whole money nominated in his/her favor.

However, later in 2016, in the case of *Md Munjurul Hoque v Bilkis Ara Begum*[22], the High Court bench, led by Justice Naima Haider and Justice Khizir Ahmed Choudhury, determined that since the nominee functions as a trustee and agent for the deceased, the funds held in their accounts should be allocated to the heirs rather than the nominees. The court emphasized that the deposited money of the deceased should be divided among the heirs according to the principles of Mohammedan Law. In this case, the nominee's role has been compared with the role of a trustee. It states that the nominee cannot be said to have

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[18] *Feroza Begum v The Government of Bangladesh and others* (Special Original Jurisdiction, HC); 73 DLR (2021)

[19] If someone dies intestate, they have died without leaving instructions about who should receive their property. On the other hand, testate means (of a person) having left a will (document saying who should get their possessions) and die testate means to die having left instructions about who should be given your property and money.

[20] Testacy means the state or condition of a person having died with a valid will. Testate means having left a will a death. Intestacy means the state or condition of a person's having died without a valid will. Intestate means one who has died without a valid will.

[21] *Zia Uddin v Arab Bangladesh Bank Ltd.* 6 MLR (AD) P.188, 52 DLR (HC), P. 36

[22] *Md Munjurul Hoque v Bilkis Ara Begum* Civil Revision No 1682 of 2015, judgment delivered on 3 September 2016

become the owner of the money of the other heirs merely by virtue of nomination. Hence, as per the judgment the nominee is only empowered to hold the money in trust for the true owners that too for the purpose of dealing with the bank.

This decision was in line with the decisions of other countries of the sub-continent related to the legal status of a nominee. For example, in *Sarbati Devi vs. Usha Devi,*[23] the Supreme Court of India held that nomination merely designates the hand that is only authorized to receive the amount. In *Amtul Habib vs Musarrai Parveen,*[24] the court emphasized that nomination does not establish a right or bequest, and thus, it should not deprive legal heirs. Both in India and Pakistan, the legal status of a nominee is similar to that of a trustee.

In *Md Munjurul Hoque v Bilkis Ara Begum*[25]*,* the court also gave a similar opinion. Moreover, in this case, the court also clarified the role of a nominee. The court held that the idea of the nominee is to provide for a proper discharge to the bank without involving the bank in unnecessary litigation. Immediately after the pronouncement of the judgment some serious consequences were noticed in the financial sector of Bangladesh. Many banks had to freeze several accounts of deceased persons as both the heirs and nominees were demanding the money deposited in the bank. Banks were facing difficulty in determining to whom they would hand the money to. As of consequence, the judgment of this civil revision has been stayed by the Appellate Division and is still pending before it for the final verdict.[26]

Moreover, to mitigate the uncertainty about the disbursement of a deceased's money kept in Banks, the Bangladesh Bank issued a circular[27] directing the banks to disburse the deposited amount of the deceased person to their nominated person in accordance with Sec. 103 of the Bank Company Act, 1991.

Another dispute related to the nominee was settled in the writ petition between *Feroza Begum vs The Government of Bangladesh and others*[28]. In this case, the deceased was an officer of Rupali Bank. The petitioner Feroza Begum was empowered as nominee of the provident fund and pension of the deceased. The deceased died in 2017 and the nominee applied to get her late husband's provident fund and related facilities. Anwara Begum, the first wife of the deceased also claimed her husband's retirement benefits. As both claimed title over the same benefits the Bank fell into complexity to disburse the benefit. Moreover,

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[23] *Sarbati Devi vs. Usha Devi* AIR 1984 SC 346
[24] *Amtul Habib vs Musarrai Parveen* PLD 1974 SC 185
[25] *Md Munjurul Hoque v Bilkis Ara Begum* Civil Revision No 1682 of 2015, judgment delivered on 3 September 2016
[26] Md. Zahid Hossain, "*BANK-E REKHE ZAOA MRITO BAKTIR AMANAT KE PABE?" Daily Law News*, Available at: <https://lawyersclubbangladesh.com/old/2021/04/19/> accessed 4 November 2023
[27] BRPD Circular No: 6 (19-April, 2017)
[28] *Feroza Begum vs The Government of Bangladesh and others* (Special Original Jurisdiction, HC); 73 DLR (2021)

another succession case filed by the respondents (i.e. Anwara Begum and her son) of this writ petition was pending between the parties before the appellate court.

In this writ petition the court held that as succession cases remained unresolved among the involved parties so within the context of the writ petition, the determination of rights, titles, or the succession regarding any money or property is beyond the purview of the court. Thus, the court did not give any verdict related to the right of the legal heirs over the claimed benefits. However, the court directed the bank to release the provident fund and other entitlements in favor of the nominee.

Based on the aforementioned judicial decisions, it is evident that, in Bangladesh, a nominee has the right to receive the money or property entrusted through nomination. However, the unresolved question pertains to whether the nominees can exclusively enjoy the received money or property all by themselves or if they are obligated to distribute them among the legal heirs of the deceased. Particularly, in the Feroza Begum case the High Court Division left the determination of the dispute entirely to the discretionary power of the court of first instance, and thus it kept the dilemma related to the legal status of a nominee alive.

General Perception of Nominee and Bank Practices

Mass people of Bangladesh are the major stakeholders in any discussion related to the nominee. Almost all the individuals in the country are this way or that way connected with different financial institutions. So, it is very important to understand their perception related to the nominee before suggesting any change in the existing legal framework. However, in Bangladesh, a majority of the people consider that the nominee enjoys not only the right to receive but also the right to enjoy the amount nominated in his favor. The general perception about a nominee is that a nominee is an absolute beneficiary of the property.[29]

Siddiqua in one of her articles[30] gives an example related to the general perception regarding nominees in Bangladesh. As per her own experience a Muslim professor from a public university in Bangladesh, died leaving behind a sick widow and an adopted young daughter. His assets included a house registered in his name, land in a village, and a pension/gratuity from the university. The widow's share in the estate was so small that she had to accept a nominal amount her brothers-in-law paid for her share of the house. However, she was named as the nominee for the pension and other benefits from the University. As a nominee, she received the whole amount and nobody not even her

[29] TBS News. (2024, February 18). "Nominee or heir? Who is entitled to receive money from a deceased?" <https://www.tbsnews.net/thoughts/nominee-or-heir-who-entitled-receive-money-deceased-564474>

[30] Begum Asma Siddiqua and Ahmad Hidayat Buang, "The Nominee's Position in Bangladesh and Malaysia" (March 20, 2018). *Australian Journal of Asian Law*, 2017, vol 18 no 2, Article 12: 271-286, Available at SSRN: <https://ssrn.com/abstract=3144808>

brothers-in-law questioned that, as they believe that no one can challenge a nomination.[31] From this example, it is evident that even many of the educated families in Bangladesh consider the nominee as the absolute owner of the nominated property. When the educated portion of the society has that perception about a nominee then it is safe to assume that the other people from different sections of the society also possess similar ideas regarding the status of the nominee.

To understand the banks' practice for the disbursement of deceased's money the author has conducted several interviews with Bank employees. Most of the banks, disburse the money to the nominee in accordance with the Bangladesh Bank's circular. However, different banks have different policies as well to avoid future litigation. An employee[32] of United Commercial Bank PLC states that the bank disburses the money to the nominee but the disbursement is conducted in the presence of the other legal heirs of the deceased. He further mentions that a depositor can nominate any person but the bank advises the depositor to make the nomination either among the first blood relatives or the spouse of the nominator.

Another employee[33] of the IFIC Bank PLC also mentions such internal policy of the Bank. According to him, the Bank disburses the deceased depositor's money to the nominee's bank account and thus discharges its liability. As per him, IFIC Bank PLC does not have any formal requirement regarding the presence or consent of other legal heirs while disbursing the money to the nominee. The bank also has a relaxed policy related to the selection of nominees. The depositor can nominate any person and the bank has no preference in this regard.

The similarity between bank practice and general perception is that in both cases it is believed that the nominee will receive the benefits upon the death of the depositors. The majority of the people believe that a nominee is not only a mere receiver but also becomes the absolute owner of the nominated benefit depriving all other legal heirs of the deceased. On the contrary, the relation between the bank and the nominee is limited to the discharge of the duty only. Banks simply disburse the amount to the nominee and after receiving the money whether the nominee distributes it among the other heirs or not is beyond the purview of the bank.

Findings

The existing legal statutes of Bangladesh have no homogenous provision related to the legal status of a nominee. The statutes have failed to specify the rights of a nominee. Whether the nominee is treated as a trustee or not, completely depends upon the interpretation of

[31] ibid p7.

[32] Interviewed on condition of anonymity

[33] Interviewed on condition of anonymity

the statutes. This ambiguity in the text creates discrepancies when determining the legal status of a nominee.

Furthermore, the judicial decisions concerning nominees lack consistency. In different cases, the judges interpret the statutes in different manners and thus it creates complexity. However, all the judicial decisions are in line to agree that a nominee has the right to receive the nominated property. The divergence in decisions arises while determining the extent of the nominee's right upon that property. In India and Pakistan, the dispute related to the legal status of a nominee is decided by judicial decisions. Both of the countries have established the principle that the role of a nominee is similar to that of a trustee who receives and holds the money for the benefit of others. But in Bangladesh, there is still no settled principle and the judges have to rely on their discretionary power while dealing with such disputes.

In the layman's eye, a nominee acquires absolute rights over the nominated property upon the death of the person who nominates him. The general perception of the majorities of Bangladesh is that a nominee is not just a mere receiver but can also enjoy them depriving all other legal heirs of the deceased.

The banks treat a nominee as a person who will deal with the bank upon the death of the depositor and help the bank discharge its liabilities. Whether the nominee distributes the money among the legal heirs of the deceased or not is something beyond the purview of the banks. However, to avoid future litigation many banks also introduced some policies which limit the power of a depositor to nominate any person apart from his immediate family members to receive the deposited money upon his death.

The applicability of The Muslim Personal Law (Shariat) Application Act, 1937 while dealing with any dispute related to the nominee is still an unsettled dispute. There is no legal ruling related to the testate or intestate nature of nomination.

Remarks

Consistency among the legal statutes is a must to clarify the legal status of a nominee in Bangladesh. The statutes should be amended and provisions similar to the Co-operative Societies Act, 2001[34] need to be included. That is to say, the legislation should clarify the applicability of personal succession law while dealing with issues related to nominees. For example, to comply with the Bangladesh Bank circular[35] Bank Companies Act should be amended and a new subsection after Section 103 may be added where it can be mentioned that the individual nominated under Section 103 of the Act will acquire the deposited money along with all associated rights and liabilities, following the depositor's death. In this case, the law of succession will not be applicable, and the nominated individual will

[34] Co-operative Societies Act, 2001, s. 40

[35] BRPD Circular No: 6 (19-April, 2017)

assume ownership of the assets in the bank, along with all the associated rights, benefits, and obligations, after the depositor's passing. Similar amendments related to the nominee's right can also be brought in other enactments as well. This way the consistency among the legal statutes can be ensured and it will also help to mitigate the ambiguity in the legal texts to a great extent.

Moreover, it would be better if the legislation included provisions to limit the power of the depositor while selecting a nominee. Instead of naming any random person as a nominee, the depositors should be instructed to name only immediate family members as nominees. For instance, in section 103(1) of the Bank Companies Act, 1991 the word '…chose a person…' should be replaced with '…chose a person among the immediate family members…'. This subtle change in the wording can mitigate many problems.

The ambiguity surrounding whether the nomination is testate or intestate in nature requires clarification. If the nomination is treated as a testamentary succession, it would align with the general perception of mass people and would also support current banking practices related to the nominee. To do so, existing legislation must be amended to grant nomination a similar effect as that of a written will. It can also be done by adding a clause in the nomination form of the financial institutions where the nominator can choose whether or not to give the nomination the same effect as a written will. This change will eventually help the court to understand the intention of the nominator while settling any dispute related to the nominee.

Conclusion

The concept of nominee and nomination has existed in Bangladesh for more than centuries. Despite such a long existence, it is very unfortunate that the legislation fails to frame a homogenous and clear provision related to the legal status of a nominee. The complex interplay and inconsistency between legislative provisions and judicial decisions contribute to a certain degree of ambiguity. In the absence of explicit legislative guidance disputes related to the legal status of the nominee depend heavily upon the discretionary power of the court for settlement. Nevertheless, the people of Bangladesh will have to wait for the ultimate verdict from the Appeal Division of the Supreme Court to ascertain the final determination regarding the status of nominees.

However, amendments in legislation to clarify the status of a nominee are a must. It becomes imperative for policymakers, legislative, judiciary, and stakeholders to engage in a collaborative approach aimed at refining and enhancing the legal framework surrounding nominees in Bangladesh. A robust legal framework can mitigate the dilemma related to this matter quite comprehensively. Clarity in statutory provisions, coupled with a consistent judicial approach, will contribute to a more specific and just resolution of nominee-related disputes.

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