

JUSTICES: Journal of Law

Journal website: <https://justices.pdfaii.org>

ISSN : 2964-5107 (online)
<https://doi.org/10.58355/justices.v4i4.205>

Vol. 4 No. 4 (2025)
pp. 289-299

Research Article

The Complexities between Nominee & Legal Heir: Bangladesh Context

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Received : August 26, 2025
Accepted : October 27, 2025

Revised : September 21, 2025
Available online : November 17, 2025

How to Cite: Tamanna-E-Nur. (2025). The Complexities between Nominee & Legal Heir: Bangladesh Context. *JUSTICES: Journal of Law*, 4(4), 289-299. <https://doi.org/10.58355/justices.v4i4.205>

The Complexities between Nominee & Legal Heir: Bangladesh Context

Abstract. In Bangladesh, the idea of a nominee and nomination has actually been existing for centuries. Despite its extensive background, it is regrettable that the Act does not contain a uniform and unambiguous clause pertaining to a nominee's legal status. There is some ambiguity because of the intricate interactions and discrepancies between judicial rulings and legislative measures. In the lack of clear legislative direction, the court's discretion is typically used to resolve problems pertaining to the nominee's legal standing. The ultimate result is deprivation of rights of legal heirs in banking sector, capital market and everywhere. Instead of having constitutional safeguard the lacking of uniform law creates ambiguity to obtain rights in effective way. To ensure justice the Government should scrutinize the matter properly and should develop a suitable system in everywhere where the nominee and legal heir dispute arises.

Keywords: Nominee, Legal heirs, Financial Institution, Capital Market, Constitution, Al-Amanah

INTRODUCTION

John Locke truly stated- “Where there is no property, there is no injustice”. Conflicts over money are common, particularly when it comes to inheritance. Every human being has a common tendency to protect his own assets. However, it is not feasible because man is mortal and can't hold property after his or her departure of life. For greater interest of himself and his family he saves money for future generation. In some cases, when the legal heirs remained minor at the time of death of guardian the custody of assets goes to another person. He or she may be the family member or outsider. As a result, the concept of nominee emerged. However, things get worse when the agent or nominee refuses to transfer the assets to the heirs properly. There arises a typical situation from the perspective of banking system as well as capital market in Bangladesh.

The Concept of Nominee

A legal term, "nominee" should be used in accordance with the rules and legislation of the particular country in which it is implemented. Misuse of nominees may be equated with illicit actions including fraud, tax evasion, and money laundering.

A nominee is a person designated by the owner of an account or policy to receive benefits in the event of the owner's death from a financial asset or insurance policy. They hold the resources, rights, or properties in trust on behalf of the beneficial owner, who is the real owner.

There are several acts of nominee, some of them are as follows:

- In official documents and records, the nominee's name is usually used instead of the beneficial owner's to safeguard the latter's privacy.
- The beneficial owner can simplify the transfer of assets or property by having the nominee taking responsibility of the required paperwork and legal obligations on their behalf.
- By ensuring confidentiality and legal protection, the nominee acts like a barrier between the beneficial owner and creditors, protecting the latter's identity and assets.
- It provides the beneficial owner legal representation as the nominee might act as the beneficial owner's agent.

Until the policyholder or account holder passes away, the nominee is not entitled to any legal control over the assets. However, Nominees are able to facilitate transactions, including the purchase and sale of shares, by holding shares on behalf of the genuine owner and handling transactions on their behalf. Companies can get around regulations and preserve the privacy of their shareholders by appointing a nominee. True owners can avoid handling the paperwork and formalities associated with ownership, such as attending shareholder meetings and casting votes on their behalf, while nominees handle these tasks.

In a sense, nominee is that person to whom responsibilities are handed over in absence of real owner. He or she needs to understand that they are not the true

owners and that they're assigned obligations to fulfill. Moreover, the act ought to be carried out under guidelines and restrictions.

The Concept of Legal Heir

A person who is legally entitled to inherit a deceased person's assets or property under inheritance rules is referred to as a legal heir. The laws of inheritance, which varies by nation, religion, and other circumstances, determine legal heirship. At the moment of death, legal heirship becomes established and cannot be altered. It is legally obligatory and subject to judicial recognition. Upon the death of the individual, legal heirs are entitled to the assets. Children, descendants, or other close relatives of the deceased usually inherit property as heirs. In legal terms, heirs are not the same as beneficiaries, who are the people named in a will or other written document as the people who are supposed to inherit the assets of a deceased person. From Islamic perspective, the concept of inheritance bears a great significance. The transfer of property from a deceased person to a living individual who is a legal relative is referred to as inheritance. Muslim personal laws, which derive from primary scriptural sources such as the Holy Quran, the Sunnah, the Ijma, and the Qiyas, as well as pre-Islamic customary succession rules, regulate the devolution of inheritance for Muslims. Sharers and Residuaries are the two categories of heirs recognized by Islamic law. Residuaries would inherit the portion of the deceased's property that remains after the sharers have taken their share. Sharers are the people who are entitled to a certain share in the deceased's property.

The numerous advantages of legal heir are as follows:

- The primary benefit of being a legal heir is the entitlement to inherit property, assets, and other belongings from the deceased.
- A deceased person can also find peace of mind in knowing that their loved ones will be taken care of after they die away if they have a legal heir.

However, if there is a legitimate heir, it's possible that the inheritance won't be given in accordance with the decedent's wishes. Moreover, heirs in rights could not be capable of the task or might not have the same priorities or values as the departed, which could lead to an expensive and drawn-out legal battle over the inheritance.

The Perspective of Nominee and Legal Heirs from Financial Sectors

In our country in bank, financial institution, broker house nominee is a common phenomenon and a nominee is a must needed person in the form. Without nominee no account could be opened. So, systematically we have to depend upon nominee. Nominee can be legal heirs or any trustworthy person and after the death of real account holder nominee would get the money. In cases where a nominee is available, the bank or other institutions are generally not legally obligated to pay the legal heirs. Their responsibility is to abide by the guidelines and directives provided by the account holder. As a result, once they pay the person whom the account holder designates, they will no longer be held accountable for these deposits.

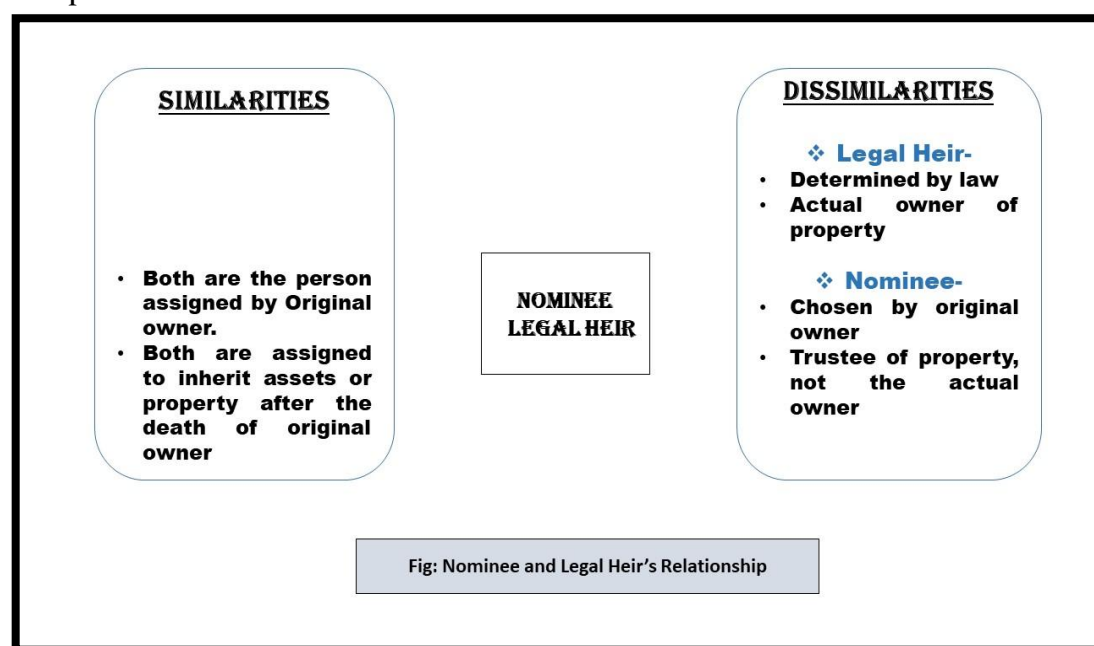
It is ideal to clarify it by claiming that there are two parts to the nominee of an account issue. Specifically, the nominee's and the institution obligations. The nominee's job is to function as a trustee of these funds and distribute them according

to succession; the institution's obligation is to pay the nominee money. Therefore, in the event that the account holder designates someone his account, the authority's obligation upon the death of that individual is to transfer the funds from the deceased account to the nominee, who is then tasked with distributing the funds among the surviving relatives. The legal heirs are free to file complaint against the nominee in order to reclaim their rights if they fail to fulfill their commitment.

The Similarities and Dissimilarities between Nominee & Legal Heir

Both legal heirs and nominees are the people assigned to inherit assets or property in the event that the original owner dies. The fact that they are both selected to acquire assets is the primary distinction between the two.

However, there are several differences between nominees and legal heirs. A legal heir is determined by law whereas a nominee is typically chosen by the original owner of the assets or property. While the legal heir is the one who actually owns the property, the nominee retains it in trust for them. The legal heir has full ownership of the assets, whereas the nominee only has restricted access to them. Compared to formal inheritance, which entails court cases and probate, nomination is a faster and easier process.



The Reasons for Choosing Nominee

From the previous discussion it is clear that, nominee is not the actual owner. Rather, he is the trustee to whom the property is bestowed upon. Instead of having legal heirs some people chose nominee for their property. There are several reasons behind that thinking:

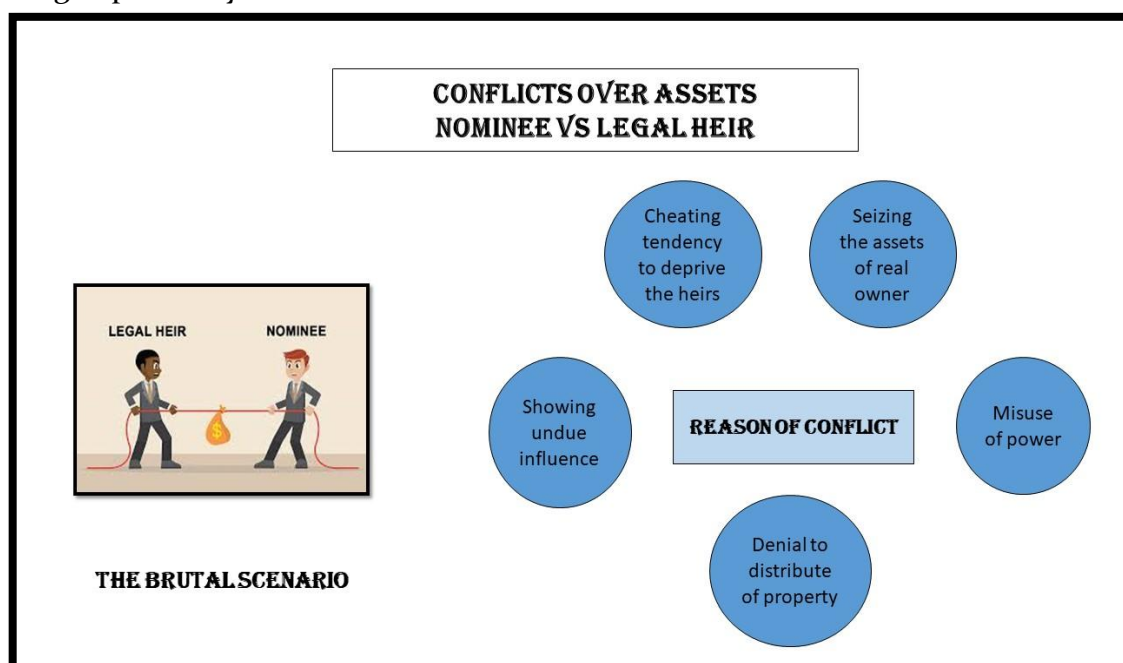
- In case of minority of legal heir, the real owner appoint nominee before attaining majority of his heir.
- When legal heirs are incapable of understanding like-insane, unsound mind, dumb etc. Here the nominee acts as guardian of legal heir.

- When legal heirs have tendency to destroy property or money, for the preservation of assets real owner nominated another one.
- When there is legal conflict between several heirs, in that cases nominee may be appointed.
- Apart from those issues, the real owner can appoint nominee as per his or her own will if they think necessary.

The Dogmatic Scenarios of Nominee and Legal Heir

The problem between nominee and legal heir is not new rather from the very beginning of concept of estate it has originated. Basically in Islamic era it was Trustee who was being appointed to take care of property. Later, nominee came from the concept of financial issues where bank, financial institutions etc. are relevant. However, the difficult situation arises after the death of real owner. Then the distribution of property lies upon the nominee. Legal heirs are basically the original owner of property and it is the duty of the nominee to distribute it properly after the death of real owner.

However, about 60% issues it is observed that, the relationship between nominee and legal heirs is conflicting in case of distribution of money. The nominee sometimes failed to understand that, he or she is not the real owner, only their duty is to act as trustee. He has to transfer the property to the heirs as per will of real owner or in a proportionate way. The nominee doesn't disburse the assets to heirs for which he was being appointed. That results in legal conflict between them and it has turned into worst situation. Whereas, legal heir has sole right over his property, he or she is being deprived by the unfaithful attitude of nominee.



This is the real phase of relationship between nominee and legal heir. Their conflicts over assets showed several reason behind that where main issue is the

tendency to deprive the legal heirs. Moreover, by undue influence or fraudulently the nominee captured the assets of the real owner that results into deprivation.

Legal Directives regarding Nominee & Legal Heirs

There are several provision regarding the protection of rights of legal heirs under-Banking laws, Capital market directives, Constitutional provisions as well as Islamic regulations.

1) Legal Ambiguities under Various Provision

There was always confusion regarding the issue of nominee and legal heirs. Most of the laws have loopholes and there is a chance of misuse the legal provisions in systematic way.

a) Banking Laws

Some people presumed the nominee as the future owner of the money of real account holder. There are numerous dispute regarding this issue as there was loophole in the laws.

Section 4 A of The Government Savings Bank Act, 1873 allows the nominee to receive money against the deceased's savings instrument. However, when the holder of the savings certificate does not designate a nominee, the money will go to the heirs as per Section 5-C. In addition to that, In the event of the depositor or account holder's death, the nominee will have precedence over all others and all other parties will be stripped of the property, as per Section 103(3) of the Bank Companies Act, 1991. As a result, this legal clause supersedes all other laws (e.g. Law of Inheritance). Both of these act showed contradiction with other laws and there must have possibility of losing property from the side of legal heirs.

Moreover, all commercial banks have received a directive (BRDB circular no. 6), dated 19 April 2017, from Bangladesh Bank (BB), the banks' supervisory body, instructing them to obey the Bank Company Act 1991 and its amendments up to 2013 when paying depositors' money after their death. Also, the Provident Funds Act, 1925 mentioned that a nominee has not only right to receive the money but also he would be entitled to all other rights. In reality, Bangladesh Bank has explicitly instructed commercial banks to pay the nominee the depositor's money upon the depositor's death with this directive.

b) Securities and Exchange Laws

Nominee plays a great role in capital market. When a person wanted to open any BO Account in any broker house, he ought to assign a nominee. Nominee and successors related issue is a very common phenomenon here. There are also several guidelines of Dhaka Stock Exchange, Chittagong Stock Exchange as well as The Security Exchange Commission which are actually the main regulatory bodies of Capital market in Bangladesh.

Under CDBL by Laws through Section-11.8 we can observe Transmission after the death of Account holder. It dictates- An account can be opened as single or joint venture where nominee can be made one or more than one person. When the account

is joint, after death of any of them the credit of such account vest upon another one. However, if it is single account all of the securities goes to the nominee. If there is no nominee, then succession of such securities shall be determined as per law of succession.

Moreover, in a letter of Bangladesh Securities and Exchange Commission (BSEC) vide memo no. BSEC/SRI/Policy/2021/-432 dated April 24, 2022 it is stated that- When any investor nominates a person as a nominee, after his death the securities shall be vested upon the nominee. In case of having no nominee the securities shall be vested to the successors as per succession certificate under The Succession Act, 1925.

Both of the directives provide privilege to the nominee. To uphold the successor's right over nominees is quite tough here and most of the cases nominees have taken shield of those guidelines. Sometimes, the legal heirs are being deprived by dint of that.

2) Legitimate Solutions for the Protection of Legal Heir

The previous provisions actually indicate the barrier and loopholes. However, there is remedy in every legal issue and no one can be deprived of his legitimate right.

a) Constitutional Safeguards

Constitution is the Supreme law of the state and it provides shield to the sufferers always. Constitution always follows the maxim- 'Ubi jus ibi remedium' that means 'Where there is right, there is remedy'. No one can be deprived of his legal right and our constitution has established this by providing fundamental rights.

Article-42 under Part-III, Fundamental rights, ensures Right to property of every citizen that seems everyone has lawful ownership and rights over his property. The nominee has only temporary rights, however heirs have legal rights guaranteed by Constitution. Right to be treated under law is the specific right of every citizen under Article-31 where no action can be taken against life, liberty, body, reputation or property if there is no violation of law. So, the property right that belongs to legal heir can never be taken arbitrarily. The most interesting fact is the Enforcement of fundamental rights under Article-44. Clearly this article ensures protection of victim under the provision of Writ as per Article-102. In case of violation of fundamental rights, the affected person has the right to move to High Court Division. We can say this is a great chance of legal heirs to get back his or her rights through Writ.

Moreover, as per Article-15 under Part-II, Fundamental Principles of State Policy determines the provision of basic necessities where the issue of shelter is connected. It is the duty of state to ensure the protection under these policies. Also, the term 'Social Security' is important here where the issue of money, property etc. are indirectly connected. It can be said that, legal heir has right over his property from the view of social security and state has the duty to ensure this. In addition to this, to ensure democracy and fundamental human rights Article-11 acts as a tool. It is the fundamental rights of legal heirs to get his portion after the death of the real owner and it is directly specified in constitution.

It is observed that, Constitution always provide protection to the affected and legal heirs are also included here. If they are being deprived of their rights, they can regain it by way of constitutional rights.

b) Court Decisions regarding Legal Heir & Nominee Issue

The Supreme Court of Bangladesh's High Court Division delivered a verdict on the matter of Md Munjurul Haque vs Bilkis Ara Begum Civil Revision No. 1682/2015. The right of the legal heirs over the money placed or invested against the nominees was established by a historic ruling rendered by the High Court on April 3, 2016. The High Court's ruling stated that the nominee would only act as a trustee with the funds, and as such, would have to divide them among the deceased's rightful heirs. The Appellate Division subsequently decided to stay the High Court's verdict. The complete verdict was then handed by the High Court Division in 2019, and it noted that only nominees have the ability to take money out of a deceased person's bank account and split it among their lawful heirs in line with their individual religious inheritance regulations.

Breet Kavanaugh stated- "The Supreme Court is the last line of defense for the separation of powers and for the rights and liberties guaranteed by Constitution." In our country the decision of the Supreme court shall supersede above other laws or rules and regulations. Lawfully, the legal heirs have highest priority over the nominees." Those observations clearly prevail the right of legal heir over the nominee.

The laws pertaining to nominees have been construed differently by Indian and Pakistani courts. "The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy," the Supreme Court of India ruled in the seminal case of Sarbati Devi v. Usha Devi, AIR (1984) SC 346. Another decision given by the Pakistani Supreme court regarding the matter Amtul Habi vs Musarrat Parveen, PLD (1974) SC 185 laid down an important principle that dictates-The rights of nominator's legal heir cannot be taken away from them as a nomination is not a gift or bequest. Our country can follow this principle as precedence.

c) Islamic Observation from Quranic View

The nominee acts as a trustee under Islamic law as per the doctrine of Al-Amanah which denotes reliability, trustworthiness, fidelity, honesty and good faith. The term Al-Amanah means agent, guardian, trustee, authorized representative etc. There are several verses regarding nomination where there is clear indication for a nominee or trustee to protect the minor's or other's property on behalf of his legal guardian.

In a verse of Holy Quran Allah commanded not to betray and He said- 'O you who believe betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you'-(Surah Al Nisa-4:51). Again Allah commanded and warned by saying- 'Contend not on behalf of such as betray their own souls; for Allah loveth not one given to perfidy and crime'-(Surah Al Nisa-4:107).

It has been established by the Qur'anic verses that a nominee is a trustee; as such, the nominee shall not be entitled to any benefit from the trust, but rather be required to hold the trust effectively and return it to the appropriate beneficiary without claiming any ownership interest in it.

CRITICISMS AND RECOMMENDATIONS

The flawless transfer of funds is the primary goal of the nomination system in the banking system. The money will only be transferred after completing specific formalities if the depositor does not designate a nominee, which could cause problems for the bank and the heirs.

The laws that currently govern nomination in Bangladesh, such as the Insurance Act 2010, the Government Savings Bank Acts 1873, the Post Office National Savings Certificate Ordinance 1944, and the Co-Operative Societies Act 2001 etc. are not exhaustive because they do not address every aspect of the law of nomination. Instead, they should be extremely clear, sufficient, and exhaustive. Certain Acts stipulate that in the event of a depositor's death without a nomination, the money shall be disbursed in accordance with the Succession Act, 1925. Certain acts, like the Co-Operative Societies Act 2001, does not specify in detail what happens if a depositor passes away without leaving a will. This has led to a scenario where certain laws in Bangladesh regarding nominees are at odds with one other. Even the Banking laws as well as Security laws create confusion sometimes. After death of original owner, the money or securities goes to nominee and he thinks himself as the real owner. This situation extinguishes the right of legal heir whereas he is the actual owner. In our country this scenario is very common and nominee has a tendency to consume other's portion which is totally inhumane. In some situation the deprived legal heir moves forward to court for justice which is lengthy proceedings and at the interim period nominee grabs all of the assets.

There is a maxim of equity that denotes- 'Equity regards the beneficiary as the true owner'. So, the nominee is the mere interim trustee of the property however, beneficiary is the real owner. He has equitable as well as legal rights over the assets of real owner. To dissolve the anomaly several recommendations can be prescribed-

- A prescribed form should be added with every issues to specify the rights and liabilities of nominee.
- The doctrine of Ultra Vires must be applied strictly for nominee. When his power and functions are specified he can't go beyond the power.
- It should be stated who, in the absence of a nominee, will inherit the deposited funds in the event of the depositor's death.
- If the real owner wishes to provide a portion to the nominee, it must be clearly mentioned in the documents.
- To avoid conflict more than one person can also be added as witness at the time of processing documents.
- The legal heir would also be concerned of his right and he should keep the documents with him for his own sake.

- When any dispute arises between legal heir and nominee the authority should observe the matter properly and they must be aware that the heir's legitimate right must not be curtailed.
- The legal provisions regarding nominee and legal heir must be clear and specific to dissolve the legal ambiguities.
- The court proceedings need to be speedy so that the right of legal heir must not be curtailed. In our country many of the people suffer in the long run because of lengthy court proceedings. And the judges should be cautious at the time of providing judgment.
- Even the law enforcing agency must be concerned about the citizen. James Madison stated- 'The rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted'. It is the duty of the Government agencies to protect the rights of citizen. The Right to Property is a constitutional right and it shall not be curtailed abusively.

CONCLUDING REMARKS

Mencious depicted- '**People can have long-term life plan only if they know their private property is secure. Secure property in hand leads to peace in mind**'. Every original owner wishes to distribute his assets to the righteous person in a systematic way after his death. As his trust bestows upon the nominee, it's the duty of nominee is to deal every monetary issue in a responsive way. Additionally, the fact that Bangladesh lacks a comprehensive statutory framework pertaining to nominees is quite disappointing. As a result, the majority of people in our country lack a clear understanding of the nominee, which typically leads to misunderstandings and complicates matters for those who must deal with the nominee. In order to eliminate all complications, the government should act quickly to create a uniform law pertaining to the nomination issue, which should include a precise definition of the nominee, the establishment and operations of the institution collaborating with the nominee, and the nominee's position. It would be able to establish a compatible atmosphere in the economic as well as social sphere and the right of both nominee and legal heir would be ensured.

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