



## LAW amusements



## YOUR Advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

## Reader's query

We, three friends, want to run a partnership business. What legal formalities should we fulfill first? Should we get it registered? If so, from where?

Rubel, Dhaka

## Response

Thank you very much for asking us to provide a possible solution to your legal query. We have disappointedly found that many entrepreneurs start their businesses without knowing the legal procedures for doing the same and as a result after starting their ventures they regularly face numerous problems. Therefore, I must and I do appreciate your eagerness to know about the appropriate legal course of actions in this regard. It has been understood that you along with two of your friends are desirous to do some businesses by way of establishing a partnership firm. 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Habitually, not all the partners get involved into the management and hence one of the partners acts as the managing partner.

In order to start a partnership concern, first of all, you need to fix and finalize the understanding amongst you and your friends. It is possible that different friends give different considerations/inputs towards forming the capital of the partnership. After finalizing the understandings, you have to reduce the same into writing in the form of a 'partnership agreement'. Assuming that the capital of the partnership is more than Taka five thousand, as per the provision of the Stamp Act, the said agreement has to be executed in non-judicial stamp paper of Taka one thousand. This agreement will be treated as the constitution of the partnership firm and all activities, business, management and financial distribution has to be done in accordance with and/or in the light of the said partnership agreement. Accordingly, the agreement shall cover, amongst others, the name and principal place of business of the partnership firm, date of the agreement, full permanent addresses of the partners, duration of the firm, capital

contribution by the partners, shares of each partner in the profit and loss, responsibilities of the partners, management of the partnership firm, dissolution procedure and consequent effects, retirement/change/addition of partners, agreement signing and banking authority etc.

After entering into the agreement, as per the provisions of the Partnership Act you are advised to register the said agreement from the office of Register of Firms. Please note, however, that unlike a company, registration of the firm will not

firm. However, for the companies, higher income tax rate applies. Partnerships are more suitable for simple forms of business, very easy to establish and can be operated without much of a regulatory compliance requirements. On the other hand, though companies have to comply with many legal requirements, it is suitable for a broad business structure.

Before deciding on the appropriate mode of procedure, you are advised to consult with a lawyer, who is familiar with the incorporation of companies as well of



make the firm a legal entity. Thus the partnership firm itself will not be able to enter into any agreement or file any suit in its own name. Rather it will be the partners or one of the partners, who will do these personally on behalf of the firm. Unlike a company, which itself is a legal entity, the rights and responsibilities will lie on the partners personally as opposed to the firm.

Having said the same, you may also explore an alternative, i.e. to incorporate a private company limited by shares under the Companies Act. If you do so, the company itself will be treated as a legal entity. It has been found that the external parties feel more comfortable to deal with a company as opposed to a partnership

registration of firms along with expertise in tax matters. After perusal of your capital, business details and plans, number of partners, ambition for the future etc. the lawyer will be able to help you to decide on the best option for you, i.e. whether to go for a company of a partnership firm and can also complete the needful legal formalities.

Irrespective of the option, you will need to obtain trade license after registration and also need to do the VAT registration, if applicable. I hope that the above shall help to ascertain your appropriate next course of action and to start the operation of your intended business.

For detailed query contact [omar@legalcounselbd.com](mailto:omar@legalcounselbd.com)



## LAW week



## Report on scrap ships in 3 weeks

The High Court directed the government to submit a report within three weeks on the number of ships imported for scrapping after the HC delivered a verdict in this regard on March 17 last year. The court also asked the government to state in the report how pre-cleaning of these ships outside the territory of Bangladesh was ensured before bringing them to the country. The HC bench of Justice Md Imman Ali and Justice Md Abu Tariq directed the authorities to finalise the framing of rules for ship breaking and prepare a gazette notification within three months. - *The Daily Star, January 27, 2010.*

## MPs go against cabinet decision

In an unprecedented move, a high profile meeting of lawmakers rejected all proposals approved by the cabinet for amending the Vested Property Return Act 2001, saying if translated into law, it will go against the country's minority community. Chaired by Deputy Leader of the House Syeda Sajeda Chowdhury, the meeting termed the proposals unnecessary and said if enacted, the law will also destroy the basic spirit of the original act passed by the Awami League-led government in 2001, meeting sources said. The law and land ministers, chiefs of parliamentary standing committees on law, land and education ministries and senior officials of the land ministry attended the meeting, an extraordinary one as such meeting was never held in the country's parliamentary history. - *The Daily Star, January 27, 2010.*

## War crimes act needs reform

The law by which the government intends to prosecute people suspected of war crimes during the 1971 liberation war has been criticised by an expert group of international criminal lawyers. The legal opinion, obtained exclusively by The Daily Star, states that the International Crimes (Tribunals) Act 1973 contains 'out of date' definitions of criminal offences, provides inadequate rights to individuals subjected to investigation, and has 'significant omissions' with regard to protecting the rights of those on trial. However the opinion acknowledges that the legislation 'provides a system that is broadly compatible with current international standards'. - *The Daily Star, January 26, 2010.*

## Amended law on pvt universities okayed

The government approved the amended Private University Act 2009 to maintain standards of higher education and bolster discipline in private universities. The cabinet approved the amendments at its meeting chaired by Prime Minister Sheikh Hasina. On October 19 last year, the cabinet in principle approved the Act. Briefing reporters, Press Secretary to the Prime Minister Abul Kalam Azad said approval of 48 private universities expired in 2009 while another five have "no eligibility to run academic activities." The Act was introduced in 1992 and last amended in 1998 to ensure quality, eligibility and discipline regarding the appointment of teachers. - *The Daily Star, January 26, 2010.*

## Jamaat's goals still against constitution

The Election Commission (EC) asked Bangladesh Jamaat-e-Islami to amend its constitution again, as the party's aim and objectives and some other provisions stipulated in it do not conform to the country's constitution and RPO. In a letter to the Jamaat secretary general, the EC pointed out the provisions and asked the party to amend those, said EC sources. The commission also sent letters to eight other political parties including HM Ershad-led Jatiya Party for amending their charters again as well in compliance with the Representation of the People Order (RPO). - *The Daily Star, January 25, 2010.*

## Start demolition within a month

The High Court (HC) directed the government to start within a month demolition of all illegal structures built within the boundaries of four rivers around the capital, so that removal of the debris can be completed by the time stipulated by a previous court order. The rivers are Buriganga, Balu, Shitalakha and Turag. The court also directed officials concerned to submit to it, progress reports of the river reclamation drive through the Supreme Court (SC) registrar every three months, for necessary new court orders. The HC in June last year issued a set of directives, including one upon the government, to complete by November 30 this year the demolitions and debris removal. - *The Daily Star, January 25, 2010.*

## EU opposes death penalty in 'motivated' murder cases

The European Union has stood opposed to the death penalty in what they called politically motivated cases. European Union High Representative for Foreign Affairs and Security Policy Catherine Ashton issued a statement on the EU stand. The pan-European grouping strongly supports the government's zero tolerance with regard to "extra-judicial killings." Head of EU Delegation in Bangladesh Ambassador Dr Stefan Frowein said, "The European Union is paying close attention to the various judicial proceedings in Bangladesh this year concerning politically motivated murders." He made it clear that this EU statement "applies to trials for all such crimes, notably, the 1975 murders of Sheikh Mujibur Rahman and his family members and others, murders committed during the 2009 Bangladesh Rifles mutiny, and potentially also war crimes committed during the country's struggle for independence." - *The Daily Star, January 24, 2010.*

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## LAW quotations

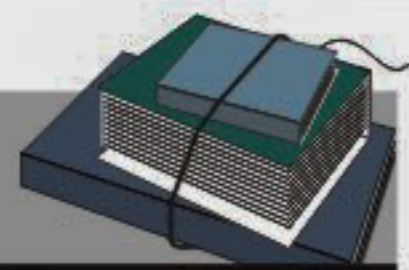
"The Martial Law Authorities in imposing Martial Law behaved like an alien force conquering Bangladesh all over again, thereby transforming themselves as usurpers, plain and simple. Be that as it may, although it is very true that illegalities would not make such continuance as a legal one but in order to protect the country from irreparable evils flowing from convulsions of apprehended chaos and confusion and in bringing the country back to the road map devised by its Constitution, recourse to the doctrine of necessity in the paramount interest of the nation becomes imperative. In such a situation, while holding the Proclamations etc. as illegal and void ab initio, we provisionally condone the Ordinances, and provisions of the various Proclamations, MLRs and MLOs..."

A B M Khairul Haque J., in *Bangladesh Italian Marble Works Ltd v. Government of Bangladesh and Others* (Popularly known as *5th Amendment Case*), 2006 (Spl) BLT (HCD) 1, at 239.

## Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: [dslawdesk@yahoo.co.uk](mailto:dslawdesk@yahoo.co.uk), [lawdesk@thedailystar.net](mailto:lawdesk@thedailystar.net)

## LAW lexicon



**Bind over** - To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a hearing finds probable cause to believe the accused committed a crime, the official will bind over the accused, normally by setting bail for the accused's appearance at trial. (This is a state court procedure.)

**Bond** - A written agreement by which a person insures he will pay a certain sum of money if he does not perform certain duties properly.

**Bound supplement** - A supplement to a book or books to update the service bound in permanent form.

**Booking** - The process of photographing, fingerprinting, and recording identifying data of a suspect. This process follows the arrest.

**Breach** - The breaking or violating of a law, right, or duty, either by commission or omission. The failure of one part to carry out any condition of a contract.

**Breach of contract** - An unjustified failure to perform when performance is due.

**Brief** - A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.

**Burden of proof** - In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof). It deals with which side must establish a point or points. (See standard of proof.)

Source: Jurist International.

## HUMAN RIGHTS watch

## Hijras in Bangladesh: A story untold

TAREK MAHMUD

It is rather difficult to grasp the fact that somebody, who is even one of your close acquaintances, has "turned into" a "hijra", let alone your dearest ones. Yet unwilling to believe the story, you move into inquiring the rumor and, with horror, you find the acceptability of the story and the person is now hundreds of miles away from you both physically and mentally. This might be taken as the ideal presumption of what happens to the nearer ones of a member of the transgender society.

There has been a vague perception working among the people of the society that the transsexuals are exclusively some sort of bizarre life form, with deformed reproduction organ that made them evils of the civilization. We watch their outrageous activities with bitter sensation and feel a sense of hatred whenever they stroll around us. We hate the way they live their livelihood, the way they respond to our stares towards

or woman or neither by disapproving ones birth assigned sex (which takes place by recognizing the reproduction organ of the newborn at the time of birth). So as to say, the transgender people could be known to us as straight (heterosexual), gay or lesbian (homosexual), bisexual, asexual or disapproving the social dimension of the gender providing that it is inadequate to express their status. So the word "transgender" offers a socio-physical definition which is less precise from the point of physiology and more extensive to its social context.

On the other hand, the word "transsexual" provides a narrower definition which stays within the physical boundary and which implies the mental reluctance of anybody to conform to his or her birth assigned sex. Transsexuals are not necessarily impotent or deformed in the sense of reproduction. They simply cherish the dream to live in a way as their opposite sex lives. So, in a society like ours, where the definition of gender is confined with the limit of male and female,

of female genitalia, though the procedure is expensive enough and considered as further social stigma for a transgender in Bangladesh. This part of the society live mostly in urban area as living through various professions is quite easier than that of in rural area. The Hijras are living in a group, relationships within which are based on the enormous amount of sympathy they share with their fellow Hijras. They lead a life that knows no bounds of misery and humiliation.

The agony starts from the beginning of a transsexual's shelter of affection-home. During the early childhood, the transsexual boy finds her attracted to girl objects as ornaments, toys, feminine garments, and starts developing a habit to play with girls or behaving in a womanish way. This generates a fear of possible stigmatization of being called as the parents of an effeminate boy among his parents, and subsequently the parents start imposing rigor behavior norms on her and direct her to carry on a normal male life that is self conflicting for a transsexual.

Another phase of humiliation starts at the moment when a transsexual enrolls herself in any educational institute to achieve education which will assist her to attain any respectable job. The peers usually bully her and refuse to connect her with their collective activities like study, sports or cultural activity. The teachers, being annoyed by his "mild nature", start looking down upon the young student and provide her with discriminatory supervision. Even the teachers happened to discourage her by ridiculing her before fellow classmates. Ultimately, the boy loses the urge to study and thus ends up being an illiterate one.

When a transsexual reaches up his youth, it becomes even harder for her to survive the pejorative sexist attitude of the society towards her. The family pressurizes her to give up the "habit" of living life like a woman. Many transsexuals are compelled to live a double life of which, the living with other transsexuals is more comfortable than to live around parents and other social beings. The young transsexual is now in a grave necessity to decide whether he should continue living in this synthetic dual life and keep on struggling to bear a self-disapproving life or he should unite with other transsexuals which will definitely give her some peace of mind. It is the most crucial and irreversible decision which the transsexual youth has to make all by herself.

Even in workplace, the transsexuals often get undermined, underpaid and needless to say, humiliated. The employers are hesitant to deploy transsexuals at work area because of their becoming the center of attraction in a negative way. The transsexuals have frequently been molested by their fellow workmates and in some cases by their employers as well. This abandonment and dishonor from every sphere of life make the transsexuals intense haters of the society.

The transsexuals in Bangladesh live in a group constituted of other transsexuals and led by a



them, the way they curse people. To the end, we simple wish they would not come into existence.

The transgender people are living all around us like living enigma. They simply exist, yet we refuse to take it as a truth. They have their time of happiness, they have their moment of sadness, they become aggrieved, and they become contented. They have a unique story of them to be told.

## Transgender or Transsexual?

It has been a difficult task to term the transgender, as the word "Transgender" covers a large terrain which includes variety of people disbelieving their birth assigned sex; the term also covers their behavior, their attitudes and tendencies towards the typical society and life. The term transgender is not to be meant to use to imply any specific sexual orientation; rather it indicates ones own self identification as a man

transsexual people are strained to stay within the specific terminology. The greater the desire becomes, the stronger the claws of social norms get. Some of these hapless people are strangled to live a socially acceptable "normal" life by adapting with the norms; others join the tiny army of nemesis against our social definition of "human being".

## The transsexuals in Bangladesh

The transsexuals in Bangladesh are particularly males those are called as "Hijra". Usually they bear the characteristics of a normal male having functional genitalia, beard, mustache and other physical indicators to be called as a man. Some Hijras may undergo hormone replacement therapy where release of testosterone has been blocked by incorporating estrogen promote sex reassignment surgery which includes amputating the male genitalia and artificial installation