



LAW watch



Public procurement and corruption

SHAKHAWAT HOSSAIN SHAMIM

An amendment to a law is designed to remove the lacunas of existing law and find the way to implement the provision more effectively. But unfortunately the recent amendment introduced to the Public Procurement Rule (PPR) would perhaps put a damper on a vital front of governance.

Corruption, terrorism and mismanagement in the public purchase are the common scenario for the last decades. Mishandling of public procurement in absence of a uniform law contributed largely to the situation. Reforms in the public sector finance were initiated during the previous regime of AL government. Later on the law was passed in 2006. But Public Procurement Act (PPA) and PPR were made effective during the caretaker government in 2008. It has been modernized and brought to international standard through the enactment of successive law and rules.

In the PPR 2008, there were mandatory provision of work experience and financial qualification of the bidders for submitting bids against any tender called by the government agencies to procure goods and works. At least five years of experience was required for the contractor to submit bid to get a work or supply of goods for up to tk20 million from any project implementing agencies.

But now under the Public Procurement (amendment) Rules the implementing agencies have been given "discretionary power" allowing to invite fresh contractors or experienced ones to submit bids against any tender for public works and supply of goods up to Tk20 million. The mandatory financial qualification relating to "turnover" and "liquidity" of the bidders have been relaxed so that the fresh contractors can also compete in any government bidding. Moreover the much debated and discarded system of lottery for contract award will be re-introduced



and tender will be rejected if tenders quote less or more than five per cent of the official estimated costs. Another provision provides that, in every contract there should be 10 per cent advanced payment. So a contractor winning a contract up to Tk20 million is new in one hand and on the other, he will take 10 per cent advanced after the contract is awarded. Another provision was kept that is no performance guarantee for contract up to Tk 20 million. Only retention money will be adjusted up to 10 per cent during the progress of the contract. The provision seems to be ex-facie irrational.

It has been said that it was done to increase the economic efficiency, transparency and fair competition in the process of public procurement. But in practice, qualities of procurement seriously suffer due to capping of tender price and rejection of tenders for quoting prices below or above five per cent of the official estimate. Because the market price is likely to better reflect the real costs than the pre-fixed price. More importantly, these amended provisions have already sent a negative message to the external partners and they will not rely on the government in future. This is a big bump to the pledges to root out corruption from society.

So it is submitted that relaxation of qualification of the bidders for procurement up to 20 million and allowing "single-stage two-envelope" method in submitting bid and lottery to select a contractor will breed corruption in public purchase. It's rational to expect from the law making authority to amend the law in such way which would not re-open the door of corruption. As it happened already, please step backward as soon as possible. When we are marching forward for "Digital Bangladesh" why should we not introduce the system of submitting the tender over internet like India and other developed country? It's high time to think over it.

The writer is a Lecturer, Department of Law, BGC Trust University, Chittagong.

LAW event



Success for BRAC's Moot Team



BRAC University Moot Team comprising Ms. Kazi Tuney Binte Zinnat (Mooter), Muhsina Farhat Chowdhury (Mooter) and Assistant Professor Tureen Afroz (Team Coach) has been acclaimed for 'Distinction Performance' in the recently held Louis M. Brown International Client Counseling Competition 2010, at the Hong Kong University, Hong Kong during 7-10 April 2010.

Louis M. Brown International Client Counseling Competition has been one of the excellent platforms for the law students since 1985, to learn and practice client interviewing and counseling skills. It started with only three teams: Canada, USA and UK and by this year, about 22 countries participated in the final competition. They are: Australia, Bangladesh, Cambodia, Canada, China, England and Wales, Finland, Hong Kong, India, Indonesia, Irish Republic, Malaysia, Netherlands, New Zealand, Nigeria, Northern Ireland, Puerto Rico, Russia, Scotland, Sri Lanka, Ukraine, and the United States. This year for the first time Bangladesh has participated in this competition and BRAC University represented Bangladesh in this historical moment.

In the finals, the first three positions were won by the New Zealand, England and Wales and the USA teams. Bangladesh (the BRACU team) scored the 12th position among 22 finalist countries of the world. Also, the Bangladesh team received recognition for 'Distinction Performance' for showing exceptionally high standard in their debut participation in this competition.

Press release.

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

I would like to know about LGBT community in Bangladesh. I would also like to know about the rights they may have. Thanks.

Zaman London

Response

Thanks for your query. I understand that you reside in the UK where it is not uncommon to meet persons who are homosexuals. The UK is one of the most recent liberalized countries in the world so far as LGBT issue is concerned.

The term 'LGBT' is not a very common one especially in this part of the Globe. LGBT collectively referred to 'Gay, Lesbian, Bisexual and Transsexual'. Sex means the sum of peculiarities of structure and function that distinguish a male from a female organism. Sexuality means a desire/urge to have sex which emerges from time to time in both male and female with their growth in age. Sexual orientation exists along a continuum that ranges from exclusive heterosexuality to exclusive homosexuality. Bisexual persons experience sexual, emotional and affectional attraction to both their sex and the opposite sex. Persons with a homosexual orientation are sometimes referred to as a Gay (for men and women, but mostly men) and Lesbian (for women only). Transsexuals are, on the other hand, persons who have converted their sex from one to other, i.e., a man who wants to be a woman and has medical treatment to make him into a woman or a woman who wants to be a man and has medical treatment to make her into a man. Such change of sex is generally done for the purpose of prostitution and thereby to increase income. There is no legal acceptability of gender transformation in our country. There may be probably many reasons for a person's sexual orientation, which may be different for different people.

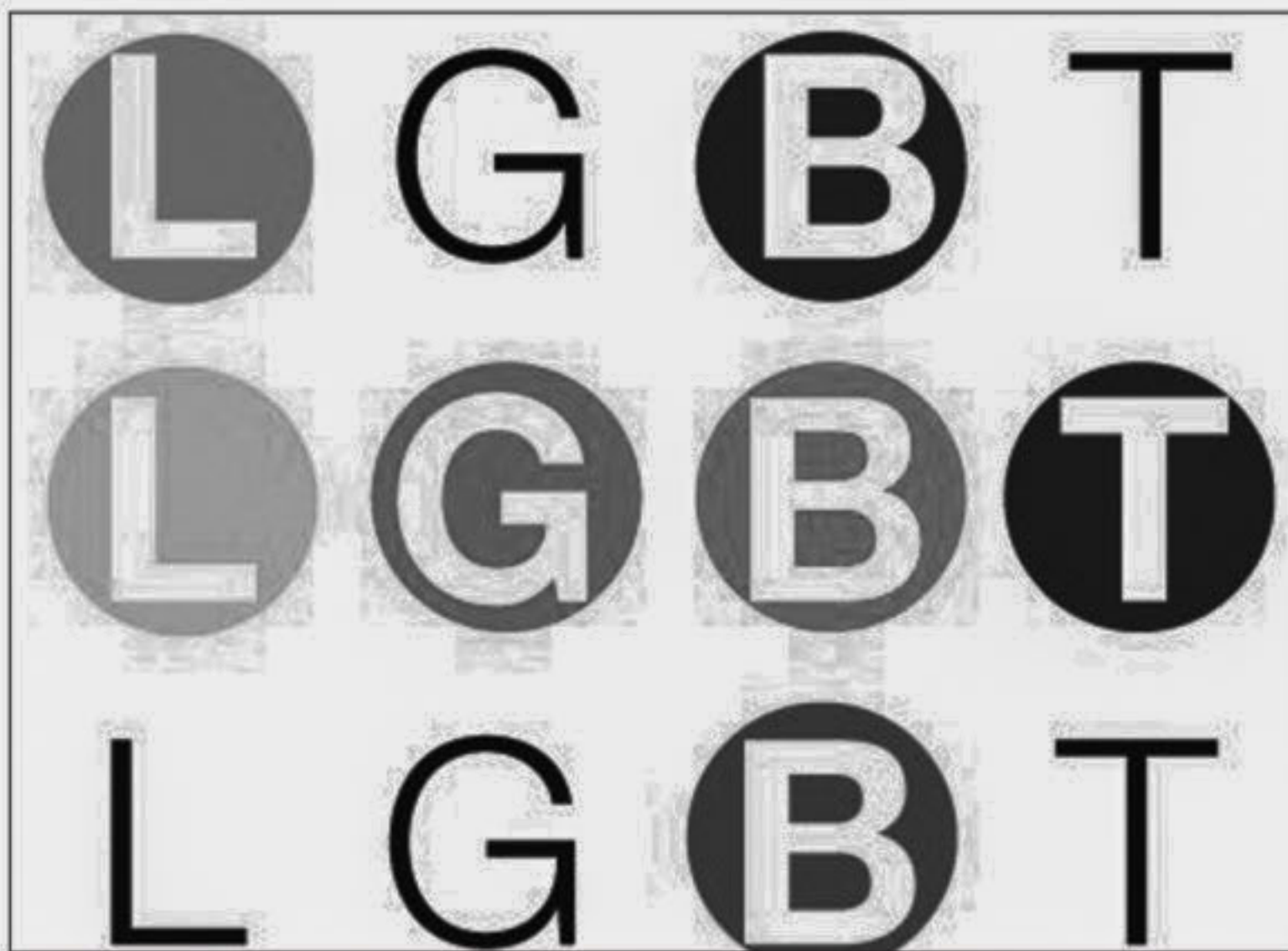
As a starting point of my response to your query, it is relevant to mention here that the Constitution of the People's Republic of Bangladesh categorically protects the fundamental rights of the citizens. The Constitution holds that State shall not discriminate any person on the ground of religion, race, caste, sex or place of birth. Neither such discrimination can be made on these grounds in case of any opportunity to public employment. This protection includes non-discrimination on ground of sex. However, this is notable that this is a very basic protection and does not at all cover protection of LGBT or securing the rights of LGBT with regard to their sexual orientations. In fact such question does not at all arise under the present legal regime of our country, which I shall attempt to discuss shortly.

Under section 377 of the Penal Code of Bangladesh, it is a crime to have carnal intercourse voluntarily against the order of the nature with any man, woman or animal and such offence is punishable with life imprisonment and with fine. This provision in the Penal Code is sufficiently clear enough to reach a conclusion that the Bangladeshi law does not recognize LGBT rather the same is prohibited as a criminal offence. As a corollary to this same sex marriage, civil partnership, civil union or the same is not recognized and not allowed in our country.

No 'hate crime' exists in Bangladesh to address crimes committed by the perpetrator motivated by the sexual orientation or gender identity of the victims.

In many countries of the world, especially western liberal countries, homosexuality is absolutely lawful and even same sex marriage or civil partnership is permissible. On February, 1994 in Strasbourg, the European Parliament (Parliament of the European Union) voted a resolution affirming equality of rights of homosexuals. They recognized, in particular, the right to marry and to adopt child by the homosexuals. The laws of those western liberal countries have on principal reflected their change in the social view point to homosexuality and aimed to reflect and secure greater degree of human rights. They believe it is the human right of the person concerned to decide and practice sex as per his/her individual sexual orientation. The situation is utterly different in our country. Our social, moral, cultural and religious values are significantly dissimilar from those of the western democracies. Islam seriously opposes homosexuality so do Hinduism and Christianity. But, religion is not the only reason why homosexuality is proscribed in Bangladesh. Indian Penal Code contains the same provision prohibiting homosexuality and treating it as a crime.

Recently, however, the Delhi High Court passed a ruling rendering s.377 of the



Indian Penal Code violating Articles 14, 15 and 21 of the Indian Constitution, which provide for equal opportunity of life and equality before law. Judges opined for amending s. 377 of the Indian Penal Code and thereby legalizing sex between consenting adults as "Equality should not be read literally but in true spirit". However, the Court's ruling does not apply to those below the age of 18 years. The Court also ruled that, the Indian Law Commission's report recommending the legalization of gay sex should be considered by the Central Parliament of India. The ruling was welcomed by gay rights activists but was not accepted by leaders of different religion groups and different corners of the public at large. Earlier in 2004 the Delhi High Court dismissed a similar petition terming it as an academic challenge to the constitutionality of a legislative provision. On 2008, the Central Government of India also opposed gay sex for being immoral. Therefore, it's time to see whether the Central Government of India will appeal against the latest order of the Supreme Court.

Thus, it is the culture as a whole which militates against the legalization of LGBT in this region of the world, including Bangladesh. Because of the cultural, religious and above all the legal bar for homosexuality, there are not much people in our country, who belong to the LGBT community, at least in a visible manner. Despite the same, I am aware of at least 2 gay and 1 lesbian group operating in Bangladesh in a very small scale. While answering your query, I am not further inclined to judge the correctness of the existing laws of our country, but shall only comment that it is not at all a forthcoming incident, when homosexuality will be legalized in our country.

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

clear idea of the particular business. Definitely having an MBA adds extra mark for this job. It will be mistaken to think that an in-house lawyer only deals with company law and contract law. Starting from contract law, he/she has to know criminal law, anti corruption laws, banking and financial laws, securities laws, commercial laws, environment laws, taxation laws, consumer laws, inheritance laws etc. Also sometimes the lawyers need to give input for business strategy issues and policy making.

The attitude is also very different here. You always have to show a can-do attitude and give legal advice fast. It is also part of the job to explain the opinion precisely and in very clear understandable way. The business people do not need to know all the legalese and detailed analysis of case laws. Many time what they need is a simple yes-no answer. You have to be also ready to do some extra work such as reporting to the board members/ management, providing training for raising awareness etc. Presentation skill has to be very good and only computer literacy is not enough here. Fluency in English is a must.

Though Bangladesh is a bit late for adopting the global trend, but it is high time for the concerned to focus on this area. Besides contributing towards creating job opportunities, this concept has the potential to open doors for our lawyers to serve in foreign countries. Indians are very much ahead on this and they are using their expertise for international outsourcing as well. Bangladesh Bar Council should play a leading role to arrange appropriate training facilities for the interested young lawyers and also encourage lawyers to change the mindset.



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Jahrat Adib Chowdhury  
Barrister-at-Law, Supreme Court of Bangladesh

LAW week



4 ship-breaking yards sued

The Department of Environment (DoE) sued four ship-breaking yards in Chittagong for causing pollution just days after the commerce ministry decided to allow dismantling vessels built with toxic substances. Ignoring an order of the High Court, ministry has recently relaxed its import policy allowing scrap-pers to import such vessels. None of over 100 ship-breaking yards in the country has any facilities to clean ships built with substances like asbestos and PCB. Every ship-breaking yard has to have a clearance certificate from the government saying while dismantling the vessels it would not pollute the environment. None of the 69 shipyards operating currently has such certificates. The DoE served notices upon them to have the certificate after the HC ordered the government last year to shut those scrap-pers. - *The Daily Star, April 22, 2010.*

Row over oath continues

Chief Justice Mohammad Fazul Karim said he would take steps soon to resolve the crisis regarding the swearing in of two High Court judges. But the CJ did not say if he himself would swear them in, said a group of pro-Awami League lawyers after meeting the CJ at his Supreme Court office. Former Supreme Court Bar Association secretary AM Amin Uddin, one of the lawyers, told *The Daily Star* that the chief justice has no option but to have judges Ruhul Quddus and Md Khasruzzaman sworn in since their appointments are still valid. - *The Daily Star, April 22, 2010.*

CJ approved all of 17 judge appointments

The chief justice, who did not swear in two of the 17 newly appointed additional High Court judges, had approved all the 17 to be appointed by the president. A few legal experts said it is the CJ's constitutional responsibility to swear in any judge appointed by the president. "There is no question of cancelling the appointments of the two judges as appointments of all the 17 judges were made in consultation with the chief justice as per existing convention and provision," Law Minister Shafique Ahmed told *The Daily Star*. On April 11, President Zillur Rahman temporarily appointed the 17 persons as additional judges of the High Court for two years as per the constitution. - *The Daily Star, April 21, 2010.*

EC allocates 1.2m euros more to help address impact

The European Commission's Humanitarian Aid Department has allocated 1.2 million euros as humanitarian aid to address the impact of rodent crisis in Chittagong Hill Tracts (CHT). The commission has already allocated 3.65 million euros since the crisis began to assist the most affected population with food and income generating activities. The people living in the remote areas of the CHT are still facing severe food insecurity due to a three-year-long rat plague, which affected their crops. Every 40-50 years the bamboo plants produce flowers which, when consumed, cause the rats to reproduce at an accelerated rate, said a press release of the European Union Delegation to Bangladesh.

The rats have eaten seeds, crops and food stocks leaving an estimated 130,000 people with inadequate food sources or incomes. - *The Daily Star, April 21, 2010.*

56 BDR rebels jailed in Satkhira

The Special Court-1 of Bangladesh Rifles sentenced 56 accused of 7 Rifle Battalion to different terms of rigorous imprisonment for their involvement in mutiny in Nildumur of Shyamnagar. The court set up at 41 Rifle Battalion also acquitted four accused -- sepoy Zaidul Islam, Golam Masud, Makbul Hossain and Golam Mostafa Sagir -- as the prosecution could not prove the charges against them. BDR Director General Maj Gen M Mainul Islam, president of the special court, pronounced the verdict at 1:00pm on completion of trial proceedings under the Bangladesh Rifles Act, 1972. Twenty-four BDR men were jailed for seven years, four for five years, three for four years and a half, five for four years, three for three years, one for two year and a half, four for two years, two for one year and a half, six for thirteen months, one for six months and three for four months. - *The Daily Star, April 20, 2010.*

Allegations not true

Law Minister Shafique Ahmed said the allegations against two newly appointed High Court judges are false, and he hoped they would be sworn in soon. "The gazette notification regarding appointments of the High Court judges is still in force. The appointments are legal and valid. I think the allegations brought against the two judges are false," he told journalists after attending the launching ceremony of a book. "I hope swearing-in of the two judges will be held soon," the minister said. - *The Daily Star, April 20, 2010.*

Rare absence of SC judges marks oath

Breaking away from the tradition, no judges of the Appellate Division were present when the chief justice swore in the newly appointed 15 High Court judges. Chief Justice Mohammad Fazul Karim administered the oath at the Judges' Lounge of the Supreme Court in the morning, leaving out judges Ruhul Quddus Babu and Md Khasruzzaman as per his earlier decision. Senior lawyers observed that both the incidents--the CJ's decision not to swear in the two judges and the apex court judges' absencing themselves from the oath-taking ceremony--are unprecedented. However, many HC judges attended the function. - *The Daily Star, April 19, 2010.*

57 BDR rebels convicted

The BDR Special Court-3 in Feni sentenced 57 out of 62 mutiny accused jawans of 19 Rifles Battalion to different terms in prison. The rest five were acquitted of the allegation. It was the third judgment given in connection with the last year's BDR mutiny. The chairman of the court, BDR Director General Maj Gen Moinul Islam delivered the verdict. In addition to jail terms, the court also fined each convict Tk 100. They will serve the sentences in civil jails. The judgment has been delivered following the BDR law. - *The Daily Star, April 19, 2010.*

No law as yet for recruitment

A parliamentary sub-committee is going to recommend enacting a law, setting criteria, qualities and qualifications for appointment of the Supreme Court judges to do away with the politicisation of the appointment process. Formed by the parliamentary standing committee on law, justice and parliamentary affairs ministry, the five-member sub-committee has almost completed drafting the law. Despite its necessity, no move was made in over last 38 years to enact the law. - *The Daily Star, April 18, 2010.*

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