

YOUR ADVOCATE

Query
Sir, I want to know the legal procedure to form a new party. Please give me sufficient information in this respect. Side by side, also mention which authority gives the approval to establish a new political party.

Reader,
New Eskaton, Dhaka

Response

I would like to thank you very much for asking me to provide legal opinion regarding the legal procedure related to the formation of a political party. The Constitution of Bangladesh has defined a political party a group of persons operating under a distinctive name for engaging in political activity or to propagate a political opinion within or outside the Parliament. As far as the legal procedure to form a new political party is concerned, it is necessary to register with the Election Commission (EC). The Representation of the People Order (Amendment) Act, 2009 and the Political Parties Registration Rules 2008 contain relevant provisions in this regard. Formation of a political party is now more systematic than ever before.

Chapter VIA of the 2009 Act deals with the registration of the political parties with the EC. However, the political party willing to be registered must fulfill few conditions in order to apply for registration. These include: it has to establish a functional central office along with a central committee. There has to be District offices in at least in one-third administrative Districts and offices in at least one hundred Upazilas or Metropolitan Thana having a minimum number of two hundred voters as its members in each of them. Besides, the constitution of the party must contain specific provisions related to some matters. For instance: to elect the members of the committees at all levels including the central committee, to reserve at least 33% positions for women in all committee including the central committee to be achieved by the year 2020, to prohibit formation of any organization or body as its affiliated or associated body comprising of teachers, students, employees, labourers or members of any

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.



other profession and to finalize nomination of candidate by central parliamentary Board of the party. The nomination has to be finalized in consideration of panels prepared by members at the grass root level of the concerned constituency. However, a political party may be disqualified from being registered if its constitution contains anything discriminatory or its objective is contrary to that of the constitution of Bangladesh etc.

The EC shall register a political

party if the aforesaid conditions have been fulfilled and issue a registration certificate in the prescribed form and publish it in the Official Gazette. Where the application has been rejected, the EC shall inform the concerned party in writing within seven working days.

As far as the application process is concerned, the Political Parties Registration Rules 2008 contains provisions supplementing the provisions of chapter VIA of the 2009 Act. Accordingly, the

EC may call for applications for registration of political parties willing to take part in the polls at times. The application must be signed by the Chairman or General Secretary or anyone equivalent thereof. It has to be made in prescribed form with the payment of prescribed fee. The documents attested by the General Secretary to be attached with the application are: constitution of the party, election manifesto (if any), Rules (if any), Logo and flag, List of the names of the members of the Central Executive Committee or any equivalent committee, the number of the Bank account in the name of the party along with the name of the Bank and the updated statement, source of the fund, document conveying power on the applicant to make application, copy of the receipt confirming payment of fee, and documents supporting the existence of an active Central Committee, Central office, effective District offices with at least ten District committees, offices in at least fifty Upazilas or in Metropolitan Thanas.

After the filing of the application, the EC shall verify the information contained in the application along with the documents attached. On the contrary, the EC shall allocate fifteen days to correct the error and produce the concerned documents. Prior to registration, the EC shall publish notice in two national dailies seeking opposition to the registration within the stipulated time. In case of objection, the EC will hear both the parties to decide as to the acceptance and rejection of the application.

Considering your second query, it may be opined that the EC is the authority to give approval to the floating of new political parties. It becomes evident as the provisions of the Representation of the People Order (Amendment) Act, 2009 and the Political Parties Registration Rules 2008 dealing with the registration of the political parties and the application process vest all the functions upon the Commission i.e. the EC.

I hope that the aforesaid analysis shall help you to take further steps incidental to your queries.

For detailed query contact omar@legalcounselbd.com

LAW WEEK

Mega trial opens

A trial court took into cognisance charges of the country's largest ever killing case in connection with the BDR carnage at Pilkhana in February 2009. As many as 801 of total 824 accused were hauled before the Court of Metropolitan Sessions Judge, Dhaka amid tight security. Apart from the prosecution, several hundred defence lawyers gathered in the courtroom and complained of not receiving any copy of necessary case documents including the charge sheet. In terms of the number of accused this is the largest ever criminal case in which every single defence counsel demanded certified copy of all case documents. -*The Daily Star, January 6, 2011.*

Local govt bodies remain ineffective

By keeping upazila parishads almost dysfunctional, and showing reluctance to hold long overdue polls to other local government institutions, the Awami League-led government has demonstrated its lack of interest in decentralisation of power. In doing so, the ruling AL also demonstrated its indifference to its own electoral pledges, and commitments stipulated in the party constitution as well. As a result, the prospect of the country's local government system, which is an integral part of the state's executive branch, is still looking bleak, and changes to the political system remain a far cry. -*The Daily Star, January 6, 2011.*

Trial on with Koko away

Trial of a money laundering case against former premier Khaleda Zia's son Arafat Rahman Koko and Ismail Hossain Saimon, son of former shipping minister late Akbar Hossain, began with deposition of the complainant. Twenty-three cases are pending against Khaleda, her elder son Tarique Rahman and Koko. Of those, the money laundering case against Koko is the first which has been put on hearing. Koko and Saimon have been charged in the case with laundering of Tk 23 crore to Singapore. As both Koko and Saimon are absconding, the court started the trial against them in absentia. -*The Daily Star, January 5, 2011.*

JS sovereign

Parliament is sovereign and everything including the judiciary is accountable to it, Suranjit Sengupta, a parliamentary panel chief, said. The senior Awami League lawmaker also said it is parliament that elects and can impeach the country's president who

appoints the chief justice and other judges in consultation with the prime minister. The law ministry is accountable to the parliamentary standing committee on it. So the judiciary too with regard to all its appointments is answerable to the parliamentary committee, he added. -*The Daily Star, January 5, 2011.*

TIB submits questionnaire, replies to SC

Transparency International Bangladesh (TIB) submitted to the Supreme Court (SC) the questionnaire of its household survey and replies of the respondents a day after it was asked to do so. A printed copy of the questionnaire was submitted to the court. All other documents containing the litigants' perception of the judiciary were given in three compact disks, said TIB Executive Director Iftekharuzzaman. -*The Daily Star, January 5, 2011.*

SC won't send rep to JS body meet

Chief Justice ABM Khairul Haque at a meeting with all High Court judges decided not to send any representatives from the Supreme Court to any parliamentary bodies. Meeting sources say all the judges opined that the judiciary as per the Constitution is an independent organ of the state and the Supreme Court is also an independent institution. So the SC is not liable to send any representative to the parliamentary standing committee on law, justice and parliamentary affairs ministry, the judges argued. The decision came as the parliamentary body on November 29 last year decided to ask the SC registrar to appear before its next meeting to clarify alleged irregularities in appointment of the district and sessions judge, Dhaka. -*The Daily Star, January 4, 2011.*

SC spurs govt

The High Court expressed concern over an incident of maiming a child to force him into begging by a gang in the capital and issued a suo moto rule on the government to stop such incidents. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain said it is astonished at the law enforcers' inaction in taking appropriate steps against the gang that reportedly abducts and maims children and use them to make money. In its directives, the bench asked the government to explain within seven days why law enforcers' inaction against the gang

HUMAN RIGHTS ADVOCACY

2010: A worrying year for human rights defenders

BDHAKESH was under the State of Emergency from January 11, 2007 to December 16, 2008. It was not an easy achievement of the people of Bangladesh to oppose the unelected caretaker government backed by the army and make the transition to a government that they could vote to power. The 9th Parliamentary Election was held on December 29, 2008 where the Grand Alliance, led by the Bangladesh Awami League, won a landslide victory and formed government along with the Jatiya Party of General H.M. Ershad on January 06, 2009.

However, the overwhelming lack of political tolerance, absence of necessary and effective institutions to ensure a democratic polity and blatant violations of human rights still remain the biggest hurdles for democracy in Bangladesh. The present reality of Bangladesh proves again that while a representative government is essential for democratic practice, is not enough if the Executive, Judiciary and the Legislative fail to play their respective roles to ensure constitutional and international norms of human rights. In such situation an undemocratic and dictatorial nature of power manifests in many different ways and abuses the state machin-

ery for partisan and narrow political gain.

The Bangladesh Awami League, in its election manifesto promised to ensure good governance, transparency and accountability. It also promised to stop extra-judicial killings. The Foreign Minister made commitments of 'zero tolerance' regarding extrajudicial killings in the Human Rights Council on March 01, 2010 and at the Universal Periodic Review Session (UPR) in Geneva in February 2009 and also when Bangladesh got elected for a 2nd term to the UN Human Rights Council on May 12, 2009. However, these are now mere words without action.

Violence against journalists; interference in electronic and print media; extra-judicial killings; custodial torture; violence against women and children are still continuing. Despite the tripartite agreement on minimum wage in the garment sector it could not be implemented causing unrest in ready made garments sector. Oppression against ethnic and religious minorities; and other human rights concerns marred 2010. Apart from all these, confrontational politics between the two major political parties and the non existence of a consensus regarding major national issues have all made



the political and human rights situation in Bangladesh more vulnerable. The Opposition MP's have remained absent from Parliament for various reasons, but have enjoyed all the facilities they are entitled to. Corruption continued unabated, negatively affecting the life and livelihood of people. During 2009 the government passed an Act to put Upazillas under the control of Parliament Members. Furthermore, in 2009 the Anti-Terrorism Act was also passed mainly, it seems, to suppress dissenting voices. Such 'controlling' laws started a trend that continued into 2010.

The laws governing the activities of the National Human Rights Commission and the Information Commission restrict the independent functioning of these two institutions and the Judiciary is becoming more and more bound in a web of politicisation. Law enforcement agencies engaged in torture and ill treatment, in total confidence that their actions would be over looked. Government representatives in 2010 publicly denied the occurrence of extrajudicial killings. The

practice of torture and degrading treatment by the law enforcement agencies is nothing new and the indifference shown by successive government regimes regarding this practice, have only strengthened their use. In 2010, Odhikar's statistics show that the Rapid Action Battalion (RAB) was the main perpetrator of extrajudicial killings this year, while the police were the main perpetrators of torture.

The annual report of 2010 shows that acts of violence against women are no where near decreasing. Despite special criminal laws to ensure justice for acts of violence against women, lack of implementation, corruption, economic hardship and social/family programme interfere to prevent justice from being done. 2010 also show a rise in incidents of harassment and physical abuse of young women and girls.

In all, 2010 has been an 'eventful' year for perpetrations of human rights abuses, which cover all the sectors of human rights social, political, economic and cultural. It has also been a worrying year for

human rights defenders, even more so due to the lack of accountability and acts of impunity, which persisted and prevented the redress of such violations.

Human rights trends are an important indicator of the health of a nation and its institutions. The more the violation of rights, the more the 'illness'. Bangladesh has always suffered from 'ill health' when it comes to human rights issues and 2010 was no exception.

The reporting and publication of the human rights situation of a country is an act that requires dedication, commitment and a certain amount of fearlessness. In this regard, Odhikar has been consistent and diligent for the last 15 years, even publishing annual human rights report during the State of Emergency. In 2010, Odhikar had to pay for its human rights activities by coming under the scrutiny of the government that can only be termed as 'too close for comfort'.

This is an abridged version of Human Rights Report 2010, Odhikar Report on Bangladesh.

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: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net