



YOUR ADVOCATE

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.



ter the Copyright of the song in his name. However, in order to avail the protection, it is necessary to apply to the competent authority for registration of Copyright in the statutorily prescribed manner with the payment of prescribed fees. Hence, the demand of the former band member as to infringement of Copyright is not maintainable, unless he is the composer of the song. So, it may happen that the Copyright of some of the songs belong to him whereas the copyright of other songs belong to different other members of your band.

It is worth mentioning that the owner of Copyright is also entitled to allow any other person to use the work wholly or partly by assigning the right in such manner. Considering your query regarding Copyright agreement, we would like to advise you to form a Company in the name of the band and have the songs registered under its name. This is because a Company is a separate entity which can own property. Holding the shares of the Company, you and other members of the band can be the part of the Company. This would be very helpful for avoiding any dispute over the musical works in the upcoming days and the creations of your band will also get necessary protection.

In Bangladesh, the protection of Intellectual property is still a new concept and the concerning law is not suitable for sufficient protection. In consequences, it will not be surprising if you find the Copyright of the songs already registered. In that case, you may have to be involved in lengthy process involving litigation. We always prefer for settling any dispute beyond the court as litigation is not only time consuming but also costly. We hope that the aforesaid advice will help you to resolve your queries and solve your problem.

For detailed query contact:
omar@legalcounselbd.com.



LAW WEEK

Fatwa can't be forced: SC

Modifying a High Court verdict declaring fatwa (religious sermon) illegal, the Supreme Court on May 12 ruled that properly educated persons can issue fatwa but cannot force anyone to accept it. "No punishment including physical violence or mental torture in any form can be imposed or implicated on any body in pursuance of fatwa," the court said in its verdict. No body can pronounce fatwa that violates or affects the right or reputation or dignity of any individual, it added. A six-member bench of the Appellate Division headed by Chief Justice ABM Khairul Haque came up with the verdict after allowing in part two separate appeals filed against the High court verdict that declared fatwa illegal. The SC in its short order said the declaration of the HC division that impugned fatwa is void and unauthorised, if maintained. *The Daily star online edition May 12 2011.*

Legal block to power takeover by military

The Supreme Court in a verdict on May 11 blocked the way for legitimising extra constitutional usurpation of state power such as military takeovers. It reinstated a part of a High Court verdict, on the 5th amendment to the constitution that had earlier been expunged by the SC itself. The HC in 2005 cancelled the paragraphs 3A and 18 of the fourth schedule under article 150 of the constitution which had made ways to legitimise rules and regulations and all acts under the first martial law regime between August 15, 1975 and April 9, 1979. In a reversal of decision, the same court on 11 May upheld the HC Division's nullification of those paragraphs. A five-member bench of the Appellate Division headed by newly appointed Chief Justice Md Muzammel Hossain delivered the verdict. *The Daily star May 12 2011.*

Court summons Hashem, family members

A Dhaka court on May 11 summoned former BNP lawmaker and Partex Group Chairman MA Hashem and seven others to appear before it on May 25 in a tax evasion case. Judge Mohammad Zohurul Hoque passed the order after National Board of Revenue (NBR) filed the case against Hashem and seven others with Senior Special Judge's Court. NBR Deputy Tax Commissioner Mohammad Ashrafuzzaman mentioned in the case that the accused dodged tax amounting to Tk 13 crore from fiscal year 2005-2006 to 2008-2009. Earlier, two more tax evasion cases were filed against the accused. *The Daily star May 12 2011.*

Caretaker system declared illegal

The Supreme Court has declared illegal a 15-year-old constitutional provision that mandates an elected government to transfer power to an unelected non-partisan caretaker administration to oversee a new parliamentary election on completion of its term. In the same verdict on May 10 the highest court said the voided system may be practiced for another two parliamentary terms for the sake of "safety of the state and its people". The court also asked the parliament to amend the constitution to make sure that former chief justices or any other Supreme Court judges are not chosen as heads of caretaker governments in case the system is kept for another two parliamentary elections. A seven-member SC panel, headed by Chief Justice ABM Khairul Haque, reached the verdict on majority vote. It thus also rejected a 2004 High Court ruling that upheld the 13th amendment to the constitution which provides for a 10-member non-partisan caretaker government to take over following the dissolution of a parliament and resignation of an elected government on completion of its term. *The Daily star May 11 2011.*

SQ Chy threatens war crimes investigators

BNP leader Salauddin Quader Chowdhury threatened to exact revenge on the investigators of the International Crimes Tribunal on May 10 during interrogation over his involvement in crimes against humanity. Members of the investigation agency said Salauddin, a BNP standing committee member, misbehaved with them while questioning. However, the interrogators extracted valuable information about his involvement in some of those crimes, said Abdul Hannan Khan, coordinator of the investigation agency. The team led by Abdur Razzak quizzed him over his role, activities and political affiliation before, during and after the 1971 war. *The Daily star May 11 2011.*

Child-clubbing cops warned

The High Court on May 08 issued a rule upon two police officials of Khulna Sadar Police Station to show cause within next two weeks as to why legal action against them should not be taken for abusing a child. An HC bench issued the rule upon S M Kamruzzaman, officer-in-charge and Moniruzzaman, sub-inspector of Khulna Sadar Police Station, after hearing a writ petition recorded in connection with physically abusing nine-year-old Belal Hossain of Baniakhamar area in the city. Md Ahmad Ali, executive director of Bangladesh Human Rights Implementation Committee (BHRIC), filed the writ

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 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:

Query
We have an upcoming heavy metal band in Dhaka. We are usually known as an underground band. When the band formed we all wrote songs for the group. The problem occurred when a former band member spread a rumor on our facebook page, to our friends and fans and demanding that we remove songs and quit playing them because of copyright infringement. We believe the songs belong to the band. Are we correct? Do we have recourse? Can we make a copyright agreement. I don't have much knowledge about the entire area of law. Can you please show us a light of hope so that we can preserve our creativity!

Cheated,
Daily Road, Dhaka

Response
We would like to thank you very much for your queries. From the fact we have understood that your problem relates to Intellectual Property and its protection. Firstly, you wanted to know whether the songs created by the band members belong to the band. Unfortunately, the songs do not belong to the band. This is because the band is not a legal entity hence it can neither own nor protect any property, either real or intellectual. So, the Copyright being an intellectual property cannot belong to the band.

Considering your second query as to any recourse that you may take, the Copyright Act 2000 of Bangladesh provides for a list of works entitling to Copyright protection. The list of work contains musical works and hence the songs are brought within the preview of this Act. According to the Copyright Act 2000, author of a work is the first owner of Copyright contained therein. As far as musical work is concerned, it is the composer (i.e. the person composing the song) who is the author. So, the composer of the song is entitled to regis-

LAW AMUSEMENTS

Laws that amuse us...

In Thailand

- You must wear a shirt while driving a car.
- You must pay a fine of \$600 in Thailand if you're caught throwing away chewed bubble gum on the sidewalk.
- No one may step on any of the nation's currency. Because all the bills and coins in Thailand have a picture of the King printed on them. As the King is highly revered, stepping on his likeness can not only get you landed in jail, but can also lead to a serious beating.

In Singapore

- If you are convicted of littering three times, you will have to clean the streets on Sundays with a bib on saying, "I am a litterer."
- The sale of gum is prohibited, after a prolific



amount of chewed gum had been stuck in the subway stations and cars. While the sale of gum is prohibited, it is not illegal to chew it, but if one sticks the gum anywhere else besides the trash can, he or she faces huge fines.

In Japan

- There is no age of consent.

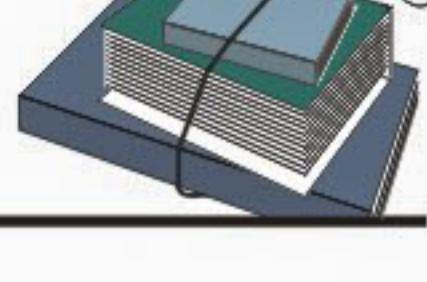
In China

- To go to college you must be intelligent.
- You may only have one child, or you will have to pay a fine. China is the most populated nation in the world, and the government there has taken measures to stem any sort of growth in the population and, hopefully, decrease it. Despite many westerners' beliefs, China does not kill second borns. Rather, a large tax is placed on any family which chooses to have more than one offspring.

In Philippines

- Cars whose license plates end with a 1 or 2 are not allowed on the roads on Monday, 3 or 4 on Tuesday, 5 or 6 on Wednesday, 7 or 8 on Thursday, and 9 or 0 on Friday.

LAW BOOK REVIEW



Accessibility to legal matters

AINER KATHA

Author: TANZIM AL ISLAM
Publisher: Palal Prokashoni
Date of publication: February 2010
Price: 150 (BDT)

In the book "Ainer Katha" Tanzim Al Islam endeavored to make a good deal of legal matters accessible of the general people. In the preface of the book Tanzim categorically mentioned the object behind his Endeavour. He believes that if people know rudimentary matters of law their sufferings will reduce drastically. Specially, laws of daily importance like family laws and land related laws.

The author in 5 different heads identified some legal anomaly in substantive and procedural matters. He pointed out some problems and suggested a number of viable cogent solutions.

Under the first head "Family matters" another lucidly explained the principle of family courts and family related legal matters including Hilla Marriage, rights of women in case of dissolution of marriage etc. He suggested some reforms in family law and ultimately he advocated for uniform family code.

Second part of the book deals with land related matters. Tanzim discussed in a very plain language rather than that of typical pattern of legal literature. It is almost exhume in our country that land related suits involve cost and hassle that at the end of the day neither the loser nor the winner wins at all. Third part of the book is named "justice system". Here

Tanzim discussed both practical and legal aspect of justice system. This part splintered the book literally into two. In the second half he focused on some theoretical issues through these also have implications in daily life.

In this section author identified drawbacks in our legal system. First he explained the causes of procrastination in civil cases. Tanzim also criticized investigation system and procedure of bail. He also includes the complexities of the Hill tracts

and nature of suicide incidents. Here the students of law, criminology and social welfare will find some match with their syllabi. Tanzim explained the malpractice of fatwa with some case studies and recent developments of judicial decisions.

At the very ending chapter of the part Tanzim succinctly noted how legal provisions are failing to protect the cause of citizens where people are subjected to doctor's negligence and his argued that though there are some legal provisions implication hardly seen. Tanzim that's why proposed to enact a new law to regulate the right of citizens health care.

From the very nomenclature of the last part of the book it is apparent to the readers that this part treats of constitution human rights and some other miscellaneous issues.

As Tanzim in the proem of the book mentioned that the articles published in the book were written for publishing daily newspapers. These are naturally very brief in shape; there was no scope to go for details. Writings were re-edited to include in the book, still there is scope for improvements.

In spite of the shortcomings Tanzim showed good acumen in writing the book for the mass. Probably that is why than Ex chairman of Bangladesh Law commission Justice Muhammad Abdur Rashid in his forward to the book expressed his optimism that the book will be useful for general readers, researchers, lawyers, students and all people concerned with law including judges.

Reviewed by Mahadi Hasan Khan
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judicial system
Forth part of the book namely Law and crime includes causation of crime from psychological perspective. Tanzim rightfully highlighted the flaws of jail system. Among other things worth nothing this chapter provides reader the causes of prevailing white collar criminality. Juvenile delinquency

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