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NEWS LETTER

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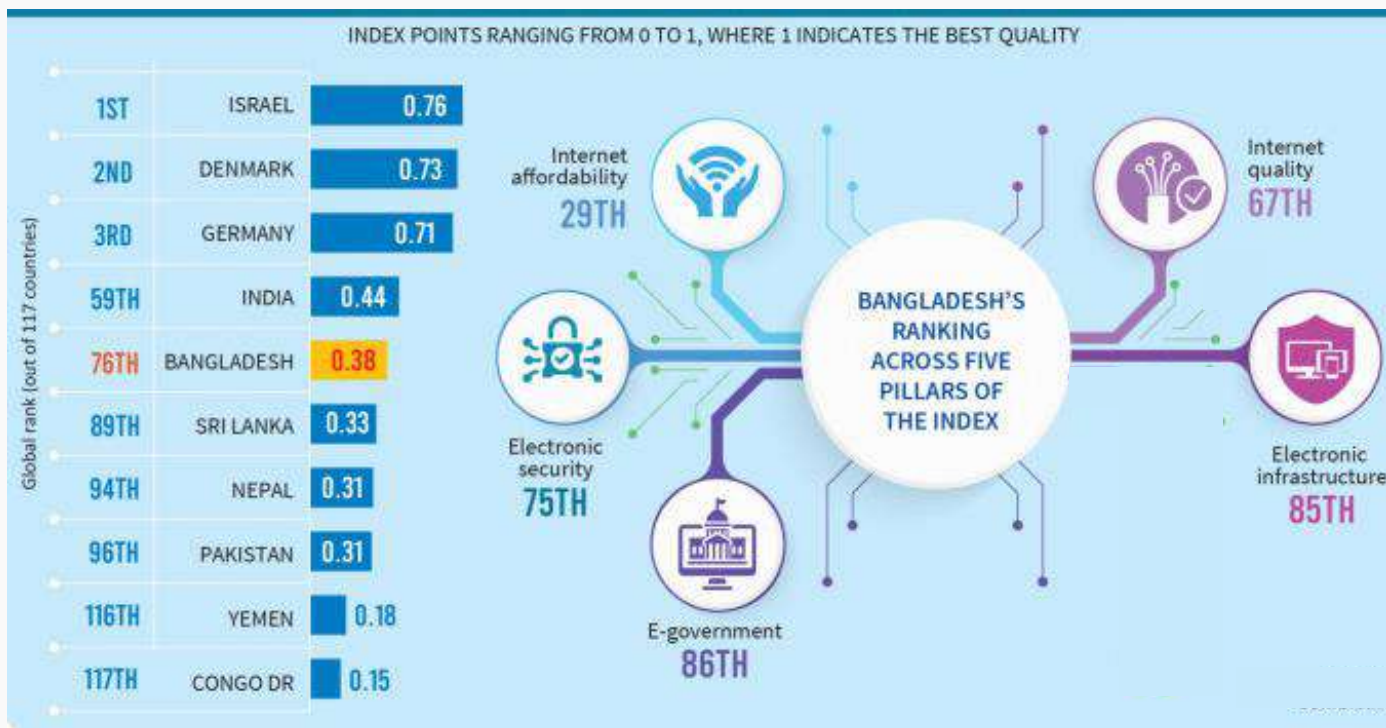
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Bangladesh Jumps 27 Notches in Digital Quality of Life Index

- second after India among the five South Asian countries assessed in the index



Bangladesh has climbed up 27 notches to rank 76th in the world in digital wellbeing, thanks to the country's performance in internet affordability, security and quality, according to the Digital Quality of Life (DQL) Index 2022.

Netherlands-based cyber security company Surfshark released the fourth annual edition of the index on 12 September based on their study on the quality of digital wellbeing across 117 countries of the world.

The index evaluated the countries on five fundamental pillars – internet affordability, internet quality, electronic infrastructure, electronic security, and electronic government.

Bangladesh has significantly improved in four of the five indicators this year except for the electronic government pillar, where its position was unchanged. The country's internet affordability and quality have increased followed by improvements in electronic infrastructure and cybersecurity in 2022 compared to last year.

As a result, Bangladesh moved up to rank 76th from last year's 103rd position among 110 countries and was placed 23rd among 34 Asian countries. Among five South Asian countries, assessed in the index, Bangladesh was the second best in digital wellbeing after India, which ranked 59th globally. Sri Lanka, Nepal and Pakistan ranked respectively 89th, 94th and 96th in the world.

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Bangladesh has performed best in internet affordability with a big jump of 55 notches which put the country in the 29th position globally under the criteria from last year's 84th. According to the index study, Bangladeshi residents can buy 1GB of mobile internet for as cheap as 28 seconds of work per month.

While, broadband internet costs people around 4 hours 32 minutes of their work time each month. In internet quality, evaluated on speed, stability and speed improvement for both mobile and broadband internet, Bangladesh ranked 67th from last year's 89th position. The index says, the country's average broadband internet speed was 43.03Mbps from last year's 36.02Mbps, while mobile internet speed hovered a little over 14Mbps.

Bangladesh also improved in the electronic security pillar, measured on cybersecurity and data protection laws, with 28 places up from last year. Under electronic infrastructure, gauged on internet users per 100 inhabitants and network readiness, Bangladesh moved up four notches to 85th this year. In electronic government, which assessed online service index and AI readiness, Bangladesh's position was unchanged at 86th.

Israel topped the ranking followed by Denmark, Germany, France, Sweden, Netherlands, Finland, Japan, United Kingdom and South Korea in the top ten.

Besides, only 18 countries of the top 50 are from outside Europe. Congo DR, Yemen and Ethiopia were listed at the bottom.

In Other News

Liberal Trade could Boost Bangladesh's GDP by 14.8%.

- says World Bank study

Unilateral trade and investment liberalization could boost Bangladesh's GDP, investment, and exports by 14.8%, 20%, and 63.2%, respectively, according to a World Bank study. Such unilateral reforms will help Bangladesh reduce trade costs and access to cheaper and better-quality imported inputs to boost domestic firms' competitiveness and output, it says, pointing out that Bangladesh's trade competitiveness is eroding mainly due to lack of lower export base.

For greater market access for exports, Bangladesh needs to explore deeper and comprehensive trade integration within the region and beyond, suggests the report "*Bangladesh- Country Economic Memorandum: Change of fabric,*" which was disclosed on the bank's website recently.

The report, while calling for deeper bilateral integration with India and the European Union, estimates that the impact of a preferential trade agreement with India will be higher, with export gains more than double the benefits of an agreement with the European Union. Bangladesh could also reap significant benefits from participating in regional integration with South Asian and Southeast Asian countries, with an estimated increase in GDP between 1.4% and 14.3%, it estimates.

Bangladesh's trade intensity is lower than predicted for countries at similar levels of per capita income and the country is missing out on gains from trade due to an inward-looking trade regime, it points out. While tariff modernization is an important step to support export diversification, an ambitious trade agenda that covers goods, services, and investment can boost the gains for Bangladesh.

CASE LAW UPDATE

Human Rights and Peace for Bangladesh (HRPB) VS Cabinet Secretary, Cabinet Division, Bangladesh Secretariat

Facts:

Since it involves public concern and public interests, a writ petition challenging the validity of section 41(1) of the Government Employment Act, 2018 (Act No. 57 of 2018) was submitted to the Supreme Court of Bangladesh. Article 27 of the Constitution of the People's Republic of Bangladesh establishes the principle of equality before law. However, section 41(1) of the Government Employment Act, 2018 claims that before a court accepts the charge sheet in a criminal case brought against a government employee in connection with the performance of his duties, prior approval from the government or the hiring authority must be sought. Thereafter, the section concerned provides extra privilege to a government employee over a general citizen before taking legal action against them.

Issues:

1. Whether section 41(1) of this Act is valid or not.
2. Whether this Section can be declared void and ultra vires of the Articles 26, 27 and 31 of the Constitution or not.

Decision:

Every individual accused of committing an offense must be treated equally as a person's status or position does not exclude them from the requirement of equal treatment. Protection from discrimination on the basis of religion, politics, race, occupation, nationality, or civil status is guaranteed under Article 28 of the Constitution.

It is important to note that, Government employees are protected from arrest under Section 41(1) of Article 21(2) of the Constitution if they become embroiled in any criminal case while carrying out their official duties. The inclusion of this clause in the Act does not provide the petitioners any cause for complaint, so the rule may be discharged. Along with that, Section 41(1) is nothing more than an attempt to defend a small number of corrupt government employees, which the state should not support because it has not improved our country. The Act makes no mention of what will happen if prior approval from the government or the person responsible for hiring the employee is not obtained before criminal charges are brought against any government employee.

On the whole, unfair benefits have been bestowed upon a group of people, including protection from arrest before agreeing to charge sheets in our regular criminal court system.

The word "by any other method" appears in Article 7B of our Constitution, and the legislature subtly rendered Articles 27 (2) and 26 (3) ineffective by introducing section 41(1) into the Act. The learned Deputy Attorney General read fourth paragraph number 29 of the ruling given in Sheikh Abdus Sabur -Vs. Returning Officer, District Education Officer-in-Charge, Gopalganj and others. Although the appeal was denied, the stated decision did not bring into doubt the legality of any laws, and even so, it may at most serve as obiter.

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Again, no argument was made supporting the validity of section 41(1) or the fact that it violates Articles 26, 27, and 31 of the Constitution was stated in the affidavit in opposition for respondent no. 4. If an accused commits a crime that is punishable by law, police are allowed to detain someone without a warrant under our current system of criminal justice; but, in this situation, government employees are granted certain protections while performing their official jobs.

Therefore, the Government Employment Act of 2018 (Act 57 of 2018), which was published in the Official Gazette on November 14, 2018, and which became effective on October 1 as a result of S.R.O. No. 305-Ain/2019 dated September 25, 2019, was made void by the Bangladesh High Court and declared to be ultra vires of Articles 26, 27, and 31 of the Constitution, since Article 7(2), and Article 26 gives this court absolute authority to declare any law invalid if it is discovered to be in conflict with the supreme law.

In Other News

NBR eases VAT Rebate on Payment of Electricity Bills through MFS

Businesses can now claim VAT rebates on the submission of invoices against electricity bills paid through mobile financial services (MFS). Earlier this month, the VAT department of the National Board of Revenue (NBR) issued a directive in this regard following the changes made by the government in the Financial Act in the last national budget.

As per instruction, the VAT authority will recognize the invoice for a rebate, issued by the MFS operator after payment of the electricity bill through the digital platforms, making the rebate process easier against electricity bills paid through MFS.

Prior to the changes in the Financial Act and the recent instructions by the national exchequer, invoices of MFS were not validated by the authorities.

Companies were only able to claim rebates with invoices issued by the relevant power department against payments of electricity bills. Despite payments of electricity bills through MFS getting popular, there was no supporting law that allowed businesses to claim rebates using such channels.

LEGISLATIVE UPDATES

Bangladesh Labour Rules 2015

On 1st September 2022, The Ministry of Labour and Employment introduced much-needed amendments to the Labour Rules 2015. There are in total 101 amendments. Changes were brought in 99 rules and 2 rules were repealed.

There are multiple crucial amending provisions from which a woman worker can be benefitted from. The new amendment to the Labour Rules 2015 refers that any woman who is working in any establishment must not be subjected to sexual harassment or conduct which can be considered uncivil, impolite and repugnant to the modesty or honor of that woman or which may seem to be sexually indecent or unmannerly. An explanation was also provided where 12 types of conduct were referred which would be constituted as unmannerly behavior and sexual harassment.

It is imperative to have a complaint committee consisting of 5 members where women will be of majority and imposes the necessity of formulating and distributing to all employees a guideline to prevent sexual harassment. A complaint box at every workplace should be installed where the received complaints should be addressed with the importance which should be lodged on a register.

Amended Rule 38 clarifies that if a woman gives birth after 8 weeks, then the days which passed after the scheduled time will be adjusted under the rules. 38A gives a woman the right to be granted leave for 4 weeks with wages if she suffers a miscarriage before the scheduled date of going on maternity leave but this leave cannot be adjusted with any leave which is due.

Amended Rule Section 31 puts the responsibility on the employer to arrange a health center to give consultancy to women regarding the use of Sanitary napkins/towels/pads and the employer has to make sure that necessary transport with security should be arranged if a woman has to work between 10 PM and 6 AM.

Some other notable amendments are given below:

1. If there is a trade union then having a participation committee is not required and as soon as a trade union is formed the activities of any participation committee will be discontinued.
2. As per the amended rule No. 4 even if the employees are directly employed by the 3rd party contractors on behalf of the employers, the employees hired through the 3rd party would be inclined to receive the same amount of payment as the employees directly employed by the employer.
3. If any worker, works in any establishment for more than 6 months then that employee will be considered a permanent worker in that particular entity.
4. Every contractor organization shall open a bank account in any scheduled bank in the name of "Employee Social security Fund" within 06 months of obtaining the license and after opening the bank account, an amount equal to one month's basic wages of all workers shall be deposited in the said bank account as per amended rule no. 06.

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LEGISLATIVE UPDATES

Bangladesh Labour Rules 2015

5. To calculate the maternity benefit, the rate of total wage is divided by 26, essentially increasing the benefits women will receive.

6. The amended rules refers that the representatives of an employee who is under investigation can be chosen by bargaining agencies and /or participating committee if the employee does not choose a representative within his/her designated period.

7. The amended rules have designated a time period of 60 days starting from the day from when the show cause notice is served to the day the judgment is passed by the investigation committee.

8. The owner of an establishment has to ensure the safety of the workers employed therein. The procedures are assessing workplace hazards at least once every year to take necessary measures to remedy the hazards of the designated workplace and inform the Deputy Inspector General of the concerned area 30 (thirty) days before the end of the year.

9. All internal walls, partitions, roofs, stairs, and passageways of every establishment, if painted and varnished and the exterior smooth, shall be cleaned once in 14 months with water, brush and detergent.

After the implementation of the Labour Rules, it took 8 long years to make the necessary changes and the committee has taken some of the significant oversights and loopholes of the original rules and made necessary amendments that have brought clarity and certainty in relevant areas.

As Bangladesh increasingly integrates with the pace of globalization and perusing the impact of Bangladesh on the global market, it is paramount to stay up to date by perfecting and reforming its legislation to align with global standards.

Test of the Existence of a Partnership in a Business



The current Partnership Act 1932 ('the act' hereinafter) of Bangladesh, came into existence to oversee the main functionalities regarding partnership in trade, commerce, and business. 'Partnership' is defined as 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. The challenge here is to determine the test by which courts can determine the existence of a partnership between the parties against mere co-ownership or some other relation between them.

In this Act, sections 5 and 6 define some natures of partnership which include modes and a contractual element of partnership. Also, sections 7 and 8 oversee the timeframe of parties staying within the partnership. These elements certainly pose the 'real intention of the parties' to actually become partners and work together to share a profit along with 'free consent' just like a contract. This article looks into the origin of a partnership and the test of intention to form a partnership.

In the case of *Carlill v Carbolic Smoke Ball Company*, the court applied the "objective test" and asked whether the reasonable bystander, after taking into account all the circumstances of the case, thinks that the parties intended to be bound in a contract.

Again, when there was a lack of intention to be legally bound, a contract cannot be enforceable especially in domestic issues, like *Balfour v Balfour*.

That means, 'intention' plays a vital role to determine the 'validity and legal enforceability of contract' among the parties. The principles coming from these contract law cases may be juxtaposed against parties trying to establish or deny a partnership through the harmonious interpretation of this act by virtue of section 2(e) and the principle that no provision of valid laws is in isolation with each other.

In *Hiralal Gendalal v Bharirath Bamchandra* case, it was held that 'although the right to participate in the profits of a business is a strong test of a partnership, the existence of a relationship depends on the Real Intention and contract of the parties. As per, section 6's explanation of this Act, sharing profit is a determining factor of the partnership. A case further propounds that an 'agreement' to contribute money towards an undertaking and to share profits and losses therefrom is a partnership (AIR 1919 Upp Bur 33). A partnership is described as a relationship when two parties concur to split the gains from their partnerships under section 5. The High Court reaffirmed the idea that an agreement is a necessary component of a contract in the case of *Noor Hossain v. Commissioner of Income Tax*, A partnership depends upon mutual confidence and utmost good faith.

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Test of the Existence of a Partnership in a Business



Sharing of profit is not a conclusive test of an existing partnership as a man who received profits is not necessarily a partner. It can be seen where the agreement of partnership was made not for the purpose of creating a real partnership but for an ulterior motive to avoid tax. The fact of participation in profits must be considered in the light of other circumstances, making this aspect a cogent aspect of determining partnership, but not exclusively rigid. There are other factors where partners intend to carry out a business through the mutual agency of one another and from that real relationship of the partnership comes into fruition. The cardinal principle of partnership seems to lie within the particulars of how it was formed and particularly the state of mind continuing through that formation.

The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance, and, other incidents. This can be inferred from section 30 which states a minor cannot become a partner since a minor cannot give consent. Also, under section 44(a) an unsound person cannot carry on with a partnership relation as their state of mind becomes deluded.

The common law surrounding the test of partnership takes into consideration the temperament of the subcontinent where the locals did not do everything on a formal basis. So, when a dispute arises regarding the formation of partnership the subcontinental courts always look into the facts and circumstances which led to the actual formation of the partnership.



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