

# NEWSLETTER

2024' Chapter 2

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**Bangladesh to post Sixth Highest GDP Growth in Asia in FY24**

## Bangladesh to post Sixth Highest GDP Growth in Asia in FY24

*- World Bank keeps economic growth forecast unchanged at 5.6%*

Bangladesh will clock the sixth highest economic growth in Asia in the current financial year although it will be much lower than its average in recent times and the target set by the government as pressures on the economy linger.

According to the recently released World Bank's Global Economic Prospects report, the country's gross domestic product expansion is forecast to slow to 5.6 percent in 2023-24, unchanged from its October update.

If the forecast translates into reality, this would be the lowest GDP growth in more than a decade if the Covid-hit 2019-2020 is excluded. In FY20, it plunged to a 30-year low of 3.4 percent owing to massive disruptions caused by the countrywide lockdown imposed to limit the spread of the deadly virus.

The government has decided to revise its GDP growth goal downwards to 6.5 percent for FY24 from the 7.5 percent initially set since the factors that caused the economic growth to decelerate to 6 percent in 2022-23 such as import restrictions and higher material and energy costs, as well as external and financial pressures, persist.

According to the World Bank, economic growth is expected to rise in the next financial year as inflationary pressure recedes. In Asia, which comprises 48 nations covering the Pacific, East Asia, Central Asia, the Middle East and South Asia, only five countries will be ahead of Bangladesh in FY24 when it comes to GDP growth: Cambodia, Mongolia, Palau, the Philippines, and India.



Cambodia is forecast to grow at 5.8 percent, Mongolia at 6.2 percent, Palau at 12.4 percent, the Philippines at 5.8 percent, and India at 6.3 percent. Bangladesh's lower-than-expected GDP growth comes at a time when the world economy is also going through a slowdown. In fact, the global economy is set to rack up a sorry record by the end of 2024 — the slowest half-decade of GDP growth in 30 years.

Global growth is projected to slow for the third year in a row—from 2.6 percent last year to 2.4 percent in 2024, almost three-quarters of a percentage point below the average of the 2010s. Developing economies are projected to grow just 3.9 percent, more than one percentage point below the average of the previous decade.

The Washington-based lender says inflation is likely to remain elevated in Bangladesh, weighing on private consumption. Headline inflation averaged 9.02 percent in FY23 — the highest in more than a decade — and stood at 9.49 percent in November and shows no sign of cooling off. It said as foreign exchange reserves are likely to stay low, import restrictions are expected to continue and impede private investment.

## From Shorif to Shorifa: *A Confusion or a Violation of Multiple Constitutional Rights?*

Recently the whole nation is seen to have divided into two groups – one who believes that the incorporation of a two-page story titled 'Sharifar Golpo' (The story of Sharifa) in the History and Social Science textbook of class-vii is a step forward as a nation, and the other who see it as a mistake that is not ignorable.

The story revolves around a child who initially was recognized as a boy by the society around him but never by heart could accept it as a fact because in their heart, they always thought a girl. Eventually, as the story progresses, this child gets to meet another person who just like themselves, could not accept the gender they were assigned by the society at birth. This person explained the child that people like them are neither boy nor girl and rather belong to a third gender and therefore belonged to the Hijra community.

The story came into spotlight when a former part-time BRAC University Teacher tore apart those two pages as a gesture of protest, claiming that such stories could lead the young minds towards confusion ultimately giving birth to irreparable gender identity crisis. This action of that former teacher gave rise to too many questions regarding multiple legal and social issues.

One of the main questions that need to be addressed here is what message this story was actually trying to convey? While the Education Minister refrained from expressly suggesting anything, Bangladesh Mohila Porishod and some other political parties were of the view

that the story was about the struggles of a Hijra (i.e. an Intersex Person), where their failure to be able to fit into the general box of gender leads them towards a life of isolation eventually out-casting them from the gentlemen society.

Such assumption gave birth to a follow-up question, was that message indeed properly conveyed through the wordings used in that textbook? Before we address this question, it is better to familiarize ourselves with certain terms like "Intersex" and "Transgender". As per the Oxford Dictionary, an intersex person is one who has the both male and female sex organs or other sexual characteristics that does not fit into any specific category of male or female. In our ordinary language we call them Hijra in Bangladesh. Transgender, on the other hand, are those "whose gender identity does not match the sex they were said to have at birth". As per the story of Shorifa, the child always thought himself as a girl by heart despite physically being born as a boy. The wording here clearly indicates towards the attributes of a transgender and not an ordinary hijra.

Now the reason for failure to acknowledge oneself with its birth assigned gender based on the external physical attributes can be caused by many reasons, including hormonal abnormalities, being born with sex chromosome of the opposite gender or simply by choice. It is that third reason that is the matter of concern here.

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## From Shorif to Shorifa: *A Confusion or a Violation of Multiple Constitutional Rights?*

While the original intention of publishing that story may have been an attempt of creating awareness regarding a third-gender's struggles, the actual wording has given birth to an entirely new problem, since the textbook did not clarify exactly for what reason Shorif had to adopt the identity of Shorifa!

It is socially accepted that when a new born arrives at home, Third-Genders are welcomed for blessings and are donated with some money in exchange. Sometimes we even excuse their irritating instance for money on the street. This is mainly done out of sympathy with the intention of financially helping their communities as their workplaces are very limited in number. This story of Shorifa is now forcing us to re-think about this whole practice as it appears from the story that people by choice can also become part of Hijra community and not just because of a medically recognized dysphoria!

Unfortunately, this is not just one hypothesis. In Mid-August last year, eight "apparent" Hijras were arrested from Mirpur for extorting money from passers-by. Upon arrest, it was revealed that they in fact were fully able men impersonating the third-genders. In their defence, they said, they identified themselves as women and therefore became part of the Hijra community, where on order of Pappu Hijra, they are now required to arrange money to be paid as one kind of their subscription fees. If children are now being taught that it is ok to become part of Hijra community by choice then how fair was it to arrest those eight "men" and taking action for impersonation?

This also makes us wonder does legal rights of male and female, e.g. property rights should also be applicable as per someone's choice of gender? What happens to their choice of partner? It should be noted here that unnatural intercourse is a punishable offence in Bangladesh (s.377 of Penal Code).

Clearly, inclusion of such words without proper clarification as to what group of people it actually was trying to refer, can in fact pose a question regarding the validity of multiple legal instruments of this Country. The good news is that the Education Minister has confirmed that the matter is being considered with sufficient seriousness and any scope for confusion indicating a possible incompatibility with existing laws will be addressed and fixed accordingly.

Regarding the action of tearing pages from the book, it indeed is legally and morally unacceptable to destroy a property to with intention to injure someone else (irrespective of whose property it was). While, the wording of the book indeed require further clarifications, the way this issue was brought to the attention of the authority is equally no acceptable.

# LEGISLATIVE UPDATES

## Labour (Amendment) Bill 2023: The Process Postponed Again

Labour law of Bangladesh has gone through major changes over the last decade. Particularly because, being one of the largest hubs for readymade garments, Bangladesh is always in need of ensuring compliance with labour laws in such manner that not only ensure protection of labour rights within the domestic periphery but also is in compliance with the international standard of workers' rights; and to ensure that the required standard is met, the law makers have always tried to keep the relevant legal instruments up-to-date by making necessary amendments when and as required.

In Bangladesh, **Labour Act 2006 (the Act)** and **Labour Rules 2015 (the Rules)** are the two principal instruments that are engaged to this task and as mentioned above, they both have evolved over the years through various amendments such as the ones in **2013** and **2018**.

However, probably **the most significant one so far was the one made in 2022 with regards to the Rules** as it specifically **focused on meeting the needs of the growing number of female workforce**. The amendment, including other changes, set out the rules regarding how to report and thereafter handle sexual harassment at workplace.

Nevertheless, there was more room for changes and that is why Labour (Amendment) Bill 2023 was proposed. The changes that it aimed to bring were:

- i. Allowing 120 days of maternity leave instead of 112; and
- ii. bringing the number of required signature for formation of a trade union down to 15% (instead of 20%) in cases where total number of workers more than 3000;
- iii. making the Appellate Division of the Supreme Court the appellate Court for the Labour Appeal Tribunal replacing the High Court Division

Previously mothers-to-be used to enjoy a leave of 8 weeks before the delivery and then 8 more weeks after that, totaling into 112 days. The aim of this proposed change was to make it a round 4 months.

Regarding the trade unions, previously it required 20% signatures of the workers to for forming one, irrespective of the total number of the workers of the respective organization. The change in the 2023 Bill was proposed with the hope that now the process will get a bit easier to form a trade union. This is because, if the Bill gets approved, it will only take 15% workers' signatures to form the union in cases where total number of workers is more than 3000.

The Bill was submitted before the Parliament last year, and got passed in November 2023. Unfortunately, the President returned the Draft to be reconsidered. The concerns were mainly with regards to the simplified process for trade union formation. It is being considered if it is possible to reduce the number to 10%. It was confirmed by the Law Minister Anisul Huq after coming out of the meeting with the officials of the ministries of labour and employment, and law, justice and parliamentary affairs at his secretariat office on 24th January 2024.

It was further confirmed that the final percentage of the required signature will ultimately be decided through "discussion between the labourers and employers".

While it is hoped that after the reconsideration of the Draft, certain specific labour issues, such as freedom of association and rights to collective bargaining, are also going to get addressed in that Draft, the date of having it enacted is postponed again. Even though the Honourable Minister has confirmed that the 1st session the 12th Parliament will consider the matter seriously, the fact remains unchanged that the fate of this Draft still remains uncertain.

# CASE UPDATE

**Paschimanchal Gas Company Ltd. Vs. Manticore Technologies Ltd. and Ors.**  
**(Civil Appeal No. 61 of 2022), reported in LEX/BDAD/0075/2023**

## Fact:

This is a Civil Appeal arising from the Judgment and Order dated the 14.03.2021 passed by a Division of the High Court Division in Writ Petition No. 5474 of 2020.

The writ-petitioner is a private limited company, which was incorporated under the Joint Stock Companies and Firms having the aim (amongst others) "to run its business by setting up and operating power plants and thereby generating power and selling the same by transmission and distribution".

The writ-petitioner company claimed that they installed gas-based power plants in Ishwardi EPZ, an unit under the BEPZA after being inspired by the government policy to enhance number of gas-based power plants in private sectors within the Export Processing Zones (EPZs) under the Bangladesh Export Processing Zones Authority (BEPZA). The Petitioner further stated that they "legitimately expected that the Government and the BEPZA permitted the writ-petitioner company to set up gas based power plant only because there would be gas supply to Ishwardi EPZ for generating power". As a result, "a huge amount of money" was spent by the Petitioner for establishing the said power plant "with the bank finance".

According to the Petitioner after obtaining the said permission, they repeatedly kept requesting the Pashchimanchal Gas Company Limited (PGCL), i.e. writ-respondent no.5, and Petrobangla, i.e., writ-respondent no.4, for making arrangements for "gas supply to the writ-petitioner company for running the said power plant"; however, PGCL kept refusing, stating that "due to incapacity of line and technical reasons, gas could not be supplied to the writ-petitioner company even though there was gas pipeline from Baghabari through Pabna up to Ishwardi EPZ".

The reply remained unchanged even after being requested by BPEZA and being instructed from the PM's office in this regard. In the meantime, the petitioner, due to failing to start generating power on time, was served with notice of termination of agreements entered with BEPZA with regards to permission to work as a power supplier. This resulted in further financial loss incurred by the Petitioner as it had to seek help from the Court to prevent this termination, consequencing into being directed to pay all the outstanding dues of BEPZA authorities within 6 months and to commission the project within one year from date of that Rule as a precondition for having the termination notice withdrawn. Unfortunately this was only one of the few other legal battles they got into in their attempt of getting supply of gas. Therefore, they claimed that at that point the loss was increasing with no positive result.

However, with time, there appeared to be some changes in the circumstances. The Managing Director of PGCL himself later sent a letter to the Petrobangla informing that "it was possible to supply gas to the writ-petitioner company by establishing pipe line at the cost of consumer from Pakshi Valve Station of Gas Transmission Company Ltd. (GTCL)" and that there is positive recommendation from the PM's office too. On the other hand, the relevant Ministry (respondent no.1), issued a circular to the effect that "gas connection shall be given on priority basis, in case of Industry, Electricity (Power) and Fertilizer factory".

Unfortunately, now despite having larger capacity for gas supply due to extended pipelines, the PGCL agreed to consider the matter only if the Petitioner applies and takes approval from the Power Division of respondent No. 1 to establish IPP Power Plant under Captive category in Ishwardi EPZ. This is because, as PGCL argued, "the writ-petitioner company will be using gas for power generation to supply uninterrupted

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electricity to the industries located in Ishwardi EPZ through BEPZA. Hence, it is clear that the writ-petitioner company falls under the Captive Power Customer Category in accordance with the definition provided in clause 2.2.5 of Gas Biponon Niyomaboli 2014 (i.e. the 2014 Regulations for marketing of Gas)".

Feeling aggrieved by constant refusal based on different reasons at different occasions, the Petitioner has now initiated another fresh writ petition. This time claiming that their continuous request for supply gas was supported by a legitimate expectation that "the Government and the BEPZA permitted the writ-petitioner company to set up gas based power plant only because there would be gas supply to Ishwardi EPZ for generating power"

HCD, after hearing, made the Rule absolute and directed the writ-Respondent Nos.1-5 to provide gas connection by acknowledging that there indeed was a legitimate expectation arising from multiple agreements taken place between the Petitioner and BEPZA, and that there was no need for a separate approval from respondent no.1 as according to s.5A(2) of Bangladesh Export Processing Zones Authority Act 1980, any decision taken by the Board "shall not require any formal approval of any Ministry or Division dealing with the matters for their implementation".

This decision was challenged in the Appellate Division (AD).

Issue:

The AD had to consider –

- Whether High Court Division (HCD) had rightly considered the facts in light of all existing rules and regulations relevant for this matter.
- Whether Commercial Power Plants (CoPP) licensed under 2008 Policy are legally entitled to supply of natural gas from the Government; or Whether they can demand/insist on supply of natural gas from the Govt. on ground of legitimate expectation since the licensing condition specially requires such type of Power Plant to arrange alternative fuel from its own sources.

**Held:**

The Supreme Court of Bangladesh (Appellate Division) reached a decision on 29.08.2023 in this regard and accordingly held that –

1. The direction of High Court Division to provide gas connection to the writ petitioner is beyond the scope of law the proposition of legitimate expectation is not legally sustainable.

2. Signing of commercial agreements between the writ petitioner and BEPZA does not create any right in favour of the writ petitioner for getting gas supply from the writ respondents resulting in a non-sustainable expectation which is not legitimate in the eyes of law.

Reason for such decision was that "Permission for Independent Power Producer was not granted under IPP Policy 1996". Furthermore, Clause 4(E) of Policy Guidelines for Enhancement of Private Partnership in Power Sector 2008 (under which the licence was obtained by Commercial Power Plants as Independent Power Producer) clearly "excludes any entitlement to natural gas connection as fuel from Government". Since, no vested and legal right has been created in favour of writ petitioner no question of legitimate expectation can arise simply by virtue of the license issued by the Bangladesh Energy Regulatory Commission for generation of electricity in Ishwardi EPZ.

It is a settled proposition of law that when any legal and vested right has not been created in favor of a particular person and no promise was made in that event, mandamus cannot be issued by the Court.

Furthermore, HCD failed to consider that as per Art. 18A of the Constitution, "it is the duty of the Government to preserve and regulate and safeguard natural reasoarces, which is also reconfirmed by Section 24 of the Bangladesh Energy Regulatory Commission Act, 2003". Such Constitutional obligation overrides every other law in existence.

The HCD also erred in law and in facts as it erred in interpreting s.5A(2) of Bangladesh Export Processing Zones Authority Act 1980 in isolation, "without considering that Section 5A(2) has to be read in the context of Section 5A(1)" It is noteworthy that while reaching a verdict following Acts were taken into consideration:

- Clause 4(E) of Policy Guidelines for Enhancement of Private Partnership in Power Sector 2008
- Section 5A(1) of Bangladesh Export Processing Zones Authority Act 1980
- Section 5A(2) of Bangladesh Export Processing Zones Authority Act 1980
- Article 18A of Constitution Of The People's Republic Of Bangladesh
- Article 44 of Constitution Of The People's Republic Of Bangladesh



*Principal Office:*

Mukti Bhaban (Third Floor)  
2 No Comrade Monisingh Sharak  
21/1 Purana Paltan. Dhaka  
Phone: +88 02 22 33 81 540  
Fax: 88 02 22 33 81 476

*Gulshan Office:*

Gulshan Palladium, 3rd Floor,  
Road: 95, Madani Avenue, Gulshan 2,  
Dhaka, Bangladesh

*Shamoli Office:*

29 Probal Housing, 3rd Floor Ring Road,  
Mohammadpur. Dhaka-1207,  
Bangladesh

*Court Address:*

Room No 101 (Ground Floor) Supreme Court  
Bar Association Building  
Supreme Court of Bangladesh Ramna, Dhaka

Website: [www.as-associates.net](http://www.as-associates.net)

E-mail: [info@as-associates.net](mailto:info@as-associates.net)