

LAW IN DEPTH

Stamp duty in an arbitral award

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There are two layers of foreign investment protection. The first layer consists of the International Investment Treaties (IITs) in bilateral or multilateral forms facilitating foreign investments to host States with the necessary provisions for promoting and protecting the same. The domestic laws, regulations, and dispute resolution mechanism fall under the second layer, which supplements the first one with its smooth functioning. Thus, the second layer relates to the foreign and domestic investment both in a respective manner.

Bangladesh enacted the Arbitration Act 2001 by repealing the previous Act of 1940. This Act contains everything relating to conducting a successful arbitration between the parties from home and abroad. Section 44 states that a person can file a petition to enforce the arbitral award. All petitions except

regarding the International Commercial Arbitrations must be filed before the court of the District Judge. In filing a petition, the award should be stamped.

There are no provisions as to who will stamp the arbitral award as per the 2001 Act. Even the Stamp Act 1899 does not clarify the issue. Neither article 12 of Schedule 1 of the Stamp Act 1899 nor section 29 of the same Act talks about this. In section 29, there is a list of who will pay the stamp expense in the absence of an agreement to the contrary; but no arbitral award is mentioned there. This lacuna creates ambiguity as to who will pay the stamp cost in the arbitral award. These gaps are hampering the procedure of arbitration cases.

Without removing these defects, it would be difficult for the parties to seek remedies and solutions through the arbitration mechanism causing eventual harm to the country's investment regime. Our service sectors are

reliant on foreign investment. It is one of the most jobs providing sectors of Bangladesh. Our courts of law are overburdened with the mountainous pressure of cases. The traditional system of dispute is almost futile to give a speedy remedy.

In India, there is no explicit provision in any statute for the stamp of an arbitral award. It is a settled principle that the question as to whether the award is required to be stamped and registered would be relevant only when the parties would file the award for its enforcement under section 36 of the Arbitration & Conciliation Act, 1996. The Supreme Court of India, in the case of *M. Anasua Devi v. M. Manik Reddy and others* held that the objection to non-stamping of the arbitral award is required to be dealt with at the enforcement stage of the arbitral award and not at the stage of objection. In a recent case, the Delhi High Court also held that whether an award is stamped or not is only relevant for enforcement proceedings.

However, there is a different tendency in our jurisdiction. Suppose a party has come before the court to set aside an award. He has to submit the stamp. There is no precedent by the superior court behind this order of the district judges in Bangladesh. We perceive that where any procedure has been made mandatory by the subordinate court, that must be incorporated by legislation or any matters. However, it is crystal clear that it is the duty of the person who got the arbitral award to pay stamp duty when the person produces before the court to enforce the arbitral award in the Indian legal arena. As a result, chaos has happened in our court arena about this matter. As arbitration suits are civil in nature, the court may yield a procedure for the ends of justice. However, this procedure is arbitrary in nature.

Our legislature should take the initiative to remove these lacunae relating to stamping the arbitral awards. As it is a procedural matter, many cases under Arbitration Act 2001 may have stayed before the court.

The writers are Advocates, Dhaka Judges Court and Chittagong Judges Court, respectively.



LAW EVENT

World Non-Violence Day commemorated

International Non-violence Day serves as an opportunity to spread the message of non-violence through education and public awareness as well as to reaffirm the desire for a culture of peace, tolerance, and non-violence.

To commemorate the 2nd of October International Non-violence Day, Center for the Study of Genocide and Justice (CSGJ), Liberation War Museum organised a youth panel discussion on "Confronting Hate Speech Campaign with the Message of Peace: UN Appeal" on October 1, 2022. At the same time, the closing ceremony for the month-long Certificate Course on Genocide and Justice was hosted by the CSGJ, and the participants of this Course received certificates and awards from Mr. Justice M Enayetur Rahim, the honorable judge in the Appellate Division, Supreme Court of Bangladesh, Dr. Sarwar Ali and Mofidul Hoque, the two trustees of the Liberation War Museum, also graced the ceremony. On behalf of the Center, Emraan Azad, the current Coordinator of the Center, spoke at the ceremony.

International Non-violence Day serves as an opportunity to spread the message of non-violence through education and public awareness as well as to reaffirm the desire for a culture of peace, tolerance, and non-violence. A group of young researchers, namely Nusieba Jahan, Md. Jahid-Ul-Islam, and Tabassum Islam Tamanna, from the CSGJ gave a presentation on the above-mentioned theme. Three presenters highlighted the "UN Strategy and Plan of Action on Hate Speech (Detailed Guidance on Implementation for UN Field Presences)" which was issued in September 2020. They elaborately presented on the definition of hate speech, the Rabat threshold test, the existing UN Initiatives, and some additional proposals to end violence caused by hate speech.

Following the panel discussion, Mr. Justice M Enayetur Rahim, handed over certificates to the graduates of the 11th Certificate Course. Along with detailed sessions on genocide and justice, the participants were introduced to the socio-political dimensions of the liberation war of Bangladesh. The core international crimes, as well as several international criminal justice institutions and tribunals like the Nuremberg, Tokyo, ICC, and ICT-BD, were covered in the Course. The current Rohingya crisis and the international legal options for addressing the Rohingya genocide were also introduced in depth in this Course. A total of 45 Bangladeshi students successfully graduated this time.

Three participants received awards for their extraordinary

performance. The Best Researcher Award went to Khandker Saad At Tanbir from the University of Dhaka, the Most Inspiring Award to Nursat Jahan Jeni from the University of Rajshahi, and the Best Participant Award to Md. Mahamudun Noby Rupok from Bangladesh University of Professionals.

Mr. Justice M Enayetur Rahim, expressed his appreciation with the initiatives encouraging young people to seriously study genocide and justice. He anticipated that the participants would serve as ambassadors for peace and justice and enlighten others about the history of Bangladesh.

Event covered by Tabassum Islam Tamanna, Research Assistant, Center for the Study of Genocide and Justice, Liberation War Museum.



RIGHTS ADVOCACY

Trade Union: The collective voice against workers' predicament

RUBIAAT HASAN SAWON

In our country's perspective as well as worldwide, formation and joining into trade union is now a recognised right. Article 38 of our Constitution clearly grants the "right to association" as "every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order". So, the right to form and join into trade union falls within our "fundamental constitutional right" mandate. Apart from national mandate there is international mandate of forming trade union too (see, article 23(4) of the UDHR and the ILO Convention 1987).

Chapter XIII of Bangladesh Labour Act, 2006 lays down the procedure of forming trade unions along with the related matters of "industrial relations". A trade union cannot run without registration as declared in section 192. Initially, section 176 reaffirms the right to form a trade union. Section 176(e) guarantees that an establishment having 20% women workforce must have 10% women representation in the union. To form a union, application is to be submitted to the Registrar of the Trade Union in that particular area and this Registrar is the Director of Labour or anyone else authorised by him. The application must involve details about name, time of formation, addresses/occupations of the members, statement of total paid membership as well as the name and number of total workers of that concerned establishment. Attaching resolution as to adoption of the union constitution and authorising registration application is also mandatory for initiating registration process.

With the proper inclusion of everything in application as abovementioned, section 179 mentions about necessary requirements for registration. Accordingly, the constitution of the union must include name, object, manner of becoming member, fund source, conditions of benefit, members list, amendment process, fund maintenance and audit process, dissolution process, election process, no-confidence motion and meetings. A union cannot register without having membership of at least 30% workers of that establishment and the director can hold spot visit to satisfy itself before registration that the membership requirement is complied with.

More than one establishment of the same employer would be taken as one establishment for the purpose of formation of a trade union when the establishments are allied and work together in the same industry. There is a limitation in section 179(5) which states that not more than 3 registrations would be allowed within one establishment. Within 60 days of application and the Registrar being satisfied as to the requirements, a Registration Certificate is issued and upon dissatisfaction an objection is communicated. If within 15 days the objection is addressed then the Registrar can either register the union or can reject the application. On the basis of grievance from such rejection, there could be appeal to Labour Court and later even to the Labour Appellate Tribunal.

Registration of trade union vests some rights upon itself and its members as well as furnishes the officials with some duties and immunities. The registered union gets the privilege of a "body corporate" with common seal and perpetual succession. Sections 186 and 187 guarantee that the conditions of service would remain unchanged pending registration of trade union and employer cannot alter those to the disadvantage of workers or officers. The workers service cannot be unilaterally terminated during the pendency of such registration thus safeguarding the intended union officer or member from being jobless at employer's sweet will. Further, any imposition of condition in employment or discrimination or discharge or removal on the basis of being part of a trade union would be an unfair labour practice and shall be punishable. Section 197 limits the application of criminal law regarding conspiracy for trade union as claim of conspiracy could be an easy way of blaming union officials. Section 198 gives immunity to the trade union, its members, officers and collective bargaining agent from civil actions along with section 198(2) giving immunity against tortious actions when it arises in the proceeding of an industrial dispute.

To sum up, we expect that the unions would remain beyond politicisation and malicious profit-making motives so that we may see the real visualisation of "unity in unionism".

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