

RIGHTS WATCH

COP27: Accomplishments and shortcomings for Bangladesh

Bangladesh, being the seventh most climate-vulnerable country, put special significance on the Conference as it requires funds for climate mitigation and urgent climate actions to sustain its economic growth.

TARAZI MOHAMMED SHEIKH AND JULIAN RAFAH

The 27<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27) was driven by three thematic targets this year. First, to identify the countries which lead greenhouse emissions reductions. Secondly, to specify the countries to pay for ending the reliance on fossil fuels and transition to cleaner energy. And finally, to address the question of whether the countries most exposed to the changing climate are owed some form of compensation or reparations. Besides, the Conference was also set to explore issues relating to biodiversity and decarbonisation. The prime focus of the Conference, however, was to address the ways of financing climate change mitigation under article 4 of the Paris Agreement, a legally binding international treaty of the UN on climate change, and to acquire adaptation policies under article 7 of the Agreement.

Bangladesh alongside four other countries received the Award where each winner will receive €15,000 in funds. The award was given for the Rangamati Hill District Council initiative. The initiative collaborated with five villages in Juraichari Upazila where the residents were faced with adverse climatic disasters, i.e., droughts, landslides and flash floods. UNDP Bangladesh and Danida supported the community to set up solar power-based safe water supply facilities during the crisis.

*Global Shield's financial support*  
Bangladesh has been named among the first recipients of the support. The Global Shield addresses current weaknesses in the financial protection structure in climate-vulnerable economies with contributions of around 170 million euros from Germany and more than 40 million euros from other countries.

*Loss and damage*  
Keeping global warming at the centre, the

as it requires total funding of approximately \$2.5 trillion by 2030.

*Shortcomings of COP27*  
*Failure in strengthening emission commitments*  
The COP27 agreement failed in the reduction of net carbon emission and fossil fuel reduction- a key objective to achieve the aspirational goal of limiting the Global temperature increase to 1.5 Degrees Celsius above pre-industrial levels before the year 2030 under article 2.1(a) of the Paris Agreement.

*Failure to tackle food insecurity*  
Food systems came up as an agenda unlike the previous COPs but there was significant political resistance to fully adopting a systems approach. Developing food systems and changing agricultural productivity is particularly important for developing countries like Bangladesh as a part of the Adaptation policy. Unfortunately, there was absence in the text of any reference to the Intergovernmental Panel on Climate Change's estimate that food systems emit about one-third of the greenhouse gases. Moreover, COP27 focused on the supply-side solutions to tackle food systems avoiding the politically more challenging demand-side issues of ensuring food systems towards sustainability, equitability and resilience.

*Inadequate climate finance for developing countries*  
The developed countries failed to keep the promise to mobilise \$100 Billion a year by 2020. The establishment of a loss and damage fund was a huge success but some of the largest emitters including China and India have refused to contribute to the fund. India blocked the inclusion of the term "current high emitters" in the text arguing that historical high emitters are expected to contribute to the funds. China has also pointed out to per capita emissions and restated its status as a developing country to avoid contribution to the fund.

*Adaptation was given less priority*  
Adaptation is the single most important policy for developing countries like Bangladesh with rising sea levels, extreme weather events, changing agricultural productivity and food system challenges. However, at COP27, parties decided to define a framework to measure the goal's achievements and prepare a two-year progress report. The previous call from Glasgow to double adaptation finance was repeated. But the overall progress was muted in the implementation stage.

The writers are students of law, BRAC University and University of Dhaka, respectively.



LAW REFORM

Dishonour of cheque is a civil wrong, not a criminal act

KAUIM AHMED

The High Court Division (HCD) of the Supreme Court of Bangladesh has recently opined that imprisonment of a person in a cheque dishonour case under the Negotiable Instruments Act, 1881 is tantamount to the deprivation of the right to personal liberty enshrined under article 32 of the Constitution of Bangladesh. The HCD made this comment while disposing of an appeal by Mohammad Ali, who was sued by BRAC bank and received a sentence of 6 months and penalty of 2.95 lakh in the trial court.

There are many offences which fall within the category of civil wrong. Usually, after a breach of a civil wrong, remedy in the form of compensation or damages are awarded to the plaintiff. However, according to section 138 of the Negotiable Instruments Act, the convicted person could be punished with imprisonment for a term which may extend to one year, or with fine which may extend to three times the amount mentioned in the cheque, or with both. Such a legal position has been meant to stop the endemic problem of cheques being dishonoured.

Citing some examples of the legal systems of the developed world, the HCD bench expressed that in various countries including Singapore,

**Like in Bangladesh, there is provision for imposition of both civil and criminal liability for dishonour of cheque in the USA. If the cheque is made for less than \$500, the crime is considered to be a misdemeanor. As such, it is punishable by up to 12 months in jail and a fine up to \$500.**

France, England, Australia, there is no provision of criminal punishment or imprisonment in connection with cheque dishonour cases. As we can see in these countries, cheque dishonour cases are considered as merely a civil wrong.

Like dishonour of cheque, defamation is a civil matter. Though initially it was a crime and punishment used to be imposed for defamation to someone, now many countries have made it only a civil wrong. All international mechanisms take it as a civil wrong. However, defamation still is a crime in our legal system. Section 500 of the Penal Code, 1860 stated that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years.

Article 32 of Constitution provides that no person shall be deprived of life and personal liberty save in accordance with law. In *Vikram v Bihar* (1988), the Supreme Court of India stated that the right to life includes the right to live consistently with human dignity and decency. From the judgment given by the HCD, it is crystal clear that the existing provision of section 138 of the Negotiable Instrument Act is *ultra vires* to the spirit of the Constitution of Bangladesh. Moreover, Bangladesh is a party to the International Covenant on Civil and Political Rights (ICCPR) which forbids sending of a person to prison for failing to discharge his/her contractual obligations. Article 11 of the ICCPR provides that no one shall be imprisoned merely on the ground of inability of fulfilling a contractual obligation. This Act is perhaps still carrying the legacy of the colonial legal system in the country.

Like in Bangladesh, there is provision for imposition of both civil and criminal liability for dishonour of cheque in the USA. If the cheque is made for less than \$500, the crime is considered to be a misdemeanor. As such, it is punishable by up to 12 months in jail and a fine up to \$500. However, if the cheque was made for more than \$500, or if the cheque was made from an out-of-state bank, the crime is a felony.

In the United Kingdom as well there is a civil remedy available under the Bill of Exchange Act, 1882 and gives an option to the payee to file a suit in a civil court. No criminal liability is imposed in Singapore, only civil liability is to be imposed on the drawer. In France, it has a master database called the Fichier Central des Chèques (FCC) which stores data of persons who issued more than one dishonoured cheque and subsequently bans them from issuing a cheque for another five years.

In a nutshell, keeping cheque dishonour as a criminal act shows nothing but our colonial mindset and a lack of foresight. Bangladesh is bound by its supreme law Constitution, as well as its international laws to keep this as a civil wrong. As such, Bangladesh should make necessary changes in its legislations regarding this issue to keep up with its obligations as well as the jurisprudential development of the world.

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LAW EVENT

Research seminar on the International Refugee Regime and Non-signatory States held at BRAC Centre

Centre for Peace and Justice at BRAC University and Faculty of Law at University of Oslo jointly organised a research seminar on the International Refugee Regime and Non-signatory States on Tuesday, 29 November, at BRAC Centre Inn. Based in Oslo University's Faculty of Law, Professor of International Migration Law Maja Janmyr and Postdoctoral Fellow Dr. M Sanjeeb Hossain presented respectively.

The first presentation on *International Refugee Law beyond States Parties to the 1951 Refugee*

*Convention* was made by Professor Maja Janmyr where she shared her findings from the BEYOND Project. Among other things, Professor Janmyr discussed how Bangladesh has not signed the 1951 Refugee Convention, but the country hosts a large number of Rohingyas who left their homeland Myanmar. She argued that the Convention continues to structure State's responses to refugees and plays a central role not only in States that are party to the Convention, but also in major non-signatory States.

In the second lecture, Dr. M

Sanjeeb Hossain presented his ASILE Project research and identified the precarious status of the Rohingya refugees in Bangladesh. This precarity stems from a range of reasons which relate to the absence of a domestic law in Bangladesh to address refugee matters, the confidential nature of MOUs between the Bangladesh Government and the UNHCR, the application of the Foreigners Act 1946 against Rohingya refugees, etc.

Dr. Faustina Pereira, Senior Fellow at Centre for Peace and Justice, and Dr. Sergio Carrera, Project

Coordinator at ASILE, were present as discussants to the two research presentations. The event was moderated by Manzoor Hasan OBE, Executive Director at Centre for Peace and Justice. In concluding remarks, Dr. David Dowland, Academic Registrar at BRAC University, thanked all the participants from different organisations and universities for their kind participation and constructive discussion.

Event covered by Law Desk, The Daily Star.

