



REVIEWING THE VIEWS

Revisiting the BITs of Bangladesh

Many of the investment protection treaties of Bangladesh include potentially broad and vague provisions which could be interpreted by the arbitral tribunal in a manner giving preference to investment protection over Bangladesh's exercise of regulatory power to adopt measures directed at achieving legitimate policy objectives.

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In an interdependent global economy, the movement of capital from one part to another has become a common phenomenon. Every state needs to maintain friendly economic relationship with other states, which is done ordinarily by multilateral or bilateral free trade agreements. This facilitates cross-border movement of goods and services. Globally, there are more than 3000 international investment agreements (IIAs), including 2850 bilateral investment treaties (BITs) today. The proliferation of BITs depicts the accelerated engagement of states in inter-state economic activities and capital transfer. Some countries have good production base, but they do not have enough capital to utilise that. Other countries have more capitals, but they do not have adequate facilities to invest that. This is how countries cooperate in importing and exporting of capitals. Capital importing countries offer fair treatment and safeguard for foreign investments. Capital exporting countries then enter legal relations to secure their investments in other countries.

Bangladesh has signed a considerable number of IIAs with different countries and regional economic integration organisations. Bangladesh started signing BITs in 1980 with the UK as part of its larger policy shift towards economic liberalisation through boosting multilateral trade and foreign investment flows into and out of the country. Immediately after signing the BIT with the UK, Bangladesh enacted the Foreign Private Investment (Promotion and Protection) Act 1980 to secure all foreign investments. Till now, Bangladesh has signed 31 BITs with countries from different parts of the world. Bangladesh has also entered 4 other treaties with investment provisions. As

a founding member of the WTO, Bangladesh is committed to carrying out its multilateral trade obligations.

While foreign investors demand strong protection of their investments under the BITs by incorporating provisions scrutinising any legitimate acts or measures of host state amounting to violations of foreign investments protection standards, host state is actively advocating for their sovereign right to regulate. Regulatory power is the ability of the host state in adopting variety of measures to achieve wide ranging policy objectives. Right to regulate is the sovereign prerogative of a country arising from the control over its own territory. Historically, the divergent position of investment protection and sovereign regulatory power started suddenly after the World War II with the evolution of newly independent (formerly colonised) states. These newly independent states of Global South realised that most of their natural resources are in the hands of private entities having origins in their colonisers. It is in this context that those newly independent developing states, by using their numerical majority in the General Assembly of the UN, passed the resolutions on Permanent Sovereignty over natural resources; New International Economic Order; and Charter of Economic Rights and Duties of States. In all these, they have reiterated their sovereign power to regulate foreign investments in their territories.

At the same time countries of the Global North started entering into new deals/agreements, designed solely with the single objective of protecting their own investments, with developing countries who were unaware of the consequences of those treaties. As such, international investment law has been almost purposefully developed

in isolation. Some states, as well as scholars, have argued that such compartmentalised development aids in the promotion of the sectional interest in investment protection to the detriment of the global interest in environmental protection, as well as the protection of human rights, labour rights, cultural rights, and the rights of indigenous peoples. With the increase of South-South cooperation, intra-developing states investment has also increased considerably in recent past. This new paradigm has led to another phenomenon. Now the more powerful developing countries (prospective investors) want to dictate the terms of IIAs in diminution of host states' regulatory power to incapacitate their weaker counterpart.

Many of the investment protection treaties of Bangladesh include potentially broad and vague provisions which could be interpreted by the arbitral tribunal in a manner giving preference to investment protection over Bangladesh's exercise of regulatory power to adopt measures directed at achieving legitimate policy objectives. Bangladesh can go for re-negotiation of its first-generation BITs (where sole purpose is to secure investment, and protection of foreign investment has been given priority over other considerations) to insert an express provision to protect legitimate public welfare objectives so that it will not constitute expropriation or nationalisation. Bangladesh as a capital importing country must tailor the four core provisions of BITs namely – fair and equitable treatment; expropriation; non-precluded measures; and monetary transfer provisions to safeguard its regulatory power as host state.

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FOR YOUR INFORMATION

A passenger's guide to legal provisions on the Metro Rail

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Bangladesh has stepped into a milestone in public transportation through the inauguration of the Mass Rapid Transit (MRT) Line-6 project, also known as the metro rail on 28 December 2022. Hitherto, the Metro Rail Act, 2015 was enacted to consolidate all the metro rail-related legislation under a legal framework. Amongst all the provisions in this Act, the regulations on compensatory claims and penalties concern the passengers the most.

Compensation to an injured person
Section 25 provides for compensation to a person injured or dead as a result of injury arising from the operation of metro rail. The licensee (a person licensed under this Act for the construction, maintenance, operation, and development of metro rail) will be obliged to pay compensation to the injured person, or his family as prescribed by law. Section 26 mandates the licensee to arrange the transfer of any injured person owing to metro rail operations in the nearest hospital. In case the injured person receives his own treatment, the licensee must reimburse the injured person in consonance with the prescribed rules.

Compulsory insurance payout
Compulsory insurance of metro rail, its passenger and third parties are a must for a licensee under section 28 (l). In case of any accident, the licensee shall, on its own accord, inform the insurance company within 90 days and pay the reparation money to the injured person.

Compensation to third parties
A similar provision applies in case of injury suffered by any person or his property apart from Metro rail and its passengers (section 29).

Along with these provisions, the Act also provides an array of criminalised acts and mentions their penalty.

Unauthorised entrance in a prohibited area
Unauthorised entry into a restricted area of metro rail is penalised with maximum one year imprisonment or a fine not exceeding Tk 5 lakh, or both (section 34).



Disruption in the metro rail and passengers' safety
Any disruption in the metro rail and the safety of its passengers shall be punished with imprisonment not exceeding five years, or a fine of maximum Tk 50 lakh, or both (section 35).

Unauthorised sale of tickets
Selling metro rail tickets or passes without authorisation, distorting or falsifying the tickets is punishable with imprisonment for a term not exceeding 10 years or a fine of Tk 1 crore, or both (section 36).

Travelling without tickets
Commuting the train without a ticket or pass is penalised with a fine which will be ten times the metro rail's fare (section 40). On non-payment of the required fine, there shall be imprisonment of six months.

Aiding, abetting, inciting, and conspiring
Assistance, incitement, and conspiracy in the commission of any offence within the purview of this Act which leads to the commission of that offence are punishable with the penalty prescribed for that offence (section 43).

Recurrence of crime
If a previous convict repeats the offence, his penalty shall be twice the maximum punishment (section 44).

These legal provisions shall enlighten a passenger on compensatory claims and penalties surrounding the metro rail.

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LAW EVENT

Human Rights Summer School: An unconventional legal education model

As the Covid pandemic retires, Empowerment through Law of the Common People (ELCOP) organised the 21st edition of the Human Rights Summer School (HRSS) for law students. It took place in Proshika HRDC, Koitta, Manikganj, from 17 to 27 December 2022.

HRSS is an intensive residential human rights short course organised usually at a rural-based venue. *Adhikarbhumi* (the land of rights) is a fictitious land for the participants to showcase their legal skills for ten days. This year's theme for the summer school was "Human Rights and Bangladesh: Leadership in Prospect". A total of 42 participants from 19 universities in Bangladesh, Nepal, and India, attended the HRSS.

Professor Mizanur Rahman, the leading human rights educationist in the country, started this unique residential model of law and human rights teaching in 2000. Professor Rahman champions the idea of "Lawyer with the poor is lawyering for justice". A flock of law teachers from both home and abroad trains summer school participants to craft the technique of human rights advocacy and interpret the law through the lens of the disadvantaged.

Following the clinical method of legal education, the HRSS allows the participants to understand human rights and other related issues. The residential training comprised class lectures, brainstorming, small group exercises, presentations, simulations, community visits, negotiations, and mootings.

In the simulation segment, the students were tasked with a fact-finding mission in which various fictional characters were created and played by the residential instructors and volunteers. The students played the role of the fact finders, and the instructors shadowed them throughout the process and provided them with their

The participants made a day-long community visit to the remote villages of Manikganj to investigate the socio-legal grievances of the community.



insights on the student's performance. In short, the principle of "I listen, I forget; I see, I remember; I act, I understand" was followed in the process.

The participants made a day-long community visit to the remote villages of Manikganj to investigate the socio-legal grievances of the community. The purpose of this visit was to acquaint the students with the reality of society and get their mindset out of the mere assembly of words in law books. With the direct contact of

the people in a community, the stages of implementation of laws written in the text can be realised.

This year summer school conducted a negotiation simulation where the participants assumed the role of various stakeholders such as the government, international development bank, human rights defenders (NGOs), and community members. It helped to nourish creativity among the students by encouraging them to seek new and unorthodox approaches to

legal issues.

Leading scholars, media personalities, judges, advocates, and academics from the USA, Nepal, and Bangladesh attended the HRSS as speakers and trainers. Professor Biswajit Chanda, Dr. Manmay Zafar, novelist Harishankar Jaladas, dramatist Mamunur Rashid, storywriter Professor Syed Manjoorul Islam, essayist and critic Professor Salimullah Khan, freedom fighter Lt. Col. Sajjad Ali Zahir Bir Pratik, among others, conduct sessions. Roshani Adhikari of Tribhuvan University received Professor KAA Quamruddin Memorial Trophy for being adjudged as the Best Fellow of the Summer School. Jannatul Ferdous Shrabony of Jahangirnagar University bagged the Professor ZI Choudhury Award for showing Academic Excellence, while Noor Ariya Alam of East West University received the KM Subhan Memorial Best Mooting Trophy for her brilliant submission on moot fact. Baishakhi Karmakar of Jagannath University was awarded the Best Fact-Finding Trophy named after late Professor M Shah Alam.

Event report by Shanto Deb Roy, Law Student, Jagannath University, and Participant in the 21st HRSS.