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LAW REVIEW

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Some critiques of the Competition Act, 2012

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The competition law is a growing segment of law that is highly connected with our economy, market price, and fair competition. We should remove all gaps and update the existing legislation to ensure that businesses and companies compete fairly with each other.

Bangladesh has planned to be a developed country within 2041. However, anti-competition or antitrust activities could hinder this mission. In the absence of fair competition in the market, this mission is not possible to achieve.

Bangladesh Competition Commission (BCC) was founded in 2016 to create equality in the market by creating sustainable competition in the economy, ensuring consumer interest and best practices in the market. It has both administrative and quasi-judicial powers to eliminate practices having adverse effects on competition, and to promote and sustain competition and freedom of trade in the markets of Bangladesh.

After coming into existence, the BCC has faced many challenges starting from the implementation of the laws. With the passage of time, our business practice has shifted to online platforms. As a result, the role of the BCC also expanded to issues involving the digital economy and e-commerce sector. It has now become a necessity for the BCC to move away from strategies used to examine a conventional business and include parameters of data accessibility, network effects, and multi-sided markets for getting a better grip on new-age areas like the digital economy and the e-commerce industry. It is expected that the BCC would take some measures to implement a framework for adequate transparency and define basic conditions for the e-commerce industry and digital market platforms. However, it is almost impossible to create such an environment under the present legal framework.

For a fair adjudication, there should be a separate judicial body consisting of judges. With the help of this procedure, the ongoing weakness of the BCC could be diminished largely. After the creation of a separate judicial body, there will be a balance between the pre-inquiry procedure and regular trial. In the present system, there is hardly any difference between regular trial and pre-trial action. Currently, many times the pre-trial procedure turns into a regular adjudicating procedure



by the existing mechanism of the BCC. The normal procedure in our judicial system is that after an investigation by responsible agencies, the report is submitted before the court and then the regular trial commences. However, in the present mechanism, the BCC issues a notice and starts a regular procedure before conducting a proper investigation. This sort of activities is totally contradicting to our regular court procedure.

According to section 29 of this Act, an appeal against the order of the BCC shall lie to the government within 30 days from the date of such order. However, there is no definition of the term government for the purpose of this Act. As a result, it creates vagueness and confusion in case of filing an appeal against the order of the BCC.

A commitment in an anti-competition case is a recognised way by which a competition authority can terminate the investigation initiated against a party on the basis of certain behavioural remedies. However, there is no such procedure in our existing legislation. The government should enhance power of the BCC to add features of negotiated 'settlements and commitments', which are allowed in the

European Union, Japan, and the United States, to quickly resolve cases through financial or non-monetary provisions to reduce litigation.

Commitment is a remedial measure in a case of anti-competitive practice not requiring admission of an infringement by an entity facing investigation, while settlement requires the company to admit it and is often allowed in cases of cartelisation. In countries where these provisions are allowed, regulators are able to facilitate resolutions over concerns relating to anti-competitive behaviour and bring in the required changes in corporate conduct without pursuing long-drawn procedures or litigation.

The competition law is a growing segment of law that is highly connected with our economy, market price, and fair competition. We should remove all gaps and update the existing legislation to ensure that businesses and companies compete fairly with each other. A separate judicial body should be set up as well as an appellate tribunal for quick settlement of the matter arising out of various actions of the BCC.

The Writer is an Advocate, Dhaka Judge Court.

LAW LETTER

Universal pension management and the rights of the elderly people

OLI MD. ABDULLAH CHOWDHURY

It is certainly encouraging to note that Universal Pension Management Bill, 2023 was passed in the parliament which would bring the country's growing elderly population under a universal pension scheme. Although demographic dividend is a much-talked about issue in Bangladesh, aging has become a dominant problem in most urban societies all over the world including ours.



Currently, there is 1.53 crore people aged 65 or above in the country, according to the preliminary report of the Population and Housing Census 2022. The report further revealed that the number of elderly people increased by 50.01% in the last 11 years, while the size of the population increased by only 14.66%. That means the increase rate of the number of elderly people is 3.41 times higher than the population growth in the country.

The Finance Division prepared the draft of the Bill which seeks to provide financial security to the growing elderly population in case of unemployment, disease, paralysis, or penury. According to the Bill, expatriate Bangladeshis can also avail pension by getting registered under the scheme.

Ms. Claudia Mahler, UN independent expert on Older Persons, called Bangladesh to take concrete action to combat ingrained and pervasive ageism and follow through on the planned measures to ensure that the rights of older persons are protected. During her visit in November last year, she also referred to the National Policy on Older Persons and observed that the lack of a timely action plan to comprehensively implement the policy remains an issue.

Recent joint research undertaken by the National Human Rights Commission (NHRC) and the United Nations Development Programme (UNDP) suggested ensuring right-based healthcare services for older persons and inclusion of ageing issues in different general and professional academic curricula. Summary findings were shared in the leading national daily Prothom Alo on occasion of the International Day for Older Persons last year on October 1. The Study recommended the inclusion of 'Geriatric Medicine' in the ongoing medical academic curriculum of Bangladesh to improve the healthcare services of older persons on a priority basis. The gradual establishment of the 'Geriatric Medicine Department/Ward' in all medical college hospitals and general hospitals was recommended as well.

It is instrumental for Bangladesh to make a comprehensive assessment of the needs of the elderly and prepare healthcare or other infrastructure accordingly. Appropriate political will and budgeting to strengthen the protection of older persons in the country are certainly the need of the hour. According to Article 15 of the Constitution of Bangladesh, the state has the fundamental responsibility "to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens - the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases."

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Implementation of laws combating air pollution

TASNIM NUSRAT REZA

Dhaka has consistently been identified as having one of the highest degrees of air pollution. Large amount of emission from motorised vehicles coupled with unplanned urbanisation and deforestation are the leading reasons for air pollution.

Within the legal framework of Bangladesh, the concept of air pollution is not bereft of its deserved attention. The Bangladesh Environment Conservation Act, 1995 not only acknowledges air pollution but also provides certain provisions to combat it. Some restrictions have been imposed on the operation of motorised vehicles and manufacturing of objects that are injurious to the environment through sections 6 and 6(Ka) of the Act respectively. Section 9 requires those who are responsible for the discharge of any environmental pollutant in excess of the prescribed limit to take measures to control or mitigate such pollution. Environmental Clearance Certificate (ECC) as enunciated in section 12 also has a crucial prospect in mitigating the adverse impact likely to generate from

the industrial projects. Apart from these, other provisions of the 1995 Act also have indirect implications in controlling air pollution as all the elements of the environment are intertwined.

In line with the global trend of keeping the environment at the centre of attention, the Air Pollution Control Rules, 2022 has recently been passed. Though many environmental organisations expected a dedicated and separate act for combating air pollution, the Rules of 2022 was introduced instead. It has detailed the provisions focusing on the aim to control, prevent, and reduce air pollution. The Director General (DG) of the Department of Environment (DoE) has been conferred with certain responsibilities for the purpose of giving effect to the Rules of 2022. Rule 4 empowers the DG to formulate a scheme of national air quality management in order to reduce and control air pollution. As per Rule 5, the DG is also vested with the power to announce a certain area as a 'Degraded Air Shed' when the air quality of the same exceeds the prescribed limits and the air thereof becomes severely polluted. To effectuate



the Rules of 2022, the DG can catalogue the activities responsible for air pollution under Rule 6. Besides, some categories have also been made based on the sources of pollution i.e., industries, vehicles,

construction projects, and garbage. Rule 15 establishes a committee comprising all the concerned personnel from concerned ministries, organisations, and institutions for giving directions,

advice, and recommendations regarding air pollution management. Non-compliance with the provisions of the Rules of 2022 will invoke the punishment of a fine of up to 2 lacs and imprisonment of up to 2 years. The most innovative provision is envisaged in Rule 16 which allows the government to award any person or institution that contributes to controlling and protecting air quality. Moreover, different departments of government and organisations including the DoE, local government, and others are directed to cooperate with one another to maintain air quality and prevent air pollution.

Though the Rules of 2022 envisions a healthy environment, only its proper implementation can guarantee the same. If the state fails to reduce air pollution, that is in fact the harbinger of its failure to ensure the healthy right to life. Hence, all the sectors of the states should remain poised to give their best effort for implementing the 1995 Act, the Rules of 2022 along with the relevant provisions of the Constitution to reap the best benefit therefrom.

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