



Ambassador Muhammad Abdul Muhith, Permanent Representative of Bangladesh to the UN in New York, handed over the Instrument of Ratification of the Minamata Convention on Mercury from the Government of Bangladesh to the UN.

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LAW REVIEW

# Bangladesh's ratification of the Minamata Convention on Mercury

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ARAFAT IBNUK BASHAR

On 18 April 2023, Bangladesh ratified the Minamata Convention on Mercury, which will enter into force for Bangladesh on 17 July 2023. The Minamata Convention on Mercury is an international treaty which has been adopted to protect human health and environment from exposure to mercury.

We might know mercury from the red line that indicates our temperature in the old-styled thermometers. But the use of mercury is not limited to thermometers. Mercury is also used in barometers, manometers, sphygmomanometers, firearms, mercury switches, makeup items, fluorescent lamps, dental amalgams, etc. However, the element mercury is extremely toxic, which has led to its use being decreased in thermometers and sphygmomanometers.

Mercury poisoning and mercury pollution over the years have become a real threat to human health and the environment. Due to the dumping of mercury waste compounds into Minamata Bay in Japan between 1932 and 1968, over 3000 people suffered from deformities, mercury poisoning, and even death. World Health Organization (WHO) treats exposure to mercury as an occupational hazard and mercury is among the top 10 chemicals causing major public health concerns.

The incident in Minamata Bay brought the issue of mercury poisoning and mercury pollution to prominence. In 2003, the United Nations Environment Programme (UNEP) through a global assessment found sufficient evidence of significant global adverse impacts

from mercury and its compounds, which made it essential to take international action to reduce its risks to human health and the environment. Finally, through years of discussions and negotiations, the Minamata convention on Mercury was adopted and opened for signature on 10 October 2013.

Bangladesh's ratification of the convention is no surprise. According to the Government of Bangladesh, by joining the Convention, Bangladesh has reaffirmed its strong commitment to global efforts in reducing mercury pollution. In 2019, the Department of Environment, after a year-long study found dangerous levels of mercury in both our air and water. In addition, due to the absence of a proper disposal mechanism, mercury even ends up in food items.

As a result of this ratification, Bangladesh is under an international obligation to not allow the mining of mercury in its territory after the Convention enters into force. Bangladesh will also have to disallow the export of mercury, except for the circumstances permitted in the Convention. In addition, Bangladesh must stop the manufacture, import, or export of mercury-added products listed in Part I of Annex A of the treaty after the phase-out date specified for those products, barring some exceptions. This also extends to the manufacturing process of products that includes mercury or mercury compounds. As a result, such products must be processed excluding mercury from the procedure.

Further, article 8(3) of the Convention obliges Bangladesh to take measures to control emissions and if required, prepare a national plan setting out the measures to be

taken to control emissions and its expected targets, goals, and outcomes. Besides, article 9 requires that the release of mercury and mercury compounds be controlled. In matters regarding managing and disposing of mercury wastes, in addition to the treaty, Bangladesh must also abide by the requirements of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

To abide by the provisions of the Convention, Bangladesh, as a developing country, will have access to mechanisms such as the Global Environment Facility Trust Fund and a specific international programme to support capacity-building and technical assistance. The Trust Fund is set to provide new, predictable, adequate, and timely financial resources to meet costs in support of the implementation of the Convention. A Committee, working as a subsidiary body of the Conference of the Parties, will review Bangladesh's compliance with the provisions of the Convention. Bangladesh will have to report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of this Convention and whether such measures have been effective.

Bangladesh has been a party to a significant number of international agreements and treaties related to the environment. However, not all the obligations under these instruments have been discharged. Bangladesh needs to abide by the requirements of the Minamata Convention to safeguard itself from the threat of mercury poisoning and mercury pollution.

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LAW LETTER

# Reviewing the Money Laundering Prevention Act, 2012

JUWEL KOBIR AND TAHEFA SAMIN

The offence of money laundering in Bangladesh has amplified drastically over the years due to a lack of regulatory mechanisms, legal complications, and organisational dysfunction. However, our legislative framework has several legal tools designed to regulate and minimise the threat of money laundering. The Money Laundering Prevention Act of 2012 is the most notable addition. The Act aims to combat money laundering and prohibit criminals from disguising illegally obtained money as lawful income.

The definition of money laundering is found in section 2(v) of the Act, which contains two main elements: purpose and a detailed explanation of the commission of this crime. This Act defines any attempt as "money laundering" when someone tries to do financial transactions in a way that avoids the Act's reporting requirements.

Section 4(2) states that money laundering is punishable by imprisonment for a term of four to twelve years and a fine equal to twice



the value of the asset, or BDT two million. In addition to this, section 4(3) allows the court to order the forfeiture of any assets associated with money laundering in favour of the state. However, sometimes the amount of the imposed fine is relatively low compared to the laundered money's current value when the judgment is given after a long time. Hence, applying fines equal to the total property's current value gained by using the laundered money may be a good solution.

Section 6 of the Act specifies punishment against the leakage of any information relating to the investigation with ill-intent, which can be up to two years imprisonment and/or a fine up to BDT fifty thousand, or both. Section 8 addresses the penalties for deliberately supplying false information about the sources, which is a maximum of three years imprisonment and/or a fine of up to BDT fifty thousand.

As per Section 12 of the Act, no court may take cognizance of any offence without the Bangladesh Financial Intelligence Unit's (BFIU) approval. This section affects the court's ability to handle money laundering offences. The subsection of the said section is also debated, as it states that any investigation report about a violation of this Act must be presented to the BFIU for prior approval. This gives the BFIU very broad authority.

Section 14 deals with the freezing of laundered assets. As said, this Act has granted enormous authority to the investigative agency; if a formal request is made to the court, the court may order the freezing of any property associated with a money laundering charge. However, there is scope for misuse of this provision by the investigative agency.

As per section 24, the BFIU is established to exercise the power vested under section 23. The government has granted the BFIU operational independence, so that it may independently investigate financial offences. However, it is indeed true that the BFIU's exclusive power poses a threat to fairness due to the possibility of misuse by its own personnel.

Section 23 grants the BFIU the authority and obligation to prevent money laundering. Under section 23(1)(c), if the BFIU considers that a transaction involves money laundering, it can issue an order to stop or freeze the transaction. Section 23(4) says that if any organisation gives false information, the BFIU can fine the organisation up to a maximum of BDT five lakh. This vast power given to the BFIU can hinder the process of getting actual justice. It has created a dependence on the BFIU, which bars the natural justice process. Sometimes many honest officers may fall into trap, whereby the actual criminals are not brought to justice. Therefore, this section needs to be reviewed.

To sum up, we can say that the Money Laundering Prevention Act, 2012 was necessitated in view of the scenario in Bangladesh; however, it is not exhaustive. The BFIU's jurisdictional overlap poses a threat of abuse of power. Furthermore, the Act has a substantial number of legal loopholes caused by the misuse of legal provisions. Therefore, the Act should re-address the provisions that do not provide appropriate, precise, and reliable direction. It is time for our legislators to modify the Act and develop an efficient anti-money laundering law that focuses mainly on implementation to reduce money laundering to the bare minimum.

The Writers are Law Graduates from Bangladesh University of Professionals (BUP).

RIGHTS WATCH

# Concerns over the recognition of pavement dwellers

ISRAT JALIL MIM

Pavements are generally part of public property; but in Bangladesh a huge portion of them are used by homeless people for shelter and livelihood. Due to the pavements being occupied, pedestrians are compelled to walk on the streets, which often makes them vulnerable to the risk of traffic accidents.

The pavement dwellers in our country, specially in Dhaka, lead very inhumane lives. As a developing country with an overburdening population, it is arduous to provide shelter and employment to all of its citizens; but cutting them out of their required basic needs by not ensuring their bare minimum means of shelter is brutally inhumane. They have the right to live with dignity. In *Mohammad Tayeb and Others v The Government of People's Republic of Bangladesh*, the dignity of the citizens was given the utmost priority saying, "The dignity of a citizen is no less important than his life or limb. Article 11 casts a duty upon the state to protect the dignity of its citizens."

The pavement dwellers also have a right to life and personal liberty under article 32 of the Constitution, and that right cannot be understood separately. The Indian higher court recognised the right to livelihood and to shelter as a



part of the constitutional right to life in the pioneering case of *Olga Tellis v Bombay Municipal Corporation* (1986 AIR 180). The Supreme Court of India enlarged the meaning of the right to life by bringing the right to shelter and the right to livelihood under the umbrella of the right to life. It reasoned that "if the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation." It rightly recognised

that the right to life is ineffectual without the means by which that right can be meaningfully exercised.

In this case, it was argued that right to life without the right to protection (by the state) of the means by which such a life could be enjoyed is illusory. The same view was upheld in *BLAST and Another v Bangladesh and Others* (Jhilpara Slum Eviction case), where the Supreme Court of Bangladesh decided that keeping the pavement dwellers homeless and to an insecure life amounts to being

contrary to the spirit and principle of articles 15(a)(b) and 32 of the Constitution. It amounts to the deprivation of their right to shelter as well as their right to life. The process is held to be unconstitutional and the same was found in *The Chairman, National Board of Revenue (NBR) v Advocate Zulhas Uddin Ahmed and Others* 12 ADC (2015) 302. The United Nations Committee on Economic, Social and Cultural Rights pointed out that the rights to adequate housing should not be intersected narrowly. Rather, it should be seen as the right to live somewhere in security, peace, and dignity mentioned in the Committee's general comment No. 4 (1991) on the right to adequate housing.

Bangladesh is undoubtedly one of the most densely populated countries in the world and it is in dire need of balanced population distribution, specifically in Dhaka Metropolitan region. The planning standards in Dhaka Metropolitan City need to be maintained. The pavement dwellers do not have access to the basic amenities, such as drainage, water, and sanitation, that must be ensured. The deficiency of resources cannot be exercised as a defense by a state to defeat the fundamental rights of its citizens.

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