

LAW VISION

An Overview of Bangladesh National Artificial Intelligence Policy 2024

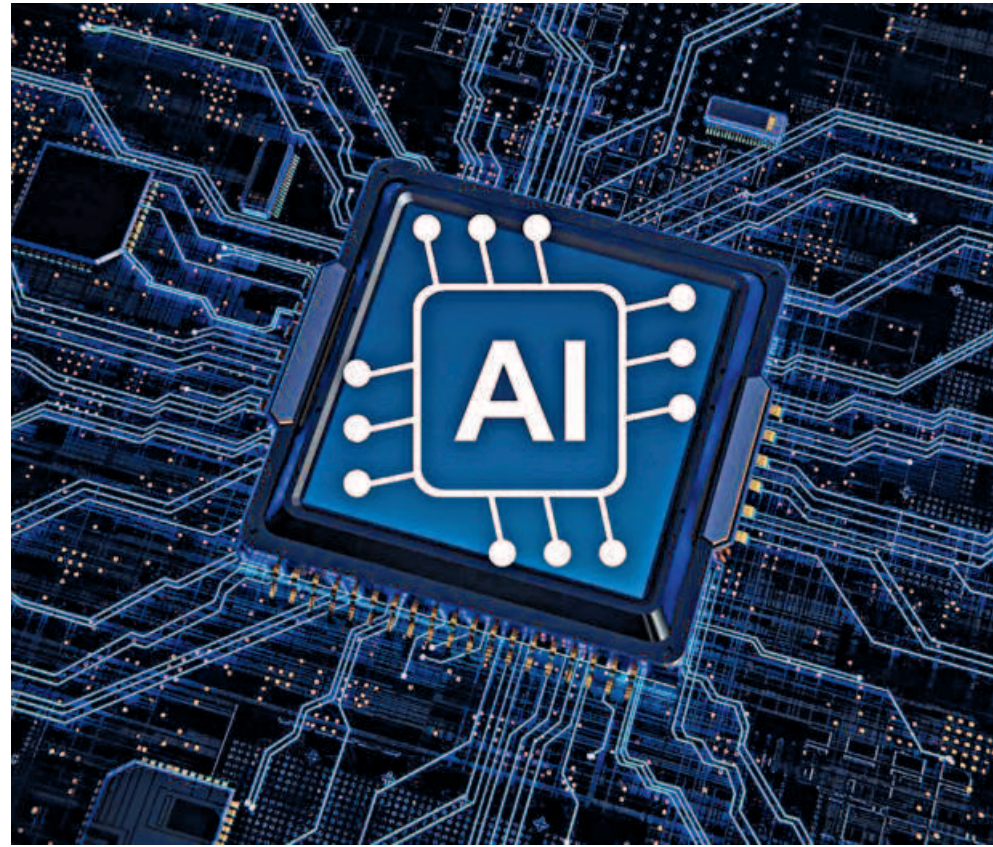
Bangladesh should introduce internationally compatible AI laws, regulations, norms and practices to maintain similar standards to AI superpowers. Further, collaboration between academia and industry is essential for introducing effective AI education to develop the necessary skills

M NAFIS MANJOOR BAREE

Bangladesh has very recently formulated the National Artificial Intelligence Policy 2024 (AI Policy 2024) to effectively address the social, legal and ethical issues associated with Artificial Intelligence (AI). The new policy mainly provides guidelines for the governance, adoption, and development of AI applications and their integration across different sectors of the government. The new policy prioritises sectors like education, public service, healthcare, transportation, telecommunication, environment, finance, manufacturing, and agriculture etc. However, the policy does not provide any details regarding the use and integration of artificial AI in the domains of defence and national security. The policy indicates the establishment of an independent National Artificial Intelligence Center for Excellence (NAICE) under the guidance of a proposed National AI Advisory Council. NAICE will collaborate with the ICT Division, relevant ministries, academia, industry, and civil society to take the necessary steps to introduce an institutional framework for implementing AI policy.

The challenges of implementing AI have also been addressed in the Policy by prescribing the formation of a monitoring committee to oversee ethical concerns related to AI's applications in both the private and public sectors. However, the policy might have underestimated the potential risks of AI implementation. For instance, the policy has no significant guideline to address organised cyber-crimes such as the 'Bangladesh Bank Money Heist' issue. International collaboration mechanisms in dealing with future cyber threats and AI generated crimes should have been addressed clearly with necessary legal recourses. Further, the major challenges concern the absence of a skilled workforce to deal with AI, data security, moral practice, lack of infrastructure, digital divide, and other regulatory issues. There are very few insights with respect to the ossification strategy to overcome the challenges. Moreover, it does not clarify the strategies Bangladesh will employ to uphold global cooperation in the application of AI.

In 2018, India introduced its National Strategy for Artificial Intelligence prioritising education, healthcare, agriculture, transportation and smart cities to create a roadmap for the integration of AI in India's



key sectors. India has also launched other programmes like "Responsible AI for Social Empowerment", "AI Task Force" and the "National AI Portal" for the integration and development of AI.

The ever-growing landscape of AI necessitates cooperation not only just between the public and private sectors but also among nations to attain prosperity for humanity at large. Therefore, Bangladesh should engage in partnerships and collaborations with foreign nations and organisations to promote research and innovation in the field of AI. Additionally, it is recommended that Bangladesh should engage in regular participation in international conferences, forums, cross-border collaborative AI projects, and programmes aimed at facilitating the transfer of AI knowledge and practice. Nevertheless, the implementation of the AI Policy 2024 in various sectors will provide a better understanding of its success and the potential of AI's use in Bangladesh.

Despite introducing the AI Policy 2024, to

achieve a delicate balance between fostering the integration of AI and mitigating risks, the government may face some practical challenges. The government may take necessary steps to overcome the challenges and achieve a workable solution. For instance, the government should develop a large-scale infrastructure to support the research and development of AI for its effective application.

Most importantly, Bangladesh should introduce internationally compatible AI laws, regulations, norms and practices to maintain similar standards to AI superpowers like the U.S.A., EU and China. Further, collaboration between academia and industry is essential for introducing effective AI education to develop the necessary skills. While the AI Policy 2024 of Bangladesh mandates the University Grants Commission to establish the AI research hub, the development of other national programmes through public-private partnerships may foster innovation, integration, and further AI development.

The writer is a corporate legal professional.

REVIEWING THE LAW

Rethinking the Gift Tax Act 1990

S.M. MAHBUBULLAH

The Gift Tax Act 1990 is possibly one of the most obscure laws of Bangladesh. The Act has its origins in the Gift Tax Act 1963, which Bangladesh incorporated within its corpus juris upon gaining independence in 1971, albeit with some modifications.

To put it simply, the Gift Tax Act imposes tax on gifts. Under section 2(f) of the Act, the term "Gift" has been defined as the voluntary transfer of any movable or immovable property without the consideration of any money or gain of monetary value from one person to another. The tax is paid by the donor based on the value of the taxable gift. Thus, making gift tax a direct tax, similar to income tax.

Section 4 of the Act provides multiple exemptions from this taxation such as, gifts to the local authority, gifts to spouses, parents, children and siblings, gifts of properties situated outside Bangladesh etc. In addition, gifts made by the assessee in any finance year up to BDT 20,000 are also exempt from taxation under section 4(2). The tax rates are elaborated in the Schedule of the Act: 5% on the first 5 Lacs BDT of the amount in excess of the exempted amount, 10% on the next 10 Lacs BDT, 15% on the next 20 Lacs BDT, and a slab 20% on any amount over that. Section 5 of the Act provides that for valuation of the gift property other



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than money, the market value on the date of the transfer is to be considered. If market value cannot be assessed in the abovementioned way, the section delegates the method of valuation to be determined by rules.

One can clearly identify the problem with the fixed 20,000 BDT exemption threshold. Back in 1990, this amount of money might have been significant. However, due to constant inflation and a steady economic growth, that same amount today holds relatively much less value. This means many more ordinary gifts are now caught within the taxation criteria, creating unnecessary burden on general taxpayers. For comparison, in India, the Gift Tax exemption threshold is 50,000 INR, albeit the tax is imposed on the donee, as opposed to the donor, like in our law.

The rise of blockchain technology and virtual assets have opened new gifting avenues that fall completely outside the ambit of the existing Act. There are no clear guidelines on imposing taxation on gifts in form of cryptocurrency in our law. Meanwhile, the question as to whether cryptocurrency is property at all is being debated internationally, and many countries are settling it through specific legislation. court judgements. The Gift Tax Act fails to deal with this issue as well.

The tax rates are also outdated and were made considering the economic circumstances of the 1990s. Reforming the gift tax could help raise revenues at a time when Bangladesh sorely needs to boost its low Tax to GDP ratio of just 7.9%. For comparison, the average Tax to GDP ratio in Southeast Asia is 19.8%. Despite being enacted over two decades back, the contribution of gift taxes to the total tax revenue are negligible. A well-thought reform in this regard could engender a meaningful revenue stream for the Government.

The 20,000 BDT exemption threshold and tax rate slabs cry out for reassessment based on present day realities. Ideally, these amounts should be indexed to inflation to prevent future value fluctuations. Simultaneously, the Act needs comprehensive upgrades to deal with modern gifting methods using virtual assets, electronic transfers, etc. Certain exemptions like that for gifts of out-of-country properties as under section 4(1)(a) may also merit a rethink in today's globalised world. Bangladesh's tax authorities should look at the global best practices in gift taxation for inspiration.

The writer is student of law, University of Dhaka.

LAW AND COMMERCE

Legal framework of parallel importation in Bangladesh

It is fair enough to say that there is no wholesale prohibition on the importation of parallel goods under the Customs Act, 1969 nor under the Amdani Niti Adesh 2021-2024. However, importers are bound to comply with certain statutory conditions in this regard.

MOHAMMAD FOYSAL

In ordinary parlance, parallel importation is understood as a mechanism of selling a non-counterfeit and branded product imported from another country in the local market without permission of the trademark owner. It is also widely termed as "grey market imports". This notion of parallel importation has stemmed from the resold theory or the doctrine of international exhaustion of branded commodities. This process happens when bypassing any native suppliers or manufacturers, importers purchase the genuine products in an overseas market with the permission of the original owner and subsequently, imports the same into the domestic market without any approval of the owner to

resell those products.

In recent years, the Bangladeshi legal regime has witnessed an upward spiral in the cases of "parallel importation." The court has delved into the focal question—whether there is any prohibition on parallel importation under the existing laws of Bangladesh. Lately, the High Court Division (HCD) has determined the issue by establishing a precedent in Unilever Bangladesh Limited v The Chairman of NBR and ors (2010). Unilever Bangladesh Limited has launched this legal action challenging the importation of parallel goods namely Vaseline, Knorr, Dove, Toothbrush, Close-Up Milk Calcium Nutrient and Axe and empty branded packing materials such as bottles, tubes, containers, wrappers, packets, labels etc. of the branded products of Unilever Plc. (which are locally produced, packaged, and marketed by them) into Bangladesh without their prior permission.

In this case, it was contended that section 15 of the Customs Act, 1969 prohibits such importation. However, the Court decided otherwise and opined that "on a bare

reading of Section 15 of the Customs Act, 1969 it reveals that there is neither absolute bar in importing parallel goods nor said section gives any unfettered right to the importers to import parallel goods. Section 15 of the said Act is balanced legislation. Section 15(d) (e)(g) and (h) of the said Act authorized the importers to import parallel goods subject to compliance with the procedure/conditions as mentioned in the said provision. If any importer fails to satisfy the conditions laid down in Section 15(d)(e)(g) and (h) of said Act the customs authority is empowered under section 17 of the Customs Act, 1969 to detain and confiscate the imported goods. Therefore, we are of the view that there is no wholesale restriction in section 15 of the said Act in importing parallel goods."

Thereafter, the Court has assessed another legal provision, supplementary to section 15 of the Customs Act and that is order 4 of the Amdani Niti Adesh 2021-2024. As per provision of order 4 (5), any aggrieved person is entitled to bring any objection regarding violation of any conditions of parallel importation to the notice of the Trade and Tariff Commission. Upon receiving any such objection, the Trade and Tariff Commission shall examine the objection and make a detail recommendation to the Ministry of Commerce. Thus, it is fair enough to say that there is no wholesale prohibition on the importation of parallel goods under the Customs Act, 1969 nor under the Amdani Niti Adesh 2021-2024. However, importers are bound to comply with certain statutory conditions in this regard. Order 5 of the Amdani Niti Adesh 2021-2024, for instance, stipulates that in case of import of registered branded product, an attested copy of intellectual property (IP) certificate from the country of origin issued by the concerned government or authorised authority or department is to be produced before the customs authority at the time of the release of the imported goods.

The writer is final year law student, University of Dhaka.

