

LAW OPINION

# The Reciprocal Trade Agreement with the US: Legal Grounds for Bangladesh to Withdraw

PROFESSOR M RAFIQU ISLAM

The Agreement on Reciprocal Trade between the US and Bangladesh concluded on 9 February 2026 has become a cause of concern in Bangladesh. This Agreement is criticised as highly discriminatory, militating against the net economic benefit and strategic interests of Bangladesh. The Centre for Policy Development (CPD) is dismayed as the Agreement serves only the US trade interests and recommends that Bangladesh should withdraw (Daily Star, 28 February 2026, 5 March 2026). Similar criticisms and recommendations may also be found in 'The US-Bangladesh Reciprocal Trade Agreement: Geopolitical Realignment, Asymmetric Obligations and the Imperatives of Balanced Trade' Dacca Institute of Research and Analytics, February 2026. This write-up suggests some legal grounds for lawful withdrawal, should Bangladesh decide to pursue this option under section 6(5-6) of the Agreement.



**The Reciprocal Agreement fails to address the vital trade interest of Bangladesh. Its features violate the constitutional requirement that Bangladesh should base its treaty relations 'on the principle of respect for national sovereignty and equality' and to determine and build up its own economic system 'by ways and means of its own free choice' (Art. 25).**

Under the Vienna Convention on the Law of the Treaties (VCLT) 1969, a treaty is void if it conflicts with a peremptory norm of international law (jus cogens) (VCLT Articles 53, 64). The right to self-determination is one such norm, having both political and economic aspects as defined in the UN International Covenants on Human Rights (Art.1). Political self-determination entitles the people to freely determine their political destiny. Economic self-determination entitles the people to freely pursue their economic development. A plain reading of the specialised studies mentioned before reveals the marginalised economic plight of Bangladesh under

the Reciprocal Agreement. Trade-induced gains for Bangladesh are riddled with mandatory conditions, restrictions and sanctions that are set to hamstringing its free economic developmental pursuits.

Apart from its stultifying effects on the Bangladesh economy shown in specialised studies on the Agreement, any lay reader of its terms and conditions cannot avoid developing a feeling that the negotiators from both sides had a common goal of making the Agreement to benefit the US. This goal has been achieved at the expense of the net trade-induced economic gains and economic sovereignty of Bangladesh. The GATT/WTO provides tariff concessions under the Generalised System of Preferences (GSP) for developing and least-developed countries to improve their exports for economic development. Bangladesh received this GSP tariff concessions in the US, which the US eventually suspended in 2013. Bangladesh has been requesting for the restoration of GSP since 2015 but remains unheeded. The Reciprocal Agreement fails to address this vital trade interest of Bangladesh. Its reciprocity merely camouflages asymmetric trade relations and economic strangulation

of Bangladesh. These features violate the constitutional requirement that Bangladesh should base its treaty relations 'on the principle of respect for national sovereignty and equality' and to determine and build up its own economic system 'by ways and means of its own free choice' (Art. 25). This Agreement was concluded in strict confidentiality under the guise of 'non-disclosure treaty' to avoid public knowledge and scrutiny. It was the US, not Bangladesh, that first brought this Agreement to the public domain. Indeed, the Agreement falls far short of the newly elected BNP government's policy of 'Bangladesh first' in which 'national interest' will guide the foreign policy of Bangladesh (Dhaka Tribune, 27 February 2026 and Daily Star, Dhaka, 4 March 2026).

Besides, the fundamental change in circumstances under which a treaty was signed entitles the affected party to withdraw from, or terminate, the treaty (VCLT Art. 62). President Trump imposed his so-called 'freedom tariffs' on almost all states. Facing high tariffs, some states negotiated special tariff deals to remain accessible in the US market. As it seems, Bangladesh, motivated by its exports to the US market at a concessional tariff rate,

negotiated and signed the Reciprocal Agreement. The US Supreme Court has recently declared Trump's tariffs illegal and at present, US tariffs stay at 10-15% on foreign products. Contrarily, the Reciprocal Agreement imposes 19% tariff on Bangladesh products, which is higher than the current 15% maximum tariff in the US. The US Supreme Court decision and the new US tariff regime has fundamentally altered the consideration and circumstances that had led to the Reciprocal Agreement, thereby making the negotiation comparatively more onerous for Bangladesh. Had these changes been known or foreseen at the time of making the Reciprocal Agreement, Bangladesh would not have signed it. The changes in the US tariff regime are fundamental enough to justify a withdrawal or termination.

Moreover, under the VCLT, the negotiators must 'produce appropriate full powers' accreditation, or if an intention of 'full powers' can be obtained from the state practice or other circumstances of the representing state (VCLT Art. 7:1). A treaty negotiated and signed without appropriately accredited full powers 'is without legal effect' (VCLT Art. 8). The VCLT also notes, non-compliance with 'internal

law of fundamental importance' (meaning the Constitution in our case) in treaty-making invalidates a treaty if the manifestation of non-compliance is objectively evident (Vienna Art. 46).

Notably, the authority in 'carrying on of any trade or business and the making of any contract' is vested with the Executive (Article 144, Bangladesh Constitution). Since treaty implementation requires a domestic parallel legislation, Article 145A requires that treaty made with foreign countries 'shall be submitted to the President, who shall cause them to be laid before Parliament'. In light of recent claims made by the President regarding his non-involvement in the treaty-making process (Kaler Kantho 23 February 2026; The Daily Star 23 February 2026), it appears that Bangladesh negotiated and concluded the Reciprocal Agreement sidestepping these constitutional requirements. In any case, the treaty-making process that the interim government followed in making the Reciprocal Agreement does not exist in the Constitution. Hence, it may be argued by invoking Articles 7 and 8 of the VCLT that the treaty is inconsistent with the Constitution, rendering it "without legal effect".

The Reciprocal Agreement provides for withdrawal after 60 days from the letter of withdrawal (s.6:5). If Bangladesh serves a withdrawal notice, the Agreement allows the US to reimpose its 'freedom tariffs' (s. 6:4) which is now illegal, and this sanction of reimposition does not exist anymore. This option of withdrawal appears rather easy for Bangladesh as it has not exchanged written notification for ratification as necessary for a treaty to entry into force (Vienna Art. 12, 16).

Alternative to the withdrawal under section 6(5) of the Reciprocal Agreement is the judicial option. Bangladesh or concerned NGO/s, businesses or citizen/s may file a writ with the High Court Division seeking an order of invalidation of the Agreement relying on the above grounds, particularly for non-compliance with the constitutional treaty-making process, violation of the supreme national law, and undermining the national interests, of Bangladesh.

The writer is Emeritus Professor of Law at Macquarie University, Sydney, Australia.

LAW LETTER

## On the right to emergency healthcare

A comparative constitutional analysis shows a growing trend of recognising 'Emergency Healthcare Service' as a fundamental right. In several jurisdictions, constitutions explicitly guarantee the right to emergency medical care, while in other places, broader 'health or life-related' rights are relied upon, providing indirect protection. For instance, article

healthcare as part of, among others, the right to life. However, in my opinion, the absence of an explicit and distinct constitutional provision arguably weakens enforceability and leaves state accountability largely dependent on judicial interpretation.

It is the stark reality that the healthcare system of Bangladesh faces multiple structural and operational



**The Supreme Court of Bangladesh, through several cases created room for interpreting emergency healthcare as part of, among others, the right to life. However, in my opinion, the absence of an explicit and distinct constitutional provision arguably weakens enforceability and leaves state accountability largely dependent on judicial interpretation.**

27(3) of South African Constitution states that no one may be refused emergency medical treatment. Later, in the case *Soobramoney v Minister of Health* (1998), it was clarified that the constitutional guarantee of emergency healthcare imposes an immediate obligation. However, where the circumstances do not call for emergency, the state is allowed more deference based on its resource constraints, thereby reflecting the principle of progressive realisation. A similar approach has been taken in countries like Kenya, Zimbabwe, Nepal, Egypt etc.

On the other hand, in Bangladesh, the Fundamental Principles of State Policy, particularly articles 15 and 18, directs the state to improve public health and medical service. However, the provisions cannot be judicially enforced directly due to article 8(2). The Supreme Court of Bangladesh, through several cases created room for interpreting emergency

challenges, such as overcrowded government hospitals, demands for informal payments, discrimination based on socioeconomic status, etc. Without explicit constitutional status, emergency healthcare remains vulnerable to administrative inefficiency, corruption, discrimination, and denial of care based on socioeconomic status. Contrarily, reliance solely on judicially interpreted rights risks inconsistency, unpredictability, and excessive dependence on judicial discretion.

Overall, the comparative experience reflects that explicit constitutional recognition is best understood as enabling rather than a determinative factor. While such recognition does not guarantee judicial activism, it performs an important normative function by lowering doctrinal barriers to enforcement, clarifying the minimum content of state obligations, and

shifting the justificatory burden onto the State. These observations highlight the value of explicitly incorporating emergency healthcare in the constitutional framework, as contemplated in the recent Constitution Reform Proposals for Bangladesh.

The Constitution Reform Commission has recommended expanding the scope of fundamental rights by unifying the civil, political, economic, social and cultural rights into a single charter of 'Fundamental Rights and Freedom' that would be enforceable in courts. Within this expanded charter, the commission proposes inclusion of the right to emergency healthcare explicitly, alongside other socioeconomic rights. It also emphasises that rights that require significant resources and time for realisation, such as health, should be implemented progressively based on resource availability, thereby balancing enforceability with practical constraints.

To conclude, the COVID-19 pandemic and the other public health emergencies have consistently exposed our systemic limitations in the emergency healthcare system, particularly the absence of an explicit constitutional guarantee to emergency healthcare services. It is high time we rethink and reform the current constitutional status of emergency healthcare.

Faria Mehjabin Medha  
Student of Law  
University of Dhaka.

YOUR ADVOCATE

## Kazi's jurisdiction and the validity of marriage

This week Your Advocate is Barrister Omar H. Khan, Advocate of the Supreme Court of Bangladesh. He heads the chambers of the renowned law firm 'Legal Counsel,' a full-service corporate practice in Bangladesh with extensive expertise in commercial, family, labour, land, constitutional and criminal law, as well as dispute resolution.

**Query**  
I recently got married under the Muslim law. However, I have lately learnt that the Kazi who conducted our marriage was not authorised for the area where the ceremony took place. Will this affect the validity of our marriage?

Faisal Fayaz, Bogura.

**Response**  
Dear Mr Fayaz, thank you for your query. Before diving deep into the matter, a little bit of context is important. In Bangladesh, matters related to marriage, divorce, etc. are dealt with by the personal laws of the respective individuals. As such, the marriage of Muslims is governed by the Muslim Shariah law. As you may be aware, nikah or marriage under Muslim personal law is considered fundamentally a contract. Thus, the validity of a nikah depends primarily on whether the essential requirements of that contract were fulfilled. These include a clear proposal and acceptance between the bride and the groom, the presence of competent witnesses, the free and voluntary consent of both parties, and dower. When these elements are present, the marriage is generally considered valid under Muslim personal law, regardless of administrative irregularities surrounding the officiant.

requirement of registration of Muslim marriages arises under the Muslim Marriage and Divorce (Registration) Act, 1974 read with the Rules of 1975. The Act makes provision for a nikah registrar (also known as 'Kazi') who is licensed by the government to register marriages and divorces. Such licenses are granted for a particular geographical area, and he can register marriages solemnised or divorces affected within that area only.



This is where many misunderstandings arise. People often assume that the Kazi's jurisdiction determines the validity of the marriage itself. In reality, the Kazi's role under the said laws is largely administrative. Kazis are appointed to register marriages, maintain official records and issue the Nikahnama so that the marriage can be properly documented and proved when necessary. Territorial jurisdiction, on the other hand, is mainly intended to ensure

organised record-keeping and to avoid confusion in registration. It does not determine the validity of a marriage. Instead, where a marriage is conducted by a Kazi in an area of which he is not in charge, it becomes a misconduct on the part of such Kazi. Commission of such misconduct may result in revocation/suspension/annulment of his license by the government. Such violation or misconduct by the Kazi does not, however, invalidate the marriage or render the registration defective.

However, while non-registration of the marriage does not make the marriage invalid, please bear in mind that the same is considered a crime, which is punishable even with imprisonment. As per the Act, a Muslim marriage has to be registered within 30 days of solemnisation. If the marriage is solemnised by the Kazi himself, it is his duty to register it at once.

In short, registration does not confer validity to the marriage. Rather, it makes the marriage documented and capable of being proved by acceptable evidence. Contrarily, lack of registration may cast doubt on the solemnisation of the marriage but does not invalidate the marriage.

I hope this explanation clears your concern and provides reassurance allowing you to move forward with greater confidence and peace of mind.