LAW REVIEW

A review of the Commercial Court Ordinance 2026

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The Commercial Court Ordinance 2026 (the Ordinance) marked a significant milestone in the commercial justice system of Bangladesh. It established a specialised process for settling business disputes, which was previously adjudicated upon by the regular civil courts under ordinary processes. Although the pre-existing legal frameworks provided channels for resolving disputes, they proved insufficient to handle the growing complexity, urgency, and technological elements of modern business disputes.

In an attempt to bridge this institutional gap, the Ordinance, under section 3, prescribes the establishment of specialised courts throughout the country to deal with commercial disputes throughout the country. These courts' territorial jurisdiction shall be determined by competent authorities through consultation with the Supreme Court. The judges are required to be chosen from the District Judges and Additional District Judges, preferably those having advanced commercial law degrees or expertise and training in business dispute. Furthermore, under section 3(4), the Chief Justice of Bangladesh shall establish one or more Commercial Appellate Benches in the High Court Division to hear appeals and revisions against decisions made by Commercial Courts.

Again, the Ordinance defines, and thereby enables, the resolution of more than 23 types of business conflicts under section 2(gha). It includes disputes involving transactions by banks and financial institutions,

subscription and investment contracts, joint venture agreements, insurance matters, intellectual property rights, agreements for the use of minerals, gas or natural resources (such as electromagnetic spectrum). Thus, it operates as a measured response to the traditional civil courts that are often burdened with land-centric disputes, family matters, and other ordinary civil litigation.

In the past, the lengthy litigation timeframe for business disputes often discouraged both foreign direct investment (FDI) and high-value domestic investments. Consequently, investors opted for arbitration despite it being a costly and challenging alternative for small or domestic businesses. The Ordinance accelerates this lengthy procedure by requiring the Commercial Courts to conclude the trial of a dispute within 90 days from the date set for the final hearing. It also addresses the structural shortcomings of the traditional litigation process by creating time-bound procedures, limited adjournments of maximum three times, mandatory pre-suit mediation, strict deadlines for submitting pleadings, and case management hearings to expedite the settlement of commercial disputes. In sum, by providing a unique avenue for business litigation outside of the larger civil court system, the Ordinance, which was long overdue in Bangladesh's legal system, distinguishes commercial justice from traditional civil justice.

The main advantage of this ordinance, in my opinion, is the specialisation it offers. Since judges are to be preferred based on their training and proficiency in commercial law and dispute resolution, it will ensure well-reasoned and consistent rulings, contributing to building investors' trust in the long term. Moreover, the guarantee of quicker dispute settlement under the Ordinance, active case management, and hard deadlines for statements make commercial justice achievable, particularly for small and medium-sized enterprises.

However, it needs to be said that the success of commercial courts in Bangladesh will ultimately depend on the judges' skills, training, and institutional resources, for which adequate preparation is required. Issues with accessibility and uniformity may also arise, especially in places with inadequate court infrastructure. Again, collaboration between commercial courts and existing civil courts during the transition period may present practical challenges if not managed properly, especially with regard to the transfer of pending cases.

A trustworthy and efficient mechanism for resolving commercial disputes is seen as a vital component sought by foreign investors and development partners. In fact, Bangladesh's goal for Least Developed Country graduation is also facilitated by the Ordinance, if implemented properly. If it is well executed, it could increase investors' confidence and aid Bangladesh's shift to a competitive post-LDC economy.

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RIGHTS WATCH

Joli No'udim Hittei?- "Why shouldn't I resist?"

Unfinished constitutional promise to the hills

SATIRTHA CHAKMA

Even after half a century since the birth of Bangladesh, the state has yet to ensure and sustainably implement the rights of the Indigenous Peoples (IPs) in Bangladesh. The pattern is, unfortunately, way too familiar and repetitive. Almost every year, we see violencence escalating in the hills, leaving a deep and long-lasting scar and trauma.

The 2024 Bangladesh Quota Reform Movement initially sparked hope to the indigenous communities against longstanding injustices. However, many developments since then has been rather disappointing. According to a report by the Parbatya Chattagram Jana Samhati Samiti, in 2025 alone, 268 incidents of human rights violations were recorded, affecting 606 Jumma individuals. The report further indicates that security forces, police, Bangalee settlers, and extremist groups were found responsible

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for these violations. It also recorded eight extrajudicial killings, 117 arbitrary arrests, 193 village search operations, and 26 incidents of violence against women and children.

Historically, little interest has been shown by the successive governments in addressing the political and structural crisis in the CHT, as Mark Twain observed, history doesn't repeat itself, but it often rhymes. Human rights concerns affecting the Bawm community also reflect the broader pattern of vulnerability, insecurity, and protection gaps faced by the IPs in the Chittagong Hill Tracts.

Beyond the so-called political unrest lies a deeper constitutional and legal dilemma: who qualifies as "Indigenous" in Bangladesh? The state has consistently avoided providing a concise and exclusive legal definition. Article 23A of the Constitution of the People's Republic of Bangladesh acknowledges the duty of protection and development of the unique local culture and tradition of the "tribes, minor races, ethnic sects and communities," yet it fails to guarantee Indigenous identity as a distinct constitutional category. Furthermore, constitutional frameworks and judicial interpretations have also failed to fully recognise the right to self-determination for indigenous communities.

In addition, many of our statutes, *e.g.*, the CHT Accord 1997, the State Acquisition and Tenancy Act 1950, the CHT Regulation 1900, and the CHT Regional Council Act 1998, use fragmented terminology such as 'tribes', 'aboriginals', and 'indigenous hillman', avoiding a dignified identity for the IPs.

Moreover, from the perspective of constitutionality as well, the CHT Accord and the Regional Council Act were challenged in *Md. Badiuzzaman* v *Bangladesh (writ petition no: 2669/2000)* and *Md. Tazul Islam* v *Bangladesh (writ petition no: 6451/2007).* In April 2010, a High Court Division bench declared the Regional Council Act 1998 unconstitutional stating that it affected the unitary character of the Constitution. However, the Appellate Division later stayed the High Court verdict. While this preserved the formal validity of the Accord, implementation remains sluggish and incomplete. In my opinion, lands stand at the centre of all conflict in the CHT, pulling every social and political grievance into its depths. The land is the repository of indigenous life, holding within it the communities' past, their cultural soul, and future viability. However, these very lands form crux of conflicts too. For instance, the Kaptai Dam submerged around 250 sq. km. of ancestral land, displacing approximately 100,000 IPs. Furthermore, Bangladesh ratified International Labour Organisation (ILO) Convention 107 but abstained from ratifying ILO Convention 169, which provides for stronger land and consultation rights. Again, it refrained from voting on the non-binding United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP). Such selective engagement narrows binding obligations regarding the acknowledgement of indigenous autonomy and land rights, limiting international accountability mechanisms.

Unfortunately, and perhaps most importantly, the quest for constitutional inclusivity is yet to be acknowledged. Article 6(2) of the existing Constitution defines every person as 'Bangalees', which radically ignores the indigenous peoples' identity. Manabendra Narayan Larma, a former member of the Bangladesh Parliament opposed the drafted Constitution due to the imposition of Bengali hegemony on the non-Bangalee ethnic groups and tribal communities living in Bangladesh. He argued, "Under no definition or logic can a Chakma be a Bengali or a Bengali be a Chakma. A Bengali living in Pakistan cannot become or be called a Punjabi, Pathan, or Sindhi; any of them living in Bangladesh cannot be called a Bengali. As citizens of Bangladesh, we are all Bangladeshis, but we also have a separate ethnic identity...."

In sum, the CHT represents Bangladesh's unresolved constitutional challenge of pluralism, justice, and land security. It is a stress test of Bangladesh's constitutional maturity. How the state resolves it will define whether legal pluralism is symbolic or substantive.

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LAW AND ECONOMICS

On Competition Law and price-fixing

GAZEE MUZEERU

Outside the commonly understood media connotation of the term, a 'cartel' in economics refers to market participants that conspire together to establish market dominance, often by creating a monopoly or oligopoly. One familiar way to do this is through price-fixing agreements, in which market actors agree not to sell or buy certain products at prices below or above a determined level.

When a group of sellers agrees to fix the sale price of goods, it becomes a case of 'horizontal' price-fixing. Horizontal, because it is an agreement among participants on the same market level, such as competing sellers, as opposed to 'vertical' price-fixing, which denotes a relationship between different market levels, such as manufacturers and retailers.

Agreements that can have the effect of horizontal price-fixing are banned across jurisdictions for their competition-killing nature. When left unregulated, price-fixing by sellers can create price of products that bear no correlation to production costs, even for essential goods. Regardless of the apparent reasonableness of the fixed price, and even taking into account that the majority of sellers are willing participants in this, common law precedents such as *Trenton Potteries* have held that all agreements among sellers to fix and maintain uniform prices are violations of competition law. The European Union also prohibits horizontal price-fixing in language similar to that used in Bangladesh's own Competition Act 2012, section 15(2)(a)(i).

A noteworthy difference in Bangladesh's price-fixing prohibition is that the law introduces a unique qualifier, 'abnormal', before price-fixing activities are deemed illegal. But addressing that requires an acknowledgement of a wording discrepancy in section 15(2)(a)(i) between the Bengali and the authentic English text.

In what may be an unmissable curiosity at the very least, a straightforward translation from the Bengali text of the subsection reads that a practice shall be deemed anti-competition and prohibited if it 'abnormally determines the purchase or sale price of any goods or services'; whereas the authentic English text published in 2017 prescribes that an agreement shall only be deemed adverse to market competition and illegal when it 'determines abnormal purchase or sale prices'. Quite clearly, 'abnormally determining price' and 'determining abnormal price' have significantly different legal interpretations and implications. Moreover, while section 45(2) of the Competition Act 2012 does declare the primacy of the Bengali text, the authentic English text with its 'abnormal price' has already made its way into policy discussions, peer reviews, and broader academic discourse.

Going by the precedent set in *Trenton Potteries* mentioned earlier, the Competition Commission or any body adjudicating competition matters would be poorly positioned to determine what constitutes an 'abnormal price.' It would be an arrangement tediously volatile and sector-specific. Indeed, the normal price fixed today may become the abnormal price of tomorrow.

It makes more sense to take the process-based approach of 'abnormally determining price', as in the Bengali text, which is still uncomfortably far from normative practices. But what would be considered an abnormal determination? Rationally, competitors should not be able to fix prices at all, whether in a normal manner or an abnormal one. Once a sale price is set by competitors, there remains no value in offering something better to purchasers. It becomes a race to the bottom: the lower the production cost, the higher the profit at a fixed sale price. As a result, quality is often among the first things sacrificed, followed by innovation.

Even in developing countries with similar economic output as Bangladesh, such as section 14(a)(1) of Philippine's law or Article 11(1) of the Vietnamese competition law, the abnormality qualifier is wholly absent. Attempts to horizontally fix prices are generally banned *per se* (illegal without needing analysis), including under the Sherman Act in the US, leaving market actors without 'normality' or any other justification for price-fixing among competitors. There is no real necessity in Bangladesh to deviate from this general practice of prohibiting all horizontal price-fixing without a normality qualification.

On the other end of this spectrum, there may be a concern that in a market where prices are not fixed, one competitor can set a product's price too low, incurring losses to poach buyers with a lucrative deal and drive competitors out by absorbing the market. While it sounds plausible on paper and remains prohibited under section 16(2)(a) of the Competition Act 2012 if the price is set below the production cost of a product or service, this is an exceedingly rare maneuver unlikely to succeed in any real market with any form of consistency. For a seller engaging in predatory pricing to recoup their losses, they would have to raise their prices at some point after monopolising. At which time the market would become open to new competitors who can now undercut the desperate-to-recover seller, in a sense regulating this anti-competitive behaviour through market mechanisms.

In terms of consumer harm, horizontal price-fixing poses a greater threat to market competition than the rare occurrences of predatory pricing. One mechanism that has time and again helped uproot price-fixing cartels is a leniency programme often found in competition legislation, where the first person or association to come forward with information about the cartel is granted amnesty in exchange for cooperation. Unfortunately, the Competition Act 2012 does not provide such whistleblower protection, and its incorporation may be one of many steps that Bangladeshi antitrust regulation can take to strengthen fair trade practices.

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