Volume 01 May 2025 Issue 02

TUHIN & PARTNERS

Nexus of Law & Business

E-NEWSLETTER

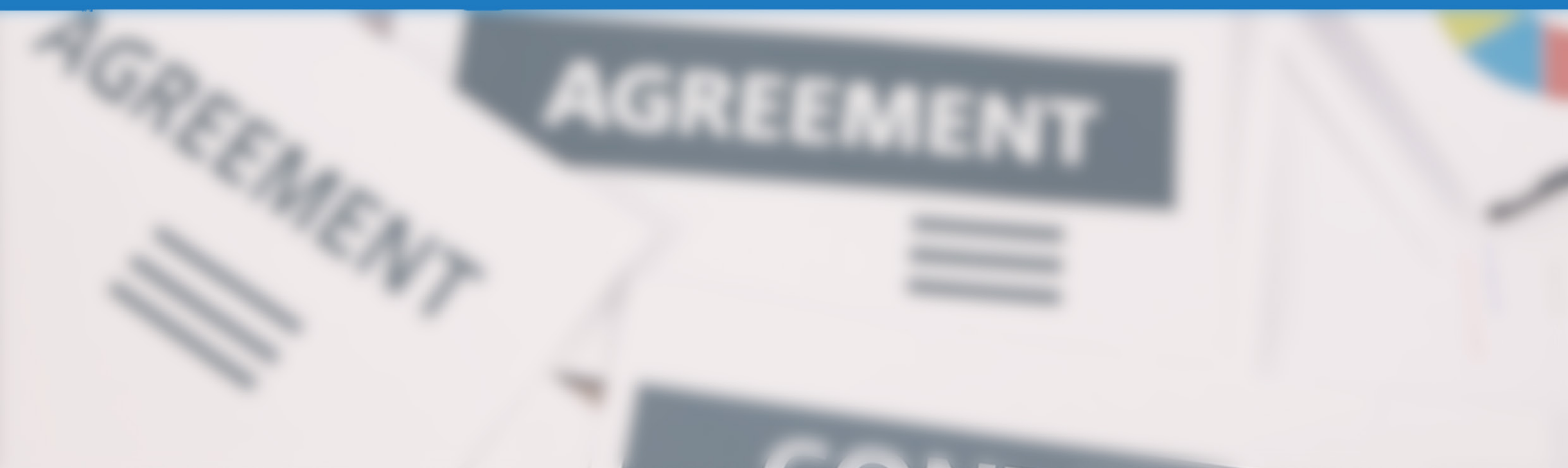


TABLE OF CONTENTS

CONTRIBUTORS

Editor-in-Chief
Kanak Kanti Karmakar
Lecturer in Law at North East University Bangladesh

Research Assistant
Fouzia Fariha
Intern, GIZ Bangladesh

Research Intern & Graphics Designer
Abdullah Al Motrood Yeasir
Assistant Officer-Legal, Akij Resource

Research Intern
Provat Bala
Research and Publication Secretary - State University of Bangladesh Moot Court Society

Research Intern
Taief Mollik
Legal Intern, Bangladesh Legal Aid and Services Trust (BLAST)

Consumer Protection in Bangladesh: Legal Rights and Remedies

Introduction

Bangladesh's Constitution (Articles 15 and 18) and consumer protection laws safeguard consumer interests. The Consumer Rights Protection Act 2009[1] consolidated provisions from other laws, establishing a National Consumers' Rights Protection Council and an enforcement Directorate. The Bangladesh Standards and Testing Institution Act 2018[2] revamped earlier laws to enhance product quality control. Together, these statutes ensure consumer safety and provide civil and criminal remedies.

Legal Rights

The Consumer Rights Protection Act 2009 (CRPA 2009) guarantees several fundamental consumer rights, including access to safe, accurately measured, and non-adulterated goods. It also aims to curb fraudulent practices such as hoarding, food adulteration, and misleading packaging. The Act empowers the Directorate of National Consumer Rights Protection (DNCRP) and district-level administrators to take enforcement actions. Furthermore, consumers can lodge complaints directly, and violations may lead to both civil and criminal penalties. Complementing this, the BSTI Act 2018 focuses on regulating product standards, giving the Bangladesh Standards and Testing Institution (BSTI) authority to certify goods, grant trademarks, and initiate prosecutions for violations related to product quality and mislabeling.

Key legal rights and protections:

• Right to safe and standard-compliant goods under CRPA 2009 and the BSTI Act 2018.
• Protection from fraud, misrepresentation, hoarding, and adulteration.
• Ability to file complaints with DNCRP and seek remedies.
• CRPA 2009 offers criminal sanctions (up to 3 years' imprisonment, fines up to 2,00,000 BDT).
• BSTI can penalize unauthorized use of trademarks and export violations (up to 4 years' imprisonment).
mechanisms, offering a quicker and more

Remedies and Enforcement Challenges

Although the legislative framework appears robust, enforcement remains inconsistent. Scholars have raised concerns about bureaucratic inefficiency, particularly within the CRPA's governing council dominated by government officials[3] . Consumers often lack direct access to courts or legal aid, relying instead on public-interest litigation to enforce rights. In a notable example, the High Court's 2019 intervention forced regulators to remove 52 adulterated food products identified by BSTI[4]. While this spurred action, other incidents highlight ongoing weaknesses. For instance, in 2020 a Dhaka court revealed that BSTI destroyed all samples from food tests, making it impossible to prosecute offenders[5]. The judge condemned the agency's conduct as suggesting a premeditated refusal to hold violators accountable[6].

Remedial mechanisms and limitations:

• Consumers can seek both criminal penalties and regulatory action via DNCRP.
• Courts may intervene through public interest litigation to compel enforcement.
• BSTI is tasked with product testing and can revoke certifications or prosecute.
• Bureaucratic structure and limited consumer access undermine consistent application.
• Evidence mishandling (e.g. destroyed samples) hampers legal accountability.

Concluding Remarks

Bangladesh's Consumer Rights Protection Act 2009 and BSTI Act 2018 grant consumers rights to safe products and remedies like fines, compensation, and business closures. Though aligned with global norms, enforcement remains weak due to institutional inertia. Courts often compel action by regulators, exposing gaps. Stronger public awareness and regulatory enforcement are crucial for realizing statutory rights. Bangladesh's experience shows that while robust consumer laws are vital, real consumer protection ultimately depends on effective, consistent enforcement.

Source: Freepik.com

1 The Consumer Rights Protection Act 2009
2 The Bangladesh Standards and Testing Institution Act 2018
3 Md Nayem Alimul Hyder, 'Consumer's rights protection in Bangladesh' The Financial Express (Dhaka, 26 April 2017)
4 M Moneruzzaman, 'HC seeks explanation from BSTI, BSFA' New Age (Dhaka, 9 May 2019)
5 Emran Hossain, 'BSTI destroys evidence, frames innocents: court' New Age (Dhaka, 21 January 2020)
6 ibid

Transition from LDC and Its Impact on Pharmaceutical Industries in Bangladesh: Challenges and Opportunities

Introduction

Bangladesh's upcoming graduation from the UN's list of Least Developed Countries (LDCs) in 2026 marks a major development milestone. While this reflects socio-economic progress, it brings legal and commercial challenges. The pharmaceutical sector, crucial to the economy and public health, will be significantly affected. As an LDC, Bangladesh benefited from WTO flexibilities, notably a waiver on key TRIPS provisions. Losing these privileges will create regulatory, financial, and strategic hurdles, but also offer opportunities for innovation and long-term growth.

Key Discussion

1. Background of TRIPS Waivers and LDC Privileges

Under Article 66.1 of the TRIPS Agreement, LDCs are exempt from enforcing patent protections on pharmaceutical products and processes[1]. The waiver allowed Bangladeshi pharmaceutical firms to make generic versions of patented drugs without licensing fees or legal barriers, helping the industry meet 98% of domestic demand and export to over 150 countries[2]. With LDC graduation, the waivers will end, requiring Bangladesh to fully comply with TRIPS by granting and enforcing pharmaceutical patents. This threatens affordable drug access, competitiveness, and the industry's global standing[3].

2. Challenges for the Pharmaceutical Industry

i. Loss of Access to Generic Drug Production

TRIPS compliance will bar the production of generic patented drugs, limiting access to affordable treatments for diseases like cancer, HIV/AIDS, and hepatitis[4]. Firms reliant on generic production for local and export markets may face revenue loss and increased dependence on foreign technology and licenses.

ii. Increased R&D and Licensing Costs

TRIPS compliance demands heavy R&D and licensing investment. Bangladesh's replication-focused pharma sector may struggle, especially smaller firms, risking consolidation and less competition[5].

iii. Legal and Regulatory Readiness

Complying with global intellectual property (IP) norms requires major reforms to domestic laws and regulations. Currently, IP enforcement in Bangladesh is weak due to outdated laws and limited institutional capacity[6]. Without significant legal updates and capacity building, the country risks breaching international obligations and facing trade disputes.

3. Opportunities from the Transition

Despite the affront challenges, the LDC graduation also offers strategic opportunities for long-term growth and global integration of the pharmaceutical sector.

i. Attracting Foreign Investment and Partnerships

TRIPS compliance may increase investor confidence and draw more FDI to Bangladesh's pharmaceutical sector. Companies with strong IP protections are more likely to pursue joint ventures and technology transfers, helping local firms access proprietary technologies and boost production[7].

ii. Incentivizing Innovation and R&D

The shift allows local pharma firms to pivot from replication to innovation. With R&D tax breaks, partnerships, and academic ties, Bangladesh can foster innovation and develop patented drugs for local and regional markets.

iii. Enhancing Global Competitiveness

Aligning with global IP norms can boost Bangladesh's trade reputation and access to markets like the EU, US, and Canada. Adaptable firms can compete globally through quality and innovation.

4. Policy Recommendations

To manage risks and seize opportunities, Bangladesh needs a proactive, multi-faceted policy approach:

- Strengthen Legal Frameworks: Align IP laws with TRIPS while ensuring public health safeguards, such as compulsory licensing under Article 31[8].
- Support SMEs: Offer financial and technical aid to help small pharmaceutical firms adapt.
- Invest in Human Capital: Invest in pharmaceutical education and training to support R&D and compliance.
- Negotiate Transition Periods: Advocate for longer timelines or sector-specific waivers to ease the shift.

Concluding Remarks

Bangladesh's graduation from LDC status marks a critical point for the pharmaceutical industry. The shift from TRIPS waivers to full compliance brings challenges, particularly in generic drug production, innovation, and legal readiness. However, if managed well, it can drive global competitiveness, investment, and sustainable growth in the sector.

Strategic reforms, policy foresight, and targeted investments are key to turning this transition into an opportunity. With careful planning and international collaboration, Bangladesh could emerge not only as a producer of affordable generics but also as an innovator in the global pharmaceutical market.

Source: Pharmaceutical Industry of Bangladesh (https://www.sasec.asia/uploads/news/2019/pharma-companies-bangladesh.jpg)

1 TRIPS Agreement, Article 66.1, WTO Legal Texts, https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm
2 Directorate General of Drug Administration, Bangladesh, Annual Report 2022.
3 Research and Policy Integration for Development (RAPID), LDC Graduation and Bangladesh's Pharmaceutical Industry: Implications for Medicine Prices, Accessibility, and Affordability (RAPID 2025) https://www.rapidbd.org/wp-content/uploads/2025/01/Final_Policy-Brief-LDC-Graduation-Impact-on-Pharmaceutical_110125-1.pdf accessed 23 April 2025.
4 Médecins Sans Frontières, "The end of the TRIPS transition for LDCs: What's at stake," 2021.
5 Rahman, M. "TRIPS Compliance and the Future of Bangladesh's Pharmaceuticals," The Financial Express, 2023.
6 World Intellectual Property Organization (WIPO), "IP Development in Bangladesh: Challenges and Prospects," 2020.
7 UNCTAD, Investment Policy Review: Bangladesh, United Nations, 2022.
8 TRIPS Agreement, Article 31, WTO Legal Texts.

Outsourcing Service Procurement Policy-2025 (Enforced on April 2025)

Introduction

The Outsourcing Service Procurement Policy-2025 aims to address the increasing demand for outsourced services across various sectors in Bangladesh. The policy sets the guidelines for outsourcing in public offices and seeks to improve service delivery while ensuring that outsourcing processes are conducted with integrity and accountability. Despite its potential benefits in improving efficiency, it has sparked controversy, especially among workers who are concerned about the implications for job security and workers' rights.

The policy applies to multiple government services, with the idea that private firms or contractors will take over specific government functions. The policy intends to enhance the quality of public services by incorporating expert service providers who can deliver better outcomes. However, the reliance on outsourcing has drawn criticism from workers and labor unions, especially concerning the future of permanent staff and the outsourcing of workers' rights.

Key Discussion

Provisions and Implementation

The core provisions of the policy address a competitive, transparent outsourcing system, with clear procedures for procurement, service quality, and performance evaluation. According to Chapter 3, Section 8[1], the policy outlines that government institutions will outsource specific services through an open bidding process. It eliminates the middlemen involved in previous procurement arrangements, promoting more efficient and direct contract management between the government and service providers. This could lead to a reduction in corruption and the improvement of service delivery[2].

However, one critical issue is the continuation of the contractor model. The policy allows service providers to bypass existing contractors and engage directly with the government. While this could reduce administrative overheads and middlemen, it also raises concerns for long-term workers under the contractor system. These employees, many of whom have worked for years with contractors, fear job loss or displacement under this new model.

Analysis of Worker Concerns

Workers employed through outsourcing contracts have raised alarms regarding the contractor system's exclusionary effects. Outsourcing workers, particularly those employed under subcontractors or intermediaries, face job instability, lack of benefits, and limited job security. The policy has been critiqued for not sufficiently addressing the concerns of these workers, including their demands for regularization and better wages.

Outsourcing unions have argued that while the policy aims to improve service delivery, it largely ignores the plight of workers who are not regularized but still perform critical public functions. Many workers demand fair compensation and job regularization, alongside minimum salary guarantees. The issue of a lack of proper employment benefits, like healthcare and pensions, has become a sticking point. A significant concern raised by the Bangladesh Outsourcing Workers' Union is the failure of the policy to guarantee worker rights such as annual leave, provident fund access, and maternity leave. These gaps, along with insufficient pay increases (many workers are requesting a minimum monthly wage of Taka 25,000), highlight the policy's neglect of workers' well-being in favor of operational efficiency[3].

Analysis of Policy's Potential Benefits and Challenges

The policy's attempt to enhance government efficiency and service quality is a commendable goal. By streamlining the procurement process and eliminating intermediaries, the policy promises to reduce corruption, increase competition, and ultimately lead to better service delivery in public offices.

However, these potential benefits need to be balanced with the policy's impact on workers. Without strong safeguards for employees, the outsourcing process could lead to precarious employment conditions, with workers left vulnerable to exploitation and insecurity. Furthermore, the policy's enforcement mechanisms will need to be robust to ensure that its provisions are properly implemented and monitored. If these mechanisms are not adequately established, the policy could fall short of its intended goals.

Additionally, the lack of integration of labor protections within the policy undermines its long-term sustainability. Without incorporating worker rights into the framework of outsourcing, the policy could perpetuate exploitation in the name of efficiency. This highlights the need for a more inclusive approach that considers the welfare of workers alongside the operational benefits of outsourcing[4].

Pros and Cons

Pros

1. Improved Service Delivery: By contracting with specialized service providers, the government can benefit from better-managed services and increased operational efficiency.
2. Reduced Administrative Costs: The policy is designed to streamline procurement processes by eliminating intermediaries, potentially reducing bureaucratic inefficiencies and associated costs.
3. Increased Transparency: By setting clear guidelines for service procurement, the policy promises to reduce corruption and promote transparency in government outsourcing practices.

Cons

1. Worker Exploitation: The most significant criticism of the policy lies in its failure to protect workers who may be displaced or continue to work under exploitative conditions without proper benefits or security.
2. Implementation Challenges: The policy's success hinges on effective enforcement, which may be difficult in a context where public procurement is often marred by inefficiencies and corruption. Ensuring proper monitoring of outsourced services is crucial for the policy's effectiveness.
3. Job Insecurity: Long-serving employees under outsourcing contracts may face displacement, leading to public dissatisfaction and unrest. Many of these workers are unsure of their future job security in a system that emphasizes contractor-based service provision.

Concluding Remarks

The Outsourcing Service Procurement Policy-2025 represents a well-intentioned effort to modernize and streamline public service procurement in Bangladesh. While it holds the promise of better service delivery and operational efficiency, it also presents significant challenges regarding worker welfare and job security. To ensure the success of this policy, it is critical that it incorporates stronger labor protections, clear mechanisms for regularization of workers, and robust enforcement of its provisions. Failure to address these concerns could lead to labor unrest and undermine the policy's goals.

1 Outsourcing Service Procurement Policy-2025, ch 3, s 8
2 Bangladesh Pratidin, 'Outsourcing Service Procurement Policy 2025: A New Direction for Government Procurement' (Dhaka, 15 April 2025) <https://en.bd-pratidin.com/national/2025/04/15/34655> accessed 26 April 2025.
3 The Daily Observer, 'Outsourcing Service Procurement Policy 2025: Implications and Challenges' (Dhaka, 3 March 2025) <https://www.observerbd.com/news/514719> accessed 26 April 2025.
4 Bangladesh Pratidin, 'Outsourcing Service Procurement Policy 2025: A New Direction for Government Procurement' (Dhaka, 15 April 2025) <https://en.bd-pratidin.com/national/2025/04/15/34655> accessed 26 April 2025.

A.B.M. Altaf Hossain & Ors. vs. Bangladesh &Ors. [19 SCOB (AD) 21]

Subject Matter: Judicial Appointment and Independence
Court: Supreme Court of Bangladesh, Appellate Division
Judgment Date: June 14, 2023
Presiding Judges: Justice Md. Nuruzzaman, Justice Obaidul Hassan, Justice Borhanuddin, Justice M. Enayetur Rahim, Justice Md. Ashfaqul Islam, Justice Md. Abu Zafor Siddique and Justice Jahangir Hossain

Summary:
This case dealt with the constitutional principles surrounding judicial appointments in Bangladesh. The appellants, two Additional Judges of the High Court Division, challenged the executive's decision to exclude their names from permanent appointment despite positive recommendations from the Chief Justice of Bangladesh. The appellants argued that this decision violated the constitutional mandate of judicial independence and the principles of natural justice. The Appellate Division issued a split judgment. A majority opinion emphasized the primacy of the Chief Justice's recommendation in judicial appointments, while recognizing the executive's authority to scrutinize candidates' antecedents. The judgment underscored that judicial independence is a basic structure of the Constitution, integral to ensuring the rule of law.

The Fact of the Case:
The appellants, A.B.M. Altaf Hossain and Md. Farid Ahmed Shibli was appointed as an Additional Judge of the High Court Division for a term of two years under Article 98 of the Constitution. Upon completing their tenure, the Chief Justice of Bangladesh recommended their names, along with others, for permanent appointment under Article 95. However, the executive omitted their names from the list of appointees without providing any explanation.
The appellants argued that the exclusion was arbitrary and stigmatized their professional reputations. They also contended that the executive's decision undermined judicial independence and violated their right to natural justice by failing to provide reasons or an opportunity to address any allegations. The Chief Justice's recommendation was based on the appellants' professional competence, integrity, and judicial performance during their tenure. Despite this, the executive claimed the authority to assess the antecedents of candidates and declined the appointments.

Issues:
1. Whether the case is maintainable.
2. Whether 10 years of legal practice in the Supreme Court is a mandatory requirement to be appointed as a judge under Article 95 of the Constitution.
3. Whether the Chief Justice's recommendation is binding on the President.
4. Whether the President violated the law by not appointing the petitioner.

Relevant Provisions:
1. Article 95, Constitution of Bangladesh: Provides for the appointment of permanent judges to the Supreme Court.
2. Article 98, Constitution of Bangladesh: Governs the appointment of Additional Judges to the Supreme Court.
3. Article 7A, Constitution of Bangladesh: Establishes the basic structure doctrine, protecting judicial independence.
4. Article 111, Constitution of Bangladesh: Declares that decisions of the Supreme Court are binding on all subordinate courts.

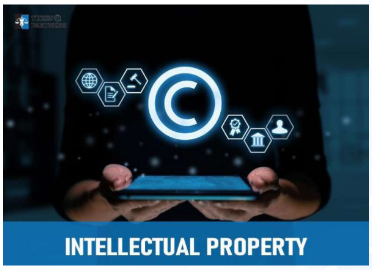
Judgment:
The Appellate Division issued a detailed judgment that addressed the interplay between the judiciary and the executive in judicial appointments. The court reaffirmed that judicial independence is a basic structure of the Constitution, which cannot be compromised. It held that the Chief Justice's recommendation must carry significant weight, as the judiciary is best equipped to assess candidates'professional competence and integrity.

The court also recognized the executive's role in scrutinizing candidates' antecedents. However, it emphasized that such scrutiny must be transparent, and any adverse findings must be communicated to the Chief Justice for reconsideration. The lack of transparency and failure to provide reasons for the appellants' exclusion were deemed inconsistent with the principles of natural justice.
To resolve conflicts between the judiciary and executive in judicial appointments, the court proposed a structured mechanism similar to India's collegium system. This mechanism would ensure effective consultation, allowing both the judiciary and executive to have their views considered. Ultimately, the court directed the executive to reconsider the appellants' cases in light of its observations, emphasizing the need for fairness, transparency, and respect for judicial independence.

Significance of the Judgment
1. Judicial Independence: The ruling reinforced the judiciary's autonomy as a fundamental pillar of democracy.
2. Transparency in Appointments: The judgment advocated for clear and reasoned decisions in judicial appointments, promoting accountability.
3. Conflict Resolution Mechanism: By proposing a structured mechanism, the court sought to prevent future conflicts between the judiciary and the executive.
4. Natural Justice: The decision highlighted the importance of fairness and transparency in administrative decisions affecting judicial officers.

Concluding Remarks:
The judgment in A.B.M. Altaf Hossain &Ors. vs. Bangladesh &Ors. Serves as a landmark ruling in protecting judicial independence and ensuring transparency in judicial appointments. By reaffirming the primacy of the Chief Justice's recommendation and criticizing the lack of accountability in the executive's actions, the court has strengthened the rule of law in Bangladesh. This case will serve as a guiding precedent for future debates on judicial appointments, emphasizing the balance of power between the judiciary and the executive while promoting fairness and transparency.

Our Services



TUHIN & PARTNERS

Nexus of Law & Business

Corporate Office

Flat G2 (6th Floor), House # 94, Road # 10,

Block # D, Niketan, Gulshan-1, Dhaka-1212

Registered Office

Office No. 305 (2nd floor),

3/B, Purana Paltan, Dhaka-1000

Email address:

tuhin@tnp.legal

Website:

www.tnp.legal

To read our e-newsletter please visit https://tnp.legal/news-letter/ or Scan