

In the News:

**Bangladesh Lucrative for
Foreign Investments**

– *US Department of State*

Case Law:

**Ataur Mridha alias Ataur
Vs The State**

[Criminal Review Petition 82/2017]

Legislative Update:

Digital Commerce

Management Guidelines, 2021

(Unofficial English Translation)

Article On:

IT Business and Income Tax

**July 2021
Edition**

Bangladesh Lucrative for Foreign Investments

- US Department of State



Bangladesh will continue to be resilient and attract foreign direct investments (FDI) to live up to its image as a favorite destination for global investors, despite the Covid-induced economic downturn, according to a new report released by the US Department of State.

The report, titled “2021 Investment Climate Statements”, talked about Bangladesh's sustained economic growth over the past decade; a large, young and hard-working workforce; strategic location between the large South and Southeast Asian markets; and the presence of a vibrant private sector. The report also mentions about the Government's promising efforts to improve the business environment in recent years, and made gradual progress in reducing some constraints on investments, including taking steps to better ensure reliable electricity.

Buoyed by a young workforce and a growing consumer base, Bangladesh has enjoyed consistent annual GDP growth of more than 6% over the past decade, with the exception of the Covid-induced economic slowdown in 2020. Much of this growth continues to be driven by the ready-made garment (RMG) industry, which exported \$28 billion of apparel products in FY20, and continued remittance inflows, reaching a record \$18.2 billion in FY20.

As per the report, Bangladesh offers a range of investment incentives under its industrial policy and export-oriented growth strategy with few formal distinctions between foreign and domestic private investors. Government actively seeks foreign investment in sectors like agri-business, textile, leather goods, light manufacturing, power and energy, electronics, light engineering, information and communications technology (ICT), plastic, healthcare, medical equipment, pharmaceutical, shipbuilding, and infrastructure.

Bangladesh's Foreign Direct Investment (FDI) stock was \$16.9 billion in 2019, with the United States being the top investing country with \$3.5 billion in accumulated investments.

Ataur Mridha alias Ataur -Vs- The State

[Criminal Review Petition 82/2017

(Date of hearing: 20.06.2019, 11.07.2019, 24.11.2020.)]

CASE LAW UPDATE

Background Facts:

The facts of the case in brief are that Druto Bichar Tribunal, Dhaka vide its judgement and Petition order dated 15.10.2003 convicted the petitioner, Ataur Mridha @ Ataur and two others under sections 302/34 of the Penal Code and sentenced them to death. Reference was made to the High Court Division for confirmation of the sentence of death. The petitioner filed Criminal Appeal and Jail Appeal before the High Court Division against the said judgment and order of the Druto Bichar Tribunal.

After hearing the death reference and the criminal appeal along with the jail appeal, the High Court Division by judgment and order dated 30.10.2007 accepted the reference, dismissed the appeal. The petitioner filed Criminal Petition for Leave to Appeal, which upon hearing leave was granted. By the judgment and order dated 14.02.2017 this Division dismissed both the appeals and maintained the conviction but commuted the sentence of death of the appellants to "imprisonment for rest of the life".

Issues before the Court:

The core question in this criminal review petition is what is meant by life imprisonment in the context of the provisions of the Penal Code, the Criminal Procedure Code, the Prisons Act and the Jail Code.

Decision of the court:

The review petition is disposed of with the following observations and directions by majority decision:

1. Imprisonment for life prima-facie means imprisonment for the whole of the remaining period of convicts natural life.

2. Imprisonment for life be deemed equivalent to imprisonment for 30 years if sections 45 and 53 are read along with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure.

3. If the Court, considering the facts and circumstances of the case and gravity of the offence, seriousness of the crime and general effect upon public and tranquillity, is of the view that the convict should suffer imprisonment for life till his natural death, the convict shall not be entitled to get the benefit of section 35A of the Code of Criminal Procedure. In the most serious cases, a whole life order can be imposed, meaning life does mean life in those cases. In those cases leniency to the offenders would amount to injustice to the society. In those cases, the prisoner will not be eligible for release at any time. The circumstances which are required to be considered for taking such decision are: (1) surroundings of the crimes itself; (2) background of the accused; (3) conduct of the accused; (4) his future dangerousness; (5) motive; (6) manner and (7) magnitude of crime. This seems to be a common penal strategy to cope with dangerous offenders in criminal justice system.



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Chapter 1

Name, Scope and Definition of guidelines

1.1. Short Title, Application and Introduction:

"According to Article 3.3.6 of the National Digital Commerce (Amended) Policy 2020" this "Digital Commerce Management Guidelines 2021" has been formulated.

1.1.1. Short Title: This guideline will be called "Digital Commerce Management Guidelines 2021".

1.1.2. Application: It will be applied all over Bangladesh.

1.1.3. Introduction: It will be effective immediately.

1.2. Definition:

If there is no context or context specified otherwise, this guideline shall mean the following-

1.2.1. Marketplace – Marketplace means a type of digital commerce site or portal on the internet where information is inserted regarding goods or services by one or more third parties and where the transaction process is completed.

1.2.2. Goods - Goods means raw materials, products and machinery and solid, liquid or aerial goods that can be handed over and met the needs of the people.

1.2.3. Service - Service means or refers to the relevant services, physical services or intellectual and professional services which have usefulness.

1.2.4. Warranty - Warranty is a type of agreement between seller or producer and buyer or consumer which guarantees specific qualities or sustainability of goods or services. If the qualities, utility or stability as laid down in the agreement are not found, then the seller pledges to refund or repair or subsidize the consumer or buyer.

1.2.5. Guarantee - Guarantee is a commitment by the seller or producer, to the consumer or buyer about the quality, effectiveness or utility of the product or service.

1.2.6. Adulterated Products - The Food Safety Act 2013 or BSTI Act or Special Powers Act 1974 will refer to adulterated goods or services defined.

1.2.7. Counterfeit products - a product registered with trademark law. Any product or service that is produced and marketed other than the trademark manufacturer or any of its appointed or approved entities will be treated as fake goods or services.

1.2.8. Digital Wallet - Digital Wallet means an online based or virtual service which is a system approved by Bangladesh Bank as useful for performing financial transactions in electronic processes in specific fields.



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1.2.9. Lottery - Lottery is the process of economically benefiting one or more people from many by selecting one or more winners in the divine selection system based on a ticket or number.

1.2.10. Authority - Authority shall mean the government in this guideline.

1.2.11. Multi-level marketing activities - Multi-level marketing programs mean marketing activities operated under the plan and commitment to provide specific commissions or dividends or any other benefits by creating a network with two or more levels of goods or services.

1.2.12. Personal Retail Account(PRA) Number - Personal Retail Account(PRA) Number is the retailer registration number provided by Bangladesh Bank.

1.2.13. Unique Business Identification Number (UBID) - Unique Business Accreditation Number (UBID) is the registration number of Central Digital Commerce Cell under the Digital Commerce Institutions of the Ministry of Commerce.

Chapter 2 Goals and Objectives

2.1. Goal:

The goal is to create a conducive environment for successful implementation of the National Commerce Policy (Amended) 2020 by preserving the interests of buyers and sellers in digital buying and selling platforms.

2.2. Objective:

2.2.1. Ensuring transparency, accountability and accountability in the management of digital commerce.

2.2.2. Creating jobs by expanding digital business.

2.2.3. Measures to boost consumer confidence and ensure rights through bringing discipline in the digital business chain.

2.2.4. Creating new entrepreneurs by creating a competitive market system.

Chapter 3

Display and purchase and sell of saleable goods and services information in marketplaces

3.1. General Rules:

3.1.1. The relevant laws of the country shall apply to the management of the digital commerce.

3.1.2. All the terms and conditions of goods and services such as terms and conditions of return of goods and prices, changes, delivery deadlines etc. should be clearly mentioned in the presentation for purchase and sale of goods and services on websites, marketplaces or social media.

3.1.3. Multi level marketing (MLM) or network business cannot be managed through digital commerce or e-commerce.



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3.1.4. Intoxicating materials, explosives or any other prohibited goods and services cannot be purchased and sold in the Digital Commerce platform. Gambling or online betting or online gambling cannot be used or participated.

3.1.5. A license from The Directorate of Drug Administration has to be obtained for purchase and sale of medicines and medical supplies through digital means. Similarly, the license of the Department of Explosives has to be obtained for the sale of any combustible material.

3.1.6. Any special software or Cookies on the seller's website should be notified to the customer in advance.

3.1.7. In order to collect any personal information during purchase and sale, the buyer's prior approval should be obtained by informing them what information will be collected and where the information will be stored, where it will be used later and in what process it will be processed. Checkboxes (Check box) or consent can be arranged on the website to ensure that terms and conditions are seen by the buyer about personal data collection.

3.1.8. Digital commerce companies will not be able to organize any lottery or raffle draw without government approval. In this case, section 294 (B) of The Penal Code 1860 shall be applicable.

3.1.9. All types of digital wallets, gift cards, cash vouchers or any other medium that can be used as an alternative to money cannot be issued, used, or purchased etc. without the prior permission of Bangladesh Bank.

3.1.10. No business that relates money can be conducted through digital media without the permission of Bangladesh Bank.

3.1.11. The buyer cannot be forced to purchase any goods or services directly or indirectly.

3.1.12. All digital commerce operators should receive at least one of the trade licenses, VAT registrations, TIN, unique business identification numbers (UBID) or personal retail account (PRA) numbers and display them on their marketplace or social media page.

3.1.13. Unique Business Authentication Number (UBID) will be made mandatory for all digital commerce companies in a phased manner.

3.1.14. All transactions in the well-known business must be preserved for at least 6 years and provide that information to any institution or organization or agency of the government if requested.

3.1.15. The owner of the marketplace shall deduct the applicable commission and delivery charges within a maximum of 10(ten) days of understanding the price of the sale of the product sold by its listed seller and pay the full price to the listed seller concerned. However, if there is any agreement between the owner and seller or merchant of the marketplace, the dues can be paid accordingly.



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3.1.16. An agreement must be entered into between the marketplace authority and the seller or merchant before presenting the information of the sale of goods or services of a seller or merchant who does not own the marketplace. During the execution of the agreement, the marketplace authorities will take measures to store complete information including the name, photograph, national identity card, mobile number, address etc. of the seller or his eligible representative(s).

3.1.17. Purchase and sale of digital commerce marketplace or Facebook page, refund of price, return of goods or product change, delivery method, delivery time and other conditions should be recorded in Bengali and displayed clearly. Conditions can be recorded in Bengali as well as other languages, if necessary. No conditions that conflict with the prevailing laws or regulations of Bangladesh can be recorded on marketplaces or social media pages.

3.1.18. Foreign Digital Commerce Institutions must be registered in Bangladesh for doing business and obtain the authorizations from the appropriate authorities to conduct the business.

3.1.19. Sellers cannot claim extra money than the value of goods or services that are given or provided in the marketplace.

3.2. Presenting products or services for sale in marketplace:

3.2.1. The marketplace must clearly specify the appropriate details of the products or services sold, such as measurement of goods, materials, colors, shapes, quality, etc., price and delivery, among others. To identify the product or service, complete description must be spelt out that the product or service should be provided with information that is capable of identifying it.

3.2.2. For clarification, information such as pictures, videos, colors, shapes, measurements, weights, materials, etc., of goods and in case of services, service types, service methods, measurement symposia (if any) should be provided. For example, Details of the product (brand, model, delivery time, country of origin etc.) should be given to the buyer so that the buyer can purchase the goods or services knowingly.

3.2.3. In case of products, details of the quantity of ingredients and ingredients of the product, chemical composition (if possible) etc. should also be provided.

3.2.4. Usage of products should be clearly specified whether the product contain anything that affects or risks the health of humans and animals or harmful to the environment or whether there are health risks known to children.



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3.2.5. Quality Control Charter should be mentioned in the product details in cases where there is an obligation to accept a certificate of a quality controlling authority.

3.2.6. Expired goods or substances cannot be sold or supplied.

3.2.7. The rules for preservation of intellectual rights should be followed properly.

3.2.8. No fake or adulterated goods can be displayed or sold.

3.2.9. The product displayed in the sale should be under the control of the seller or the person or organization contracted with it and specify the quantity of the product in stock in the notification and update the stock of the product as soon as each sale is completed. If the product displayed for sale is not under the control of the seller or the person or organization contracted with it, then the word "no stock" or "Out of stock" must be clearly recorded next to the product and in this case no payment can be accepted except in the case as stated in Article 3.2.10 below. Instead of the amount of stock in the case of products or services that cannot be disclosed in the daily products and food items or numbers, the word "Available for delivery" should be written.

3.2.10. Products displayed in advance price collection must be at "ready to ship" level within the country (under the own control of marketplace or under the control of third party vendor registered in marketplace).

More than 10% of the product cannot be accepted in advance in case of goods that are not in a position to transfer to the delivery person or to the organization within the next 48 hours of taking the full price. However, up to 100% advance can be availed through escrow service approved by Bangladesh Bank.

3.2.11. Any kind of offer, discount, free delivery or any other facility should be clearly mentioned in the product description.

3.2.12. If a third party or merchant's product or service is sold through the website, the name of the seller organization or person must be clearly mentioned on the website. However, in the marketplace, the authorities will narrow the address, phone number, e-mail, etc. of the seller or merchant's website and provide any complaint or dispute if necessary.

3.3. Product Delivery:

3.3.1. The full price of the product displayed for sale should be handed over to the delivery company within the next 48 hours of the entire price of the product displayed and the buyer should be informed by telephone, e-mail or SMS. In this case the delivery company or marketplace can use the tracking system.

3.3.2. If the full price of the product is paid, the buyer and seller will have to deliver the product within a maximum of 05(five) days after receipt of the purchase if they are in the same city or village and within a maximum of 10(10) days if they are located in a different city or village.



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3.3.3. Delivery time will be shorter for daily essential commodities and the buyer has to be clearly informed while receiving the purchase.

3.3.4. Having multiple products in one purchase (purchase order) usually does not charge different delivery charges for different products. However, separate charges can be charged if separate delivery is made to the product in the marketplace, in which case the buyer has to be informed at the time of confirmation of the purchase or invoice in advance.

3.3.5. It is responsibility of the owner of the marketplace to ensure the displayed product quality. However, if there is a different agreement with the seller or merchant, action can be taken.

3.3.6. The vendor company will enter into a business agreement with the delivery company or delivery person for timely delivery and safety of goods. Necessary insurance measures can also be taken in this regard.

3.3.7. Printed bills should be paid at the time of delivery of goods which should mention payment or paid vat and income tax (if any).

3.3.8. Products that have warranties or guarantees must be provided with a warranty or guarantee period and service receipt location and other conditioned card or digital card product with detailed address of the payment must be provided at the time of delivery of goods.

3.3.9. Delivery of perishable goods must be made at the earliest and the marketplace authorities will take appropriate measures to ensure that there is no damage to the product during delivery.

3.4. Complaints and Remedies:

3.4.1. The marketplace authorities will take appropriate action to make complaints about goods and services. Phone numbers, emails, or means of non-mailing must be clearly mentioned on a mobile app or platform to receive the applications. Every digital commerce company has to provide a compliance officer who can spend time with various organizations including the Department of Protection of Rights.

3.4.2. Proper arrangements should be in place for the customer's application record for delivery of products or services and any application should be addressed within 72 hours of receipt of the same by phone, e-mail or SMS.

3.4.3. The buyer or someone else's rating and feedback on the product or service should be placed on the website, or platform so that in future buyers can decide to buy by looking at other buyers' opinions or reviews on the goods. No one associated with a vendor organization (marketplace or merchant) or any of its staff or seller organizations or merchants can participate in reviews or ratings. This review cannot be deleted.



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3.4.4. If it is not possible to supply goods to the customer for any reason (Force majeure) outside the control of humans after paying the full price, the buyer should be informed by phone, SMS, e-mail or etc., within 48 hours of ordering. In this case, full refund has to be made within the next 72 hours and no other product can be purchased and forced directly or indirectly.

3.4.5. If anyone fails to comply with the provisions of this guidelines, the authorities will be able to take other legal action including banning the respective marketplaces including cancellation of trade licence, company registration, VAT registration etc. of the seller or marketplace or send it for redress to the appropriate authority.

3.4.6. Failure to comply with this guidelines will allow the affected person or buyer or any public or private agency to file a complaint for legal redressal in other concerned courts including the Department of National Consumer Rights Protection.

3.4.7. E-Commerce Association of Bangladesh will cooperate with the concerned authorities on the smooth operation of digital commerce.

3.5. Advance Paid Price Adjustment:

3.5.1. If the buyer pays the advance price through (debit, credit card, bank transfer, mobile banking, others) and if the seller fails to deliver the product at the scheduled time for any reason, the seller within 10 days of receiving the payment (except the time used by the respective payment medium) must refund to the buyer through the same means

(debit card, credit card, bank transfer, mobile financial service etc.). In this case, if there is a charge, the marketplace or seller will have to bear it. The buyer should be informed about the refund by email, SMS, phone or any other methods. However, in this case, the buyer cannot be overpaid at the paid price. This period can be relaxed if the buyer fails to avail the goods or services in due course.

3.5.2. Any kind of concerned discount sale activity has to be implemented simultaneously. Cashback offer will be effective within the next 72 hours of payment of the price.

3.5.3. Cashback offer or price discount offer amount cannot be deposited in wallets of any digital commerce company after completion of the sale of the respective products or services.

3.5.4. Bangladesh Bank-approved "Escrow Service" can be availed for digital commerce transactions.

IT Business and Income Tax

“IT business in Bangladesh is tax exempted” is a common statement, and mass people believes IT company does not require to pay tax. To what extent it is correct requires legal analysis. It will help the promoters of IT business to take an informed decision while entering into business. The purpose of this writeup is to clarify the concept of income tax relating to IT business in Bangladesh.



Information Technology (IT) is a general term applied to all computer-based technologies of human communication. It is very wide concept relating to computer-based technologies, and include different idea and activities. As per prevailing laws of Bangladesh, income generated from all type of computer-based technologies are not exempted from tax.

As per Section 44(1) read with Clause 33 of Part A of Sixth Schedule of the Income Tax Ordinance 1984, income generated from any of the following businesses are exempted from income tax.

SL	Nature of Business	SL	Nature of Business
1	Software development	15	Software or application customization
2	Nationwide Telecommunication Transmission Network (NTTN)	16	Digital content development and management
3	Digital animation development	17	Website development
4	Web site services	18	Web listing
5	IT process outsourcing	19	Website hosting
6	Digital graphics design	20	Digital data entry and processing
7	Digital data analytics	21	Geographic Information Services (GIS)
8	IT support and software maintenance service	22	Software test lab services
9	Call center service	23	Overseas medical transcription
10	Search engine optimization services	24	Document conversion, imaging and digital archiving
11	Robotics process outsourcing	25	Cyber security services
12	Cloud service	26	System Integration
13	e-learning platform	27	e-book publications
14	Mobile application development service	28	IT Freelancing

A company limited by its share, partnership firm, proprietorship concern etc. engaged with any of the aforementioned business activities will be eligible to get such benefit. As per prevailing law, no time limit for availing tax exemption benefit has been fixed by the National Board of Revenue (NBR). Therefore, unless legal rule has been changed, the organization involved with such business will be eligible to avail tax exemption benefit.

In order to prove its case before the income tax authority to avail benefit, the tax payer organization is required to obtain at least (i) trade license mentioning nature of business from any of the above, (ii) membership from Bangladesh Association of Software and Information Service (BASIS).

Also, the organization is required to file its return of income within suggested time line, commonly known as "Tax Day". If in any event, it fails to submit its return of income within suggested time line, no tax exemption benefit will be available. In furtherance of that, as per requirement of tax authority, the tax payer may require to submit contract paper, bill voucher and other supporting documents to prove the fact that it is involved with any one of the aforementioned business activities.



Now question arise as to whether other IT businesses, which do not fall within the list prescribed in Clause 33 of Part A of Sixth Schedule, will be deprived from the tax exemption benefit. In this regard, it would not be out of place to mention here that a company doing its business in a Hi-Tech Park, as declared under Section 22 of Bangladesh Hi-Tech Park Authority Act 2010, shall enjoy tax holiday benefit up to ten years in the following manner:

Period of Exemption	Rate of Exemption
First Year to Seventh Year	100%
Eighth Year to Tenth Year	70%

In order to get the tax benefit for doing business from a Hi-Tech Park, eligible company would also be required to file its return of income within Tax Day. Failure to submit its return with Tax Day will render the company disqualified from availing such benefit. Also, it is to be noted that this benefit is available for a company only.

For this purpose, company means a company defined in Companies Act 1994 and includes the followings:

- (a) a body corporate established or constituted by or under any law for the time being in force; or
- (b) any nationalized banking or other financial institution, insurance body and industrial or business enterprise; or
- (c) an association or combination of persons, called by whatever name, if any of such persons is a company as defined in the Companies Act, 1913 (VII of 1913) or Companies Act 1994; or
- (d) any association or body incorporated by or under the laws of a country outside Bangladesh; or
- (e) any foreign association or body, not incorporated by or under any law, which the Board may, by general or special order, declare to be a company for the purposes of Income Tax Ordinance 1984;

Therefore, if any partnership firm or proprietorship concern is engaged in IT business activities, and such activities are not listed in Clause 33 of Part A of Sixth Schedule, shall be liable to pay tax at regular rate.

If the organization involved with any of the abovementioned listed activities or carry on its business from a Hi-Tech Park, it will be exempted from income tax to the extent its income relates to such business. If the organization generates revenue from other sources, which do not fall within aforementioned listed category, will be liable to pay tax at prevailing rate. Generally, these types of companies pay income tax for the income generated from house property income, capital gain, FDR interest income etc.



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