Political Economy of Investment Climate in Bangladesh: When Structure Impedes Progress

Abul Barkat*

Investment Climate within Overall Political Economy of Bangladesh

Development without investment is improbable. And in Bangladesh, accelerating the process of development without sustained large scale investment in both productive and human development fronts is more so true. For getting the desired investment, however, an investment finendly climate has to be ensured.

The investment related development in the broader sphere of the economy indicates a mix of encouraging and discouraging trends. The **good news** in the economic development associated with investment includes the following:

1. An increasing integration with the global economy: in 1990's trade has been doubled and reached 31% of the GDP by 2001.
2. Deregulation of foreign investment, to a large extent (this blanket liberalization issue is debatable).
3. Boost in the accelerated repatriation of profit and income.
4. Formulation of conducive-to-development industrial policy reforms (1982, 1986), which has lifted import controls, encouraged export, rationalized tariff.
5. Shifting from fixed to floating exchange rate (limited to current account transactions and not to capital accounts).

---

* Professor, Economics Department, University of Dhaka, Dhaka, Bangladesh (email: hdrc@bangla.net; info@hdrc-bd.com)

* For details see Abul Barkat (2004). "Youth Poverty in Bangladesh: Present and Future", keynote paper presented at the National Seminar titled " *Youth Poverty in Bangladesh: Present and Future Perspectives", organized by ALRD, BELA, Nijera Kori, and SAMATA, Dhaka: 12 August 2004.*

All these gains could not be realized to the desired level due to the prevalence of the **discouraging** factors which include, among others, the following:

1. Deteriorating law and order situation.
2. Weak state capacity to govern and deliver services primarily attributed to the lack of transparency and accountability of public institutions.
3. Growing mistrust on the judiciary.
4. Slow growth of domestic investment in productive sectors.
5. Lack of interest of the investors (many foreign investors have already withdrawn).
6. Slow pace of reforms in the institutional and regulatory framework.
7. Lost momentum of liberalization, especially in infrastructure (An example: The cost of shipping a container of garments from Chittagong to US markets is about twice as high as shipping from Bombay or Shaghai – and this is due to inefficiency and corruption in the port).
8. Less emphasis on prioritization and sequencing of liberalization
9. High share of non-performing loans (out of total US$ 47 billion loans disbursed during the last 20 years 73.2% are 'bad debt': *Bank Reform Committee Report, 10 July 2003).*
10. Meagre foreign direct investment: about $620 million annually during 1992-2000, which is one of the lowest in emerging Asia (3-7 times less than in Cambodia and Vietnam).

Structural weakness deters investment-mediated development process in Bangladesh. A governance structure conducive-to-development acts as a powerful catalyst in promoting investment. The present day investment situation is a matter of structure, which was formed in a historical process, and an understanding of the content of that process is important to set the stage for a better future within globalized politico-economic system. From this standpoint, the following dimensions are in order:

- The initial 15 years (1975-1990) of development and investment in Bangladesh can be denoted as development within mis-governance by authoritarian regimes including pure military rule and legitimised civil system of military rule. The outcomes of which were at least two-fold.

1. Increased vulnerability to attract both the domestic and foreign private capital inflows in the form of foreign direct investment (FDI), portfolio investment, foreign currency loans, and suppliers credit and loans.

2. Slowing down the process of democratic transition, a *sine qua non* to pave the way for investment-friendly environment.

- After twenty years of independence, in 1990, the development journey started with a deep-rooted corrupt system. The last 14 years (1990-2004) can be denoted as the time of "Parliamentary democracy" operating within an inherited corrupt system. The unfortunate indications, include among others, the following:

1. Narrow party-based politicization which acts as both cause and effect of bad investment climate.

2. Expanded clientism indicated through lack of cohesion, mistrust, partisan bureaucracy, escalation of inefficiency, misuse of public office etc. Bureaucracy, in today's Bangladesh, can best be portrayed as conglomerate of persons driven solely by personal interests.

The structure and extent of inefficiency in human resource management in the government has reached a level to act as a breeding ground for further inefficiency and wastage in the system. This could be seen as a factor retarding the process of *engaged governance*, which is absolutely necessary to ensure smooth flow of investment and job creation. The status of the relevant human resource management issues can best be termed as follows:

1. The whole process of recruitment, training and placement (transfer, posting) is politicised, i.e. merit is subordinated to political considerations.

2. There is no compatibility between the training and posting of investment personnel, i.e. wastage of trained human power.

3. The relevant officials responsible for managing investment opportunities can be characterized by people having inadequate policy and negotiation skill to efficiently participate in the multilateral and bilateral agreements, regional treaties etc.

In addition to the above, in terms of sustained human development, many daunting challenges remain. First, despite some gains, massive poverty persists, particularly in the rural areas and urban slums; and the basis for dis-empowerment and inequality has broadened and increased. Second, confrontational politics weakens the political will and social stamina needed to challenge the self-serving elite, bureaucracy, military, labor unions and corrupt business forces that block the potentials of progress critical for accelerating and broadening development. Third, poor governance, weak institutions and public resources, and weak sector performance inhibit development and reduce the access of the excluded to public services and benefits. Fourth, foreign aid has been less effective than it could be, reducing its impact on growth and poverty reduction[*].

Finally, on balance, in terms of both economic and human development perspectives, the following conclusions can be drawn to set the stage for an in-depth understanding about the political economy of investment climate in Bangladesh:

1. In 1990's the real GDP growth averaged 4.8% (with declined volatility) credited to increased private investment and further integration with global economy reflected in the increased export, especially in the RMG sector.
2. The GDP growth has fallen short of growth potential. Started with similar incomes (in per capita PPP$), two decades ago, compared to a Bangladeshi citizen a typical Indian citizen receives 50% more incomes and a Chinese 3 times more. And, projections show that reaching MDG goals in Bangladesh will require at least a 7% GDP growth with *distributive justice.*

And ensuring this *distributive justice* has become a nightmare because of the overall economic criminalization of the Bangladesh society, which has boosted the effective demand for criminalization of politics[*]. This politico-economic criminalization acts as a major "blockade factor" constraining all necessary investments and endeavors to facilitate human development. The last 33 years developmental balance sheet (presented below in Table 1) shows vividly that we

---

* For details see Abul Barkat (2001). "How Much Foreign Aid Does Bangladesh Really Need: Political Economy of Last Three Decades", Keynote paper presented at the National Seminar titled *"How Much Foreign Aid Does Bangladesh Really Need?"* organized by Bangladesh Economic Association, Dhaka, February 10, 2001. This article argued that 75% of all foreign aid (loans and grants officially channelled to the government) amounting a total of about US $ 37 billion has been misappropriated through corrupt practices and/or simply pocketed.

* For details see Abul Barkat (2003a). "Politico-economic scenario of Bangladesh: Where to go, where are we going"? Keynote paper at a National Seminar "Economic, Social and Political Situation of Bangladesh", jointly organized by Bangladesh Economic Association and the Federation of Bangladesh Chambers of Commerce and Industries, Dhaka: 3 January 2003.

are now caught into a culture (trap) of plundering wherein the overall environment favors everything which is against human development, which is fully in congruence with the interest of criminalization. The status of all indicators conducive to economic and human development is getting worse, and indicators associated with criminalization trap are getting stronger, and thereby, limiting the scope for broadening human choices to exercise their own free will.

Based on the above analysis, it would be appropriate to conclude that the obvious way out shall include, among others, the improvements in investment climate accompanying with mitigation of the structural weaknesses through various political, economic, social, administrative, and legal reforms. All these reforms, in order to be true investment-friendly, shall be strong enough to address the complex trends in the economic and political criminalization indicated in Table 1.

Is Overall Investment Climate Bleak?

Under the overall economic and political criminalized structure, the overall investment climate is bleak. The domestic capital – due to the very nature of the capital (highly interested in being part of the trading and commission agency) – is reluctant to transform into productive capital. Investment usually flows if investment-friendly environment exists. Such investment-friendly environment presupposes sustained availability of the following: cheap labour; raw materials; infrastructural facilities (electricity, gas, transport, communication, IT); free from labour unrest and 'trade unionism'; speedy movement of papers; speedy resolution of disputes (if any); developed banking; tax, excise, VAT incentives; corruption-free environment (or low extent of corruption or dynamic corruption[*]); congenial law and order situation; good governance and transparency; political stability; guarantee to secure uninterrupted and adequate profit; scopes for repatriation of profit. Viewing from these investment-facilitating factors, it would not be an exaggeration to conclude that the overall investment climate in Bangladesh is non-conducive to the potential investors and entrepreneurs. It is non-conducive due to many factors. The most critical ones include the lack of rule of law (crime, corruption, law enforcement); bureaucratic harassment (tax administration and other regulations); macro-economic instability; political

* The corruption in Bangladesh can be termed as non-dynamic, meaning the type of corruption in which the speed money or the grease payment is not enough to get things done. In dynamic corruption, once grease is paid the work will surely be accomplished quickly without further hassle. Transforming non-dynamic into dynamic corruption, according to some, can be a possible way out to attract investment.

Table 1: Balance-sheet of politico-economic development of Bangladesh: 33 years (1971-2004) TREND

Indicators showing upward trend	**Indicators showing downward trend**
1. Black economy/black money and associated plundering, crime, terrorism, illegal arms, muscle power, corruption, bribe, money laundering, bad governance, repression, oppression, torture, persecution, killing, physical assault	Strengthening economic foundation; development of national capital; industrialization; economic capability to run normal family economy; employment generation; efficacy of institutions dealing with black economy
2. Billionnaire and beggars/paupers; forcibly grabbing of land and waterbodies; new cars and flats, and new techniques of begging; number of people die to collect *Zakat* clothes (during Eid); number of people sick and death due to cold and heat waves	Economic opportunities; employment generation; poor peoples' ownership and access to resources
3. Multistoried buildings; brick fields; child and women laborers for brick chipping	Housing facilities for the poor; environmental balance — natural environment
4. Super market; car sale centres; garments industries, women laborers; alienation/isolation from families	Industries, workshops, production equipment and machinaries, value addition in industries
5. Rural-to-urban forced migration; number of people living in slum; informal sector; nuclear families; distress and deprivation of children-women-older people	Poor and marginal farmers control over land; rural employment; real income/wage; extended families
6. Legal and illegal import and export; unearned income; imbalanced economic growth and development	Efficient use of human potentials and resources; use of capital for industrialization; development of small and cottage industries and entrepreneurship.
7. Foreign grant-loan projects; NGO activities	Local initiatives; incentives to promote best use of local resources; peoples' participation in social and economic development
8. Use of organic fertilizer, insecticide, pesticide and HYV seeds and associated business; hoarding and black marketing of agricultural inputs	Natural fertility of land; age-old traditional seed varieties; timber; fish; environmental balance; price of agricultural commodities
9. Communication; information technology; number of students in computer and business education	General science education; technological basis; students in science and philosophy; intellectual pursuits
10. Women's employment and mobility; violence against women and children; women and child trafficking; acid throwing	Real wage/income of female workers; protective security of women and child; efficacy of institutions responsible to ensure protective securities for women and children

11. Private sector commercial universities, colleges, coaching centres, english medium schools, kinder garden, madrasha (including English medium); rich-poor disparity in education	Public/private schools, colleges and universities for common people; quality of education in public schools and low-cost private sector; efficacy of education system; public sector real allocation for basic education
12. Use of religion with business motive; religious institutions; number of pir-fakirs; religion-based political parties; violence by the name of religion; expressed uneasiness to people belonging to other religion; fatalism; number of palmists	Equal respect to people of other religion; science institutions; scientific mind-set; enlightened worldview; discussion meetings about science and knowledge; healthy life style; secular feelings-behavior-mind-set
13. Expensive private clinics, diagnostic centres; anxiety and poverty-related diseases; health expenditure; pauperization due to health expenditure	Primary health care; quality of public health service; actual per capita public health expenditure; efficacy of public health system
14. Real expenditure on unproductive sectors: military (defense), administration, protective security related areas; distance between public and public servants; influencing the court	Good governance; justice; feeling of individual security; real public sector expenditure for human welfare and in productive sectors
15. Investment in election; competition of black money holders in elections; distance between people and elected representative/institutions	Efficacy/utility of elected persons and institutions; people's trust on the elected person and institution; enlightened politics
16. Exogenous decadent culture; wastage of time in viewing and listening to decadent culture; mutual mistrust	Practice of national culture; feelings of solidarity; mutual trust and respect; human(e) values - moral, ethical and aesthetic
17. Erosion of political values; criminalization of politics; psychophanism; politics as business investment; autocracy, (latent) demand for welfarist politics.	Politicians love for people; politicians patriotism knowledge-based and humanitarian ideology-based politics, democratic values.

Source: Abul Barkat, 2003b.

instability; lack of strong financial institutions; low quality infrastructure (power, gas, transport, communications). Unless domestic productive investment is attracted, the likelihood that foreign investment will come forward is minimal.

The cost of doing business, due to the factors stated above, is excessively high. This is evident from a recent study in which firms have reported constraints to operation as major or very severe. As depicted in Figure 1, these include all the factors stated above.

What is Deterring FDI in Bangladesh?

It is noteworthy that Bangladesh offers better facilities and incentives for FDI than many South Asian countries. But the reality is that despite all this, its neighbours continue to be the major recipients—China tops the list, followed by India and Pakistan.

What is deterring FDI in Bangladesh? Lack of political stability, frequent shift of policy, high cost of doing business, corruption and lack of good governance, poor

Figure 1: Firms reported constraints to operation as major or very severe (%)

Source: Prepared by author based on information in "Improving the Investment Climate in Bangladesh", World Bank and Bangladesh Enterprise Institute, 2003: 63

infrastructure, narrow market size—all these give wrong signals to prospective investors.

Bangladesh is a signatory to various international treaties relating to investment. But the picture ends there. The people involved in channelising FDI more often are not aware of the issues, covered by these treaties, and as such the risks of investment remain. For example, Bangladesh is a signatory to Multilateral Insurance Guarantee Agency (MIGA), an of-shoot of the World Bank, which seeks to promote investment in developing countries by covering country investment risks. But unless the coverage of MIGA operations in Bangladesh is advertised to the prospective investors, rapid flow of foreign investment will not be ensured.

The institutions responsible for attracting FDI is also at fault. For instance, the "one-stop service" of the Board of Investment (BOI), where a prospective investor is supposed to get all facilities provided by the BOI—land purchase/rent, registration, electricity and gas connection from one desk at the BOI office, fizzled out. The representatives of the line Ministries are not given authority to grant facilities such as electricity connection, etc. The procedural delay in getting the above-mentioned facilities to the investor naturally discourages him, and in most cases, drives him away.

The Board of Investment brings out a comprehensive investment guide named "Bangladesh Investment Handbook". It provides a variety of useful information for would-be investors such as investment climate and incentives, a proposed list of sectors for investment, business set-up roadmap—the steps and procedures involved from 'intention to invest' to 'commercial operation'— and what assistance the BOI can give in this regard; costs of doing business in Bangladesh; comparison of costs between Dhaka and neighbouring foreign cities like Bangkok, Hanoi, Jakarta and Karachi in respect of sub-heads like worker, industrial land purchase/rent, electricity rate for business use; etc.

Although the BOI handbook is quite exhaustive and full of propaganda about the investment climate in Bangladesh, it fails to attract FDI to desirable levels due to certain vital shortcomings.

Firstly, it does not contain sufficient sub-sector-specific or product-specific information such as size of the product market; what extent of the market Bangladeshi exports constitute; who are the competitors; what is the minimum outlay; what are the sources of raw materials; etc., information which is of prime importance to any would-be investor in a product.

Secondly, although the Handbook gives an indication of the likely costs of doing business in Bangladesh as compared to neighbouring or competing countries, it does not address the situation squarely. Investors explore opportunities in a country from the viewpoint of where they can get the most competitive edge. Things such as the difference in time-lags across countries between registering with the investment authorities and going into commercial operation, and the snags in between, are important factors for their consideration. There is no necessity of expressing that Bangladesh is quite lagging behind others in this respect. This is an offsetting factor for many prospective investors.

Another important reason for poor FDI is lack of 'the view from the other side'. From the investors' perspective, despite all the incentives and allurements laid out, a multinational enterprise before investing in a country, will always try to get first hand information from his country mate who have already invested in that country, just like before tasting something new, a person will ask others who have tasted it, how it tastes. The signals a prospective investor gets from existing investors about their business experience in Bangladesh more often than not discourages prospective investors from investing here. This image and reputation problem retards the positive decision making of investors.

Rigid bureaucracy and official hierarchy prevent decision-making at lower levels, and is a significant factor in adding to the costs of doing business here. Thus the representatives of the concerned Ministries and organizations involved in FDI in the one-stop service could not give on-the spot decisions to a would-be investors' roadmap, such as sanctioning of land, electric connection, equity, etc. Such issues had to be relayed back to their respective Head Offices and decisions came there. The undue delay caused by this process is a significant deterrent to FDI.

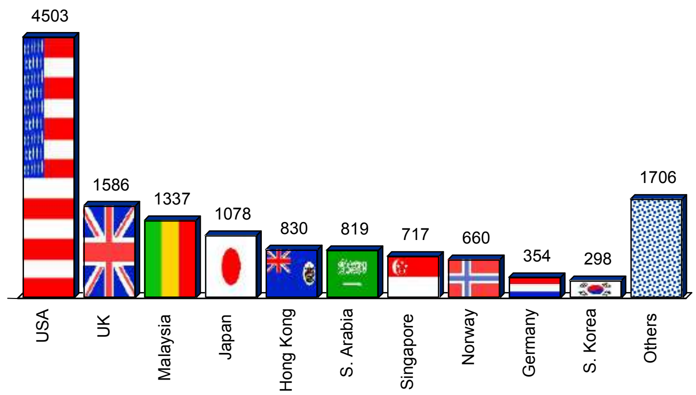
The FDI situation has been erratic and not grown enough. One of the major weaknesses in the management of investments – foreign or local – in Bangladesh has been dominated by love for approval of investment units owned or patronised by vested political quarters. The result of this lopsided favour to politically influential investors has been reflected in the minimal change of country-wise investment portfolio in Bangladesh even over a relatively long timeframe during 1991-2001. This fact is substantiated by the following graph, which clearly shows that the largest country-wise participation in investments in Bangladesh has been made by USA followed by UK, Malaysia and other countries.

However, though the above data have been disseminated by BOI on various occasions, information related to how many of these registered investment units have come into operation and how many have been continuing their operations are not readily available with BOI. Knowledgeable quarters maintain that a very negligible portion of such registered investment units are in operations at any given point of time. Directives and initiatives for promotion of foreign investment have usually taken the shape of sales-oriented as a result of lack of tendency to look critically on the ramifications of the reasons for failures at the end of the overall domestic policy and practice scenario.

Deep-rooted Corruption System Acts against Productive Investment

Poor performance in the economy of Bangladesh is almost certainly related to the problem of deep-rooted and all encompassing rampant corruption. Bureaucracy's infestation with corruption backed by criminalized politics is all-pervasive. This point is one of the most serious concerns made by the prospective foreign investors in Bangladesh. According to the World Bank's estimates, corruption reduces 2-3% of annual GDP growth rate each year. Transparency International

Figure 2: FDI Inflow into Bangladesh-1991 to 2001: Distribution by Source Country (in million US$)



Source : Board of Investment

has listed Bangladesh as the nation with the highest level of corruption for several consecutive years. According to the World Business Environment Survey, Bangladesh stood out as a country in which all the firms surveyed reported that they made off-the-record payments to get things done; nearly half of the Bangladeshi firms reported that they always had to pay to get government services; by comparism, in Indonesia, India, and Thailand, fewer than 25% of firms had to pay for these services (Stern 2002: 19).

Both domestic and foreign investors frequently report their obligations to pay extra fees for obtaining such government services as allotment of post office boxes, provision of electricity and telephone lines, various licences, customs clearance etc. Examples of higher-level corruption are those that take place frequently in the awarding of public and private tenders, as in the case of insider trading in the stock market. In this regard, business people consider Bangladesh Customs to be among the worst, a thoroughly corrupt organization in which officials routinely exert their power to influence the tariff value of imports and to expedite or delay import and export processing at the ports. A mandatory pre-shipment inspection system of import valuation was introduced in 2001 to help reduce discretionary power of customs officials, and lower costs and improve efficiency at Bangladesh's trade entry points. Annoyed over the introduction of this new system, the customs officials were the first to say that the valuation system was weak.

The US Trade Centre in Dhaka, in its Country Commercial Guide 2003-2004, claimed that an American firm had tried unsuccessfully to gain from Customs

Inspector's approval for its US$ 225 million container project while the US shareholder of a private television station had to protest the Government's revoking of its licence. There is delay in payment of dues as well. As for instance, a US exporter was waiting to be paid for wheat shipment it made eight years ago and international oil companies were owed US$150 million in payment. The report also identified poor implementation of the country's liberal investment policy as the main drawback.

In Bangladesh, the *Prevention of Corruption Act 1947* is the basic law against corruption. The Criminal Law Amendment Act 1958 was enacted in the Pakistan period (on September 23 1958) with certain objectives and for more speedy trial of public servants. In fact, the *Bureau of Anti-Corruption* (BAC), recently replaced by *Anti-Corruption Commission* (ACC) cannot start a corruption case against a Cabinet Minister without prior permission of the Prime Minister. Because of rampant corruption and associated complexities, the demand for setting up of an independent and neutral Anti-Corruption Commission was always high on the agenda.

The Bangladesh Constitution provides for establishment of an *Ombudsperson* who will be an independent high level public official to receive complaints against government agencies, officials etc. and to keep watch and control over persons under his/her jurisdiction. Moreover, Ombudsman Act of 1980 had been enacted long ago, but almost every government of this country has so far avoided appointment of an Ombudsman, so that corrupt big fishes of the ruling party are not apprehended. The motive is not difficult to understand when a responsible Minister remarks "The donors wanted Ombudsman; we have passed a law in the parliament, but we do not know what that Ombudsman will do".

Politics of Petty-reasoned Strike – As Deterrent to Investment

Frequent strikes (*hartals*) have long been a deeply embedded culture as a crude instrument for negotiations in Bangladesh politics. Strikes are called frequently by various political parties as well as trade unions and the associations of workers and businesspersons in diverse sectors on petty issues, as a way to press hard their demands, impeding business operations widely. The business houses in Bangladesh have partially adjusted to the *hartal* culture, but the disruptions inflict a severe cost on the economy and on individual businesses.

Though *hartals* are quite frequent in Bangladesh, there have been no incidents of politically designed damage to foreign business or installations over the past few years. *Hartals* (strikes) or blockades called by political parties, in general, affect businesses by keeping workers away with the threat of violence and blocking transport, resulting in productivity losses. Arson to vehicles and other property from vandalism and looting of shops has occurred during such programs. Strikes, besides causing productivity losses, have significantly led to obstacles to domestic investment as well.

Low Knowledge-base and Negotiating Skills in Government: A Disadvantage*

One of the prerequisites of standing to gain from FDI or multilateral treaties for a country is having adequate skills at the negotiating table. This means having proper knowledge of beneficial areas of FDI is in terms of comparative advantage, what are the international and domestic market conditions for that product, what are the safety measures in the treaties, what is the position of competitors, etc. Unfortunately, however, in most cases lack of proper negotiating skills paves the way for the foreign investors to dictate terms according to their advantage.

The outcome of a relatively low level of knowledge-base and negotiating skills has given rise to terms of trade with participating countries or investors unfavourable for Bangladesh.

Shortage of participation of the business class in various negotiations has often weakened the negotiating personnel. There are also reports that the views and ideas of the business class expressed in a few policy formulation sessions often remain unheeded to and not reflected in various policy papers.

Long-Term Issues in Negotiation: While the negotiation skills of the government personnel are relevant factors for creation of an enabling environment for the investors to perform, there are also certain long-term factors that weaken the position of Bangladesh in negotiations on investment. A generally weakened economy, coupled with long-term issues of interest to the stronger economies, leaves little scope to utilise the personal skills of negotiating personnel from Bangladesh.

State of Regulatory Framework to Promote Investment

Governmental regulation of trade and investment since the early 1990s has been decreasing. It is mainly the donors' advice and the wave of growing global trend toward market economy which prompted Bangladesh to opt for liberalised

---

* A substantive part under this title is drawn from a recent study by Abul Barkat, M Hoque and ZH Chowdhury (2004), *State Capacity in Promoting Trade and Investment: The Case of Bangladesh,* prepared for UNDESA-UNDP, New York.

policies for promotion of trade and investment. Despite political commitment to the policy of liberalisation, various legislations failed to trigger significant investment because of non-implementation of a number of regulatory changes. The stumbling blocks toward implementation of many of the pro-investment policy changes have been the following:

1. Apparent commitment of the bureaucracy and the political parties to reforms for deregulation of businesses has been ineffective in the face of opposition from many groups in the economy, including influential members of the business community having broad access to trade and investment through ownership or otherwise. Proliferation of enterprises has thus been stifled.

2. Members of various chambers of commerce or industry are also the manufacturers in protected industries and well-connected commission agents pursuing government contracts. They, therefore, call for a greater voice for the private sector in government decisions and for privatization, but at the same time many support protectionism and subsidies for their own industries.

3. The vicious culture of un-regulated political party nominations in national elections and other elections coupled with faulty election rules and faulty application of even certain correct election rules have opened the way for the richer business class people having vested business interests to find a way to power or affiliation with the ruling party. Finally, these classes of people influence policy formulation for regulation of businesses from the viewpoint of their own interests, often hindering open competition in domestic or foreign investment.

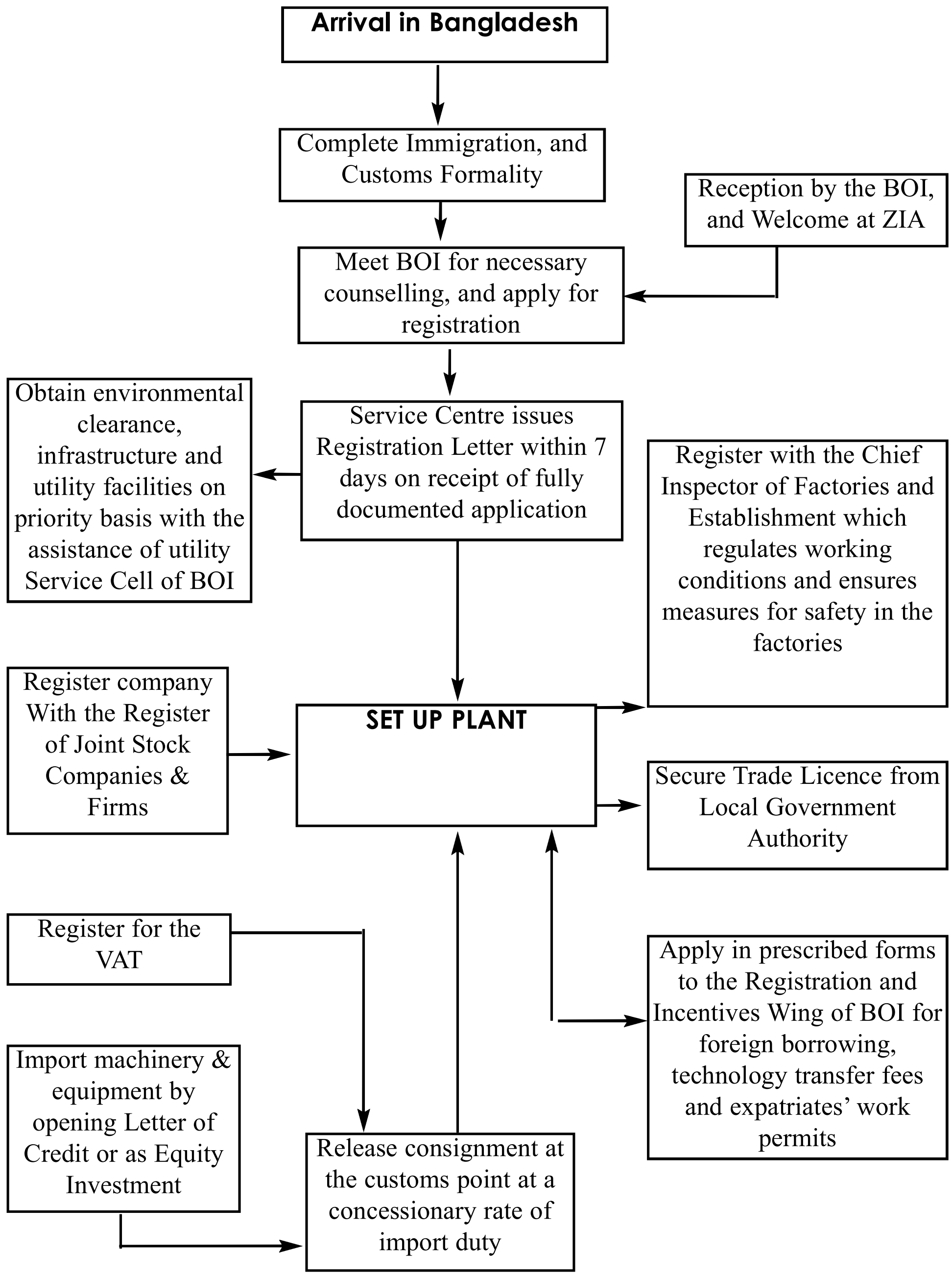
Rules pertaining to investment in Bangladesh are usually not well-publicised or transparent. This lack of transparency is practiced by bureaucrats, businesses, professionals, trade unions and political parties having vested interests in a system by way of using confidentiality as an essential norm in policy formulation. Business persons have to seek support for action from the bureaucrats, but bureaucrats' support is impossible without the recommendations or intervention of the higher political levels. The poorly paid civil servants have regarded business people as exploitative, and regard themselves as having a near monopoly on economic acumen and patriotism. Despite fear from risks to their careers from illegal activities, the incidents of solicitation of bribes from foreign investors are rampant.

Public administration reforms in Bangladesh has not yet been able to bring about minimum levels of honesty and transparency in the bureaucracy, which is central to policy formulation and practices toward improved investment climate.

Generally speaking, the country's laws and regulations and their implementation are impediments to investment. Unfriendly treatment of businesses by some of the government officials and other negative elements in the investment scenario always add to the start-up and operational costs, risks, and broadly reduces the effectiveness of government's otherwise praiseworthy investment incentives.

Various activities pertaining to investment are regulated by the Government through mainly three ministries, that is, Ministry of Industries, Ministry of Commerce, and Ministry of Finance. On another level, there are a number of departments and directorates that operate as autonomous bodies performing specialised tasks toward both promoting and regulating investment under the guidance of their respective ministries. The Parliament, with its related sub-committees and the lawmakers at large, stand out as the supreme law-making body for any legislation related to investment or any other issue. The following flow diagram shows the required process for establishment of an enterprise in Bangladesh by any expatriate and/or for establishment of a very large enterprise by any Bangladeshi national. This diagram indicates the regulatory institutions assisting the government for promotion and regulation of investment in Bangladesh.

As in the case of CBAs and Trade Unions, representations to various chambers of commerce and industry as well as product or service-specific associations of entrepreneurs are dominated by influence from the political parties (as a result of a high level political orientation of the citizens of this country). It has been observed that manipulations by the ruling political parties have often led to top level management of such institutions by members having access to or being members of these ruling parties. As a result, professional leadership in business and investment sector by these institutions have run short of optimum success. On the other hand, whatever achievements they have made in negotiations with the Government on rules and practices in business and investment, these achievements have not been poised at mass welfare, and have rather facilitated maximisation of profit of a limited few entrepreneurs.



Source: Abul Barkat, M Hoque and ZH Chowdhury (2004).

Issue of Property Right Protection: A Serious Concern to Investors

The mechanism of protection of property rights is not transparent and is a point of serious concern to the investors and prospective investors in Bangladesh. There are two particular reasons for the lack of transparency of this mechanism, such as:

1. The ingrained culture of delay in disposal of legal cases, especially the ones under the jurisdiction of CPC (Civil Procedure Code).
2. Insufficiency of enactments necessary for addressing property rights issues.

Bangladesh, being a signatory to the Uruguay Round agreements and being a member of the World Intellectual Property Organization (WIPO) in Geneva since 1995, also acceded to the Paris Convention on Intellectual Property in 1991. Following these affiliations, Bangladesh is obliged to bring its laws and enforcement efforts into TRIPS (Trade Related Intellectual Property Rights) compliance by January 1, 2006. Copyright conformity with the World Trade Organisation's TRIPS has been established by way of legislation in November, 2000. But absence of laws to enforce the new copyright legislation turned the bill to be ineffective at this moment. Land for purchase or lease has to be commonly transacted in by any investor; but the obsolete laws relating to land are complex and frequently give rise to chaos. Papers relating to land registration records are almost commonly spurious. Parties to transactions in land frequently avoid registering mortgages, liens, and encumbrances because related stamp duties and charges have been set at high levels. Instruments take effect from the date of execution, and not the date of registration. As such, a *bona fide* purchaser can never be certain of title. In brief, whatever provisions have been in writing, there is little enforcement of Intellectual Property Rights and other property rights laws in Bangladesh.

Legislation to update the Patents and Designs Act and the Trademarks Act is still pending final vetting by the Ministry of Law, Justice and Parliamentary Affairs. The Country Commercial Guide 2003-2004 published by the US Trade Centre in Dhaka indicated that Bangladesh's dispute settlement mechanism was a fundamental impediment to foreign investment. The Guide added that dispute settlement was also hampered by shortcomings in accounting principles and registration of real property.

"Special 301" Watch List of the U.S. Trade Representative, that identifies countries denying sufficient protection of intellectual property rights or fair and equitable market access for persons that rely on intellectual property protection, has never included Bangladesh. However, in 2003, a U.S. trade association proposed, though to no effect, adding Bangladesh to the Watch List. In Bangladesh, intellectual property infringement is common- especially in computer software, motion pictures, pharmaceutical products, CDs/DVDs, and audio and videocassettes. As a result of the rampant copying of CDs/DVDs audio and videocassettes, there have been two particular impacts on the local economy:

1. The violation of copyright laws, depriving the foreign producers of these audio-video materials of their entitlements in return of such copying
2. Poising of unhealthy competition to the local film and music industry when the very latest foreign films are available in the market within 24 hours of their release abroad.

Lack of Independent Judiciary: A Disincentive for Investment

The country's legal system comprises Administration of Civil Justice and Administration of Criminal Justice regulated procedurally by two distinct sets of laws, that is, Civil Procedure Code (CPC) 1908 and Criminal Procedure Code (CrPC) 1898. Beside certain special laws enacted from time to time in specific urgent situations, the Penal Code 1860 deals with the offences in terms of definitions, extent of punishment and exceptions etc.

The Supreme Court of Bangladesh comprises the High Court Division and the Appellate Division headed by the Chief Justice of Bangladesh. The High Court Division, beside its appellate and revisional jurisdiction in civil and criminal matters, has extraordinary jurisdiction known as writ jurisdiction toward enforcement of fundamental rights. The subordinate judiciary consists of the courts of District Judges, Additional Judges, Joint District Judges, Assistant Judges and the Magistrates. Although according to the constitution the judiciary is supposed to be independent, it is both highly dependent and highly politicised. And when politics is criminalized the outcome of dependent judiciary will be incongruent with such dependency.

At present, the judges of the subordinate courts are under the administrative control of the Ministry of Law, Justice and Parliamentary Affairs which exercises this control in consultation with the Supreme Court. However, the magistrates are under the administrative control of the Ministry of Establishment. The magistrates perform both executive and judicial functions. The dual administrative control over the judges and the magistrates has adverse reflection on the independence of the judiciary, affecting fair trial.

As a current practice, the judicial officers of the subordinate judiciary are appointed by the Public Service Commission, an executive unit of the state. The advice given to the Government in its conclusion of the case on *Secretary, Ministry of Finance vs. Masdar Hossain* (1999), the Government also mentioned that the Government should appoint, in its process of separation of the judiciary, judicial officers of the subordinate judiciary by a Judicial Service Commission, instead of the Public Service Commission.

The crucial element that plagues the judiciary of Bangladesh quite often are the increasing incidents of politicisation and superseding of one incumbent with another by the ruling political parties in appointments to positions of justices to the Supreme Court. One such incident in July 2003 pushed the Supreme Court Bar Association at bay with the Government; and it also resulted in boycotting of the Supreme Court by them. The similar incident happened another time when High Court judges were posted based on political considerations.

Presence of an Independent Judiciary is one of the most powerful instruments for ensuring inclusive governance and appropriate investment climate. This is important in view of the following: court's impartiality is questioned by all; the lower court is 100% controlled by ruling party—the lower court is being alleged as extension of the ruling party; the courts are now clogged with 3.2 million pending cases; resolution of each case requires 9 years time, on average (Barkat and Roy 2004); the dispute settlement mechanism is a fundamental impediment to foreign capital inflow; there exists no efficient mechanism to protect property rights; partisanship is the main criteria followed in appointing public prosecutors. The government is apparently interested in making judiciary independent, but it took 18 times time extensions during the last 3 years.

Some Suggestions to Promote Investment Climate

Throughout this article, in has been argued that investment *per se* may not be important, rather mass investment—both public and private, both domestic and foreign—can be tuned to serve the purposes of both economic growth and ensuring benefits of growth to the poor. This can be achieved through concerted efforts to improve the investment climate, which in turn can be ensured only through better governance—an inclusive governance. Before concluding with more detailed specific issues, three key points on future possibilities are in order:

1. It is possible to change investment climate by changing the *institutions and policies* in ways that will spur investment.

2. It is possible to ensure both pro-investment climate and address the issue of social inclusion through *governance reforms*. The strengthening of government institutions and rule of law will do a lot to improve the climate for productivity, jobs, economic growth and human development.
3. It is possible to make growth more inclusive by implementing a development agenda in which development will be viewed as a freedom-mediated process to ensure five substantive freedom for all: political freedom, economic opportunities, social facilities, transparency guarantee, and protective security. This is basically an issue of creating opportunities for choice towards full life.

In an era of globalization and interdependence of economies, the following specific issues need proactive thinking to promote higher investment for economic development of Bangladesh:

1. Regarding Political Will, Commitment and Stability:

   Institutionalizing democratic norms and values;

   - Ensuring Rule of Law
   - Improving law and order situation;
   - Mapping of local resources.

2. Regarding Good Governance to Minimize the Costs of Doing Business in Bangladesh:

   a. Streamlining bureaucracy (training, posting, transfer, and promotions);

   b. Curbing Corruption;

      i. Make AAC not only independent but also truly transparent and effective;

      ii. Strengthen and reform NBR and other relevant agencies for increased financial transparency;

   c. Strengthening BOI to promote sectoral priority, and areas of comparative advantage by sector including export-oriented FDIs;

   d. Promotion of economic diplomacy;

   e. Introducing e-governance for increased transparency;

   f. Engaged governance: Increased efforts to improve relationships between public officials at the grass root level and local business people.

It is repeatedly noted that it is not policy failure but **structural weaknesses** of the state and its bureaucracy that is responsible for failure to attract FDIs in Bangladesh. This structural weaknesses work as an extra tax, and thus dissuades investors from coming to Bangladesh.

3. Regarding Conducive Infrastructure:
   a. Improving service delivery of utilities, including electricity and gas;
   b. Increasing efficacy of ports;
   c. Development of information technology backbone.

Bangladesh could never attract FDIs without adequate infrastructural support. It is however important to note that although expansion of public sector amenities is vital, it is even more important to ensure quality and prompt service delivery of what we already have.

4. Regarding Development of Capital Market:
   a. Proper use of remittance (the prime source of foreign currency earning)
   b. Transparency of the stock exchange activities.
5. Regarding Image Building of Bangladesh:

   Chinese and Indian experience suggests that in general expatriate investors pioneer FDIs in a country. But Bangladesh is seriously suffering from an image crisis. Even the local investors are highly reluctant to invest in Bangladesh. Hence, the government has to take concerted efforts, along with aforementioned activities, to uplift the popular image of Bangladesh.

It is most likely that all these steps would improve Bangladesh's performance in inclusive economic development through accelerated mass investment in both the public and private sectors through both domestic and international sources.

References

Bangladesh Investment Handbook (2002). Board of Investment, Dhaka.

Bangladesh: Globalisation, the Investment Climate and Poverty Reduction (2003). Bangladesh Development Forum, Dhaka: May 16-18, 2003.

Barkat Abul (2001). "How much Foreign Aid Does Bangladesh Really Need:

Political Economy of Last Three Decades", Keynote paper presented at the National Seminar titled *"How much Foreign Aid Does Bangladesh Really Need?"* organized by Bangladesh Economic Association, Dhaka.

Barkat Abul (2003a). "Politico-economic Scenario of Bangladesh: Where to go, where are we going?" Keynote paper at a National Seminar titled *"Economic, Social, and Political Situation of Bangladesh"*, organized jointly by Bangladesh Economic Association and FBCCI, Dhaka: 3 January 2003.

Barkat Abul (2003b). "Right to Development and Human Development: Concepts and Status in Bangladesh", in Hameeda Hossain (ed), *Human Rights in Bangladesh 2002,* Ain O Salish Kendra, Dhaka.

Barkat Abul (2004). "Youth Poverty in Bangladesh: Present and Future", keynote paper presented at National Seminar titled "Youth Poverty in Bangladesh: Present and Future Perspectives", organized by ALRD, BELA, Nijera Kori and SAMATA, Dhaka: 12 August 2004.

Barkat Abul and PK Roy (2004). *Political Economy of Land Litigation in Bangladesh: A Case of Colossal National Wastage,* ALRD and Nijera Kori, Dhaka.

Barkat Abul, M Hoque and ZH Chowdhury (2004). *State Capacity in Promoting Trade and Investment,* UNDESA-UNDP.

Chowdhury AK Mahmud (2003). *Private Sector Development, Investment Climate and FDI in Bangladesh*, Bangladesh Development Forum, Dhaka.

Dymond William A (2000). *International Investment Agreements : An Overview of the Issues*; Meeting with Private Sector Representatives on WTO and Multilateral Investment Agreement, Dhaka Chambers of Commerce and Industry, Dhaka (organized by Centre for Policy Dialogue), Dhaka.

Investment Facilities in Bangladesh: as available from Bangladesh Bank's website.

Investment for Development Project (Draft Summary Report of the Proceedings): First National Reference Group (NRG) Meeting of the Bangladesh Chapter, Dhaka, April 18 2002.

Islam AI Aminul (1999). *Public Administration in Bangladesh- Role in Promoting Private Sector and Attracting Domestic and Foreign Investment,* Dhaka.

Khan M. Hafizuddin (2000). Corruption in Public Administration- Role of Watchdog Agencies, Dhaka.

Ministry of Commerce (1997). Export Policy of Bangladesh 1997-2002, Government of the People's Republic of Bangladesh, Dhaka, 1997.

Ministry of Commerce (1997). Import Policy of Bangladesh 1997-2002, Government of the People's Republic of Bangladesh, Dhaka.

Modalities for Pre-Establishment Commitments, World Trade Organisation Working Group on the Relationship between Trade and Investment; Tokyo; June 28 2002.

Rege Vinod et al (1998). *Final Act of the Uruguay Round of Multilateral Trade Negotiations- Report of the Study Team*, Ministry of Commerce, Government of the People's Republic of Bangladesh, Dhaka.

Sen Kunal: *Globalisation and Employment in Bangladesh and Kenya*- Discussion Paper 7 produced under the *Globalisation, Production and Poverty Project* of DFID; by Overseas Development Group at the University of East Anglia, and the Institute of Development Studies at the University of Sussex, UK.

Stern H. Nicholas (2002). "The Investment Climate, Governance, and Inclusion in Bangladesh", *Public Lecture* organized by Bangladesh Economic Association, Dhaka: 8 January 2002.

Stiglitz E. Joseph (2002). *Globalization and Its Discontents,* Allen Laue, NY.

World Bank (1996). Bangladesh- Government that Works: Reforming the Public Sector, University Press Limited, Dhaka.

World Bank (2002). Bangladesh-Financial Accountability for Good Governance (A World Bank Country Study), The World Bank, Washington D.C.

World Bank and Bangladesh Enterprise Institute (2003). *Improving the Investment Climate in Bangladesh: An Investment Climate Assessment,* The World Bank, Washington D.C.

World Bank (2004). Taming Leviathan: Reforming Governance in Bangladesh, The World Bank; Washington D.C., March 2002

World Bank (2004). World Development Report 2005: *A Better Investment Climate for Everyone,* The World Bank, Washington D.C.