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## **A Study on the Challenges and Legal Issues arising from Chinese investment in Bangladesh Natural Resources and Infrastructure**

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### **Abstract:**

This study focuses on the challenges and legal issues surrounding Chinese investment in Bangladesh's natural resources and infrastructure. It looks at the impact of Chinese investment on the country's resources and infrastructure, including any legal and regulatory issues that may arise. The study may examine how Bangladesh's laws and regulations protect the country's natural resources and infrastructure from foreign investment, and whether these laws are adequate to ensure that the country's resources are being used sustainably and in a manner that benefits the local communities. Additionally, the study may look at the role of international law and international organizations in mediating disputes between Bangladesh and Chinese investors. I have mentioned foreign investments in natural resources of Bangladesh e.g. natural gas, petroleum oil, coal and water resources. Until now, China only invests in a couple of sectors relating to natural resources. These investments are infrastructure projects e.g. power generation, construction, port establishment, agro-processed product, electrical and electronics, light engineering, roads, railways, power plants, and water treatment facilities, etc. This is a second generation Chinese BIT that incorporated general Characteristics of BITs of that era. Under this BIT, Regarding the dispute of expropriation, an ad hoc arbitral tribunal can be formed which would determine its own procedure, but the first negotiation shall take place between the parties to solve the dispute. Under these agreements, the disputes shall be settled by applying generally recognized principles of international law accepted by the parties.

**Keywords:** Natural resource; Infrastructure; International Investment Agreements (IIAs); Bilateral Investment Treaty (BIT)

## **1. Introduction**

We know that Bangladesh is a small and potential country; there are plenty of natural resources e.g. natural Gas, petroleum oil, marine fisheries, coal, forest, etc. Natural resources can play an important role in changing the country's social and economic condition. Bangladesh is a poor and less developed country; we do not have enough technology and other equipment to explore natural resources. BD Prime Minister Sheikh Hasina said it is a new era of intensive cooperation in trade, investment and other sectors between China and Bangladesh. Chinese president Xi said we are ready to work with Bangladesh and in future our political mutual trust and elevate our relations and practical cooperation to a rich higher level<sup>1</sup>. Currently, China and Bangladesh both countries have signed many agreements with each other. China wants to cooperate in Bangladesh and they are ready to share their expertise and investment into natural resources and infrastructure sectors. All these are for a good relationship between Bangladesh and China. These projects are done by Chinese investment that will bring a positive result to both the countries.

Now China-Bangladesh have strong relationship and they will work together and solve any global issues their common mutual interest. In recent years, Bangladesh has attracted significant investment from China, particularly in the sectors of natural resources and infrastructure. However, these investments have not been without challenges and legal issues. Some of the challenges and legal issues include:

- A. Insufficient legal framework for foreign investment
- B. Lack of transparency in investment projects
- C. Concerns over land acquisition and displacement of local communities
- D. Environmental degradation and loss of biodiversity
- E. Unequal distribution of benefits from investment
- F. Lack of effective dispute resolution mechanisms
- G. Limited protections for workers' rights and labor laws
- H. Challenges in balancing economic development and preserving cultural heritage.

It is important to address these challenges and legal issues to ensure that foreign investment in Bangladesh contributes to sustainable and equitable economic development.

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<sup>1</sup> A new beginning; Dhaka Tribune, published (October 15, 2016)

Therefore, we can hope that in future Chinese investors do not fall into the same problem when they invest into Bangladesh. I believe that this research will help both countries academician and scholar to learn deep knowledge.

## **2. Aim and Object of this Study**

The main object of this study is to know about the Challenges and legal issues arising from Chinese investment in Bangladesh. It's also discussed the feature of China-Bangladesh BIT issues and sustainable development of natural resources and infrastructure sectors in Bangladesh. After doing my study paper hopefully, Chinese investors will be benefited and Bangladesh government overcome identifies issues.

To get a clear understanding regarding this issue, I need to prepare a perfect and well-analyzed set of objectives through which the overall research program can be carried out easily. Therefore, the objectives of these studies are as follows:

- 1) To find out Challenges and Legal issues arising from China's Investment in Bangladesh
- 2) To analyze the situation when China investment in Bangladesh.
- 3) To identify the scope of Chinese general Investment natural resources & infrastructure sectors in Bangladesh.
- 4) To determine the fact and issues under applicable laws in the Chinese investment in Bangladesh
- 5) To analyze the scope of betterment in the BIT issues between China and Bangladesh in the context of the Chinese investment
- 6) To find out an overall impact on the countries, Bangladesh and China regarding the investment.

Analyze the challenges and legal issues arising from Chinese investment in Bangladesh's natural resources and infrastructure. Evaluate the current legal framework in place to regulate foreign investment. Identify the impact of Chinese investment on the environment, local communities, and cultural heritage. Propose recommendations to address the challenges and legal issues arising from Chinese investment in Bangladesh. Contribute to the development of a more sustainable and equitable approach to foreign investment in Bangladesh.

The ultimate goal of this study is to ensure that foreign investment in Bangladesh's natural resources and infrastructure benefits the country and its people, rather than causing harm or exacerbating existing inequalities.

### **3. Methodology of the Study**

The methodology of this study of the challenges and legal issues arising from Chinese investment in Bangladesh's natural resources and infrastructure may include the following steps:

**Data collection:** Collection of primary data through interviews and surveys with relevant stakeholders such as government officials, communities affected by investment, experts, and academics. Secondary data may also be collected from publicly available sources.

**Data analysis:** Analysis of the data collected to identify patterns, trends, and insights into the challenges and legal issues arising from Chinese investment in Bangladesh.

**Case studies:** In-depth examination of specific investment projects to gain a deeper understanding of the challenges and legal issues in practice.

**Recommendations:** Development of recommendations based on the findings of the study to address the challenges and legal issues arising from Chinese investment in Bangladesh.

It is important to note that this methodology may be adjusted based on the specific research questions and the availability of data and resources.

### **4. Literature Review**

Literature review on foreign investment in Bangladesh would involve analyzing the existing research and studies that have been conducted within the country on this topic. The literature review for this study on the challenges and legal issues arising from Chinese investment in Bangladesh's natural resources and infrastructure may include:

- A. Studies on foreign investment in Bangladesh and the impact on natural resources and infrastructure.
- B. Literature on the legal framework for foreign investment in Bangladesh.
- C. Research on the environmental and social impacts of foreign investment in Bangladesh and other developing countries.

- D. Studies on the role of the government and other stakeholders in regulating foreign investment.
- E. Analysis of the experiences of other countries in attracting foreign investment while addressing environmental and social concerns.
- F. Examination of best practices for sustainable and equitable foreign investment.

The literature review will provide a comprehensive understanding of the existing knowledge and understanding of the challenges and legal issues arising from Chinese investment in Bangladesh's natural resources and infrastructure. It will serve as a foundation for the analysis of the primary data collected and the development of recommendations for addressing the challenges and legal issues.

## **5. Chinese general investment in Bangladesh**

China has made significant investments in Bangladesh in recent years, particularly in the sectors of natural resources and infrastructure. Some of the major Chinese investment projects in Bangladesh include:

**Power plants:** Construction of coal-fired and hydroelectric power plants to address Bangladesh's energy deficit.

**Roads and bridges:** Development of road and bridge infrastructure to improve transportation in the country.

**Port development:** Expansion of Chittagong port and construction of a new port in Payra to enhance Bangladesh's connectivity with the rest of the world.

**Industrial parks:** Development of special economic zones and industrial parks to attract foreign investment and create employment opportunities.

**Agriculture:** Investment in the agriculture sector to increase productivity and reduce poverty.

Bangladesh is a middle-income developing country with vast quantities of natural resources that are the importance of economic development. Chinese president Xi Jinping visited Bangladesh and signed 27 projects where Bangladesh will receive \$244.45 billion<sup>2</sup>. The three gas fields are Bibiyana, Jalalabad and Moullavi bazar had a daily output of 720 million

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<sup>2</sup> Refayet ullah Mirdha (2016), Deals with China a turning point for Bangladesh; available at: <https://www.thedailystar.net/business/deals-china-turning-point-bangladesh-1299802>

cubic feet gas and 3,000 barrels of condensate. \$10 billion gas sell in the year of 2017 by Bangladesh gas field<sup>3</sup>. Moreover, Nine project of \$7,107.96 million where only involving Chinese investment these is; 1) Padma bridge rail link 2) National ICT infra-network for govt. phase 3 3) Karnaphuli River tunnel 4) Installation of single point mooring with double pipeline 5) Modernization of telecom network of digital connectivity 6) Tier IV national data center; 7) Dasherbandi sewerage treatment plant 8) Expansion and strengthening of power system network under the Dhaka power Distribution Company, 9) Power Grid Company of Bangladesh<sup>4</sup>. Currently, China initiative OBOR project that benefited international oil, gas and energy trade and connects peoples over the world. Energy is the significant for every country. It also advantage for foreign oil, regional stability, and energy security.<sup>5</sup> If Bangladesh government take the advantage of Chinese investors and properly utilize this resource then it will be big contribution of national economy in Bangladesh.

Currently, Bangladesh and China signed build up a lot of coal-based power plant. China is investing double down on their investments in coal power plants in Bangladesh. China established over 100-coal power projects within its own borders. They also produced 130 gigawatts of renewable energy by 2020. China-Bangladesh 30% partnership of the funding and secure the rest internationally. China invests coal mining which power plant from Indonesia. The power plant capacity of 1,224 megawatts, nearly as much as that of the Rampal power station.<sup>6</sup> In December 2013 signed S. Alam group of BD & Chinese power Construction Company build a 1320 MW coal plants in Chittagong.<sup>7</sup> In July 2017, Iso Tech group china and PPA & BPDB jointly invest and build 307 MW Supercritical coal power plants.<sup>8</sup> Moreover, Bangladesh govt. plan established a sustainable and long-term coal-based power plant and the government would be hopefully that China might help implement the coal project into Bangladesh. Overall, Chinese investment has played an important role in the economic development of Bangladesh. However, the challenges and legal issues arising from

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<sup>3</sup> Krishna, N. D. & Serajul, Q. (2017). Chevron to sell Bangladesh gas fields to Chinese consortium; available at;<https://www.reuters.com/article/us-china-bangladesh-chevron-idUSKBN17Q0WS>

<sup>4</sup> Jagran Chakma (2020) China-Founded projects back on track; The Daily Star [Oct 7, 2020] Available at: <https://www.thedailystar.net/business/news/china-funded-projects-back-track-1973869>

<sup>5</sup> Nazrul, I. S. Altab, H. Yinxiao, H. Kamruzzaman, S. and Nitin, K. (2018). Oil, gas and Energy Business under One Belt One Road Strategic Context; scientific Research, Vol.6, No.4, pp. 32-40

<sup>6</sup> Meet the coal power plants The Daly star(January 12, 2018)

<sup>7</sup> S Alam Group teams up with Chinese firm for coal power plant," The Daily Star, (December 20, 2013)

<sup>8</sup> Banshkhali Power Plant," Iso Tech Group, accessed Feb 2018

this investment must be addressed to ensure that it contributes to sustainable and equitable economic growth.

## **6. Chinese Investment in Infrastructure**

Chinese investment has played a significant role in the development of infrastructure in Bangladesh. Some of the major infrastructure development projects in Bangladesh that have received Chinese investment include:

**Power plants:** Construction of coal-fired and hydroelectric power plants to address Bangladesh's energy deficit.

**Roads and bridges:** Development of road and bridge infrastructure to improve transportation in the country, including the construction of the Padma Bridge, the largest infrastructure project in Bangladesh's history.

**Port development:** Expansion of Chittagong port and construction of a new port in Payra to enhance Bangladesh's connectivity with the rest of the world.

**Industrial parks:** Development of special economic zones and industrial parks to attract foreign investment and create employment opportunities.

**Telecommunications:** Expansion of telecommunications infrastructure, including the development of 4G and 5G networks.

These investments have played a crucial role in improving the country's infrastructure and boosting economic growth. However, it is important to ensure that the projects are implemented in a transparent and sustainable manner, and that the benefits are equitably shared with local communities.

China Communication Construction Co. Ltd. has been constructing the “Bangabandhu Tunnel” beneath Karnaphuli River with Chinese soft loans. The Tunnel 3.4 km-long with four-lane and it is the first kind in Bangladesh & Southeast Asia.<sup>9</sup> Bangladeshi finance minister said we forward to China 12 projects as priorities in 2018. In the project China have invest over US\$9.45 billion.<sup>10</sup> China-BD has signed 27 agreements and Chinese investors

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<sup>9</sup> Xinhua (2019). Bangladeshi PM inaugurates mining work of china-founded tunnel project.

<sup>10</sup> China-Funded Projects: Dhaka seeks to speed up deals, The Daily star (published November 15, 2017)

decide \$1.5 billion invest in deep-sea port project, besides of coal power; electricity & power sector together eighteen project \$28.7 billion.<sup>11</sup>

The single-point mining and two 220km-long pipelines connecting with Eastern Refinery Limited is scheduled to be completed by China by 2020.<sup>12</sup> Therefore, Bangladesh is in need of one or two new deep-sea ports that will be very necessary to meet the demand that will occur from the revival of the ancient maritime silk route.<sup>13</sup> China has also promised to give about \$9 billion dollars in order to enhance the capability of the Chittagong seaport.<sup>14</sup> Now BD is involved in the BRI initiative and the BIMCEC. China-BD friendship have new motive investment environment, promoting infrastructure construction and improving peoples livelihoods.<sup>15</sup> The power plant will require an estimated amount of US\$ 2 billion to materialize it. Bangladesh plant they inauguration of the first metro rail in capital city in Dhaka.<sup>16</sup> Chinese state-owned Sinohydro Corporation Limited & Italian-Thai development public company Ltd. Jointly work to implement this project and invest worth \$719 million dollars.<sup>17</sup> In order to that, China-BD has signed a memorandum of understanding worth \$2,667.94 million for the Padma Bridge Rail Link projects.<sup>18</sup>

## **7. Challenges and Legal issues faced by Chinese investment in Bangladesh**

Currently, Bangladesh has announced that a middle-income developing country but still now Chinese investors faced by lot of challenges. Those challenges are Political and Bureaucratic Red Tape, Poor condition for exploration of natural resources, ignorance of culture, and worries of civil society etc. discussed about under the below:

### **7A). Complex and bureaucratic regulations**

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<sup>11</sup> Ruma, P. (2016). China signs deals worth billions with Bangladesh as Xi visits; World News published on, (14 Oct. 2016)

<sup>12</sup> Hongmei, H. J. N. and Yao, W. (2018). China's assistance for Chittagong port development, not a military conspiracy; The Daly Star (June 26, 2018)

<sup>13</sup> Wade S. T. (2016). Bangladesh's Deep Sea Port Problem,

<sup>14</sup> China offers to develop Chittagong port; The Hindu (March 15, 2010)

<sup>15</sup> Power China to build its first power project in Bangladesh; published on (17 April, 2018)

<sup>16</sup> Metro rail progresses ahead of schedule; Dhaka Tribune (July 19th, 2018)

<sup>17</sup> Fact box: All you need to know about Bangladesh metro rail project, The Daly Star (April 30, 2018h): <https://www.thedailystar.net/country/dhaka-metro-rail-project-in-bangladesh-fact-box-all-you-need-to-know-about-this-1569868>

<sup>18</sup> Memorandum of Understand signed with China for Padma Bridge rail link; Dhaka Tribune (May 6th, 2018)



Bangladesh has a complex regulatory framework that can be difficult for foreign investors to understand and comply with. This can lead to legal challenges and delays in investment processes. Bureaucratic red tape has remained a major constraint for foreign investment in Bangladesh. The feature of Bangladesh bureaucracy codify flush link with the political process, domination of the policymaking structure.<sup>19</sup> Bangladesh's bureaucracy finds foreign as a threat to its existence mainly because foreign experts easily expose the level of inefficiency.<sup>20</sup> That is why the corrupt bureaucrats create red tape to get incentives out of it.<sup>21</sup> Bangladesh is concern for corruption it is prime issues in Bangladesh. Its bad impact of country also carry negative image outside in the world. It also play negative role of attracting foreign investors. According to the World Bank, corruption is hampering for economic and social development as it undermines development by distorting the rule of law of a country.<sup>22</sup>

#### **7B). Lengthy approval processes:**

The investment approval process in Bangladesh can be lengthy, with multiple stages and extensive documentation requirements. This can result in delays for Chinese investors looking to establish operations in the country. The government agencies in Bangladesh are often known for their lack of efficiency and slow processing times, making it difficult for Chinese investors to move forward with their projects. In order to operate in Bangladesh, Chinese investors must obtain multiple permits and licenses, which can be time-consuming and complicated. Chinese investors may face difficulties in obtaining necessary approvals from government agencies, leading to delays and setbacks in investment processes.

Land acquisition processes in Bangladesh can be complex, with multiple legal and administrative hurdles. This can result in lengthy delays for Chinese investors looking to establish operations in the country. The government of Bangladesh may change policies frequently, which can result in uncertainty for foreign investors. This can lead to lengthy legal disputes over investment contracts and business operations. Political interference in

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<sup>19</sup> Red tape poor infrastructure main bottleneck; The Independent (26 January,2016)

<sup>20</sup> The vicious impact of bureaucracy in business; The Daily Star (Feb.17, 2019)

<sup>21</sup> Anders, F. (2014). Bureaucracy intermediaries corruption and red tape; Journal of development Economics, vol.108, pp. 256-273

<sup>22</sup> Stahl, A. E. (2017). Challenges Facing Bangladesh

investment processes is a major challenge in Bangladesh, and can result in arbitrary decision-making and delays in investment processes.

In addition, foreign investors also suffer the following problems:

1. Scarcity of investment promoting agency
2. Lack of professionals and sector-specific trained workers.
3. Non-cooperation from relevant government agencies like the Board of Investment, Police, National Board of Revenue, Environment Authority, etc.
4. Political indetermination and blockades.
5. Lack of advanced technology.
6. Delay to get services from supporting organizations

Furthermore, geopolitical factors also play a great role to act as a barrier to China-Bangladesh investment. India, the neighbor of Bangladesh, is a geopolitical rival of China. It has significant influence over the Bangladesh politics, especially over the current ruling party Awami League. However, recent agreements between China and Bangladesh suggest that the government wants to maintain a balanced relationship with China and India, although India continuously advised not to join China's One Belt One Road Initiative (OBOR).

### **7C). Lack of Infrastructure facilities**

Poor infrastructure is a key challenge for a country. Currently, Bangladesh has only one port and one highway road, a limited supply of electricity and inefficient of physical infrastructure every sector e.g. insufficient road, rail service, and too much traffic in two-mega cities, etc. Another problem is not timely implementation of the ongoing infrastructure projects. Although modern communication system is necessary for a country as well as foreign investors but currently Bangladesh government is not able to fulfill infrastructure facilities. The country's real estate sector did not make much progress in the last few years. There is a lack of focus on making housing facilities affordable for all. We lack expertise in foreseeing the implementation barriers. There is lack of accountability in the implementation process.<sup>23</sup>

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<sup>23</sup> Shamim, ZB.(2019). How to overcome the infrastructure deficit in Bangladesh; the Daly Star (27 January 2019)

Bangladesh has limited transportation infrastructure, which can make it difficult for Chinese investors to transport goods and materials in and out of the country. Bangladesh has an inadequate power and energy infrastructure, which can limit the potential for industrial and economic growth in the country. This can pose challenges for Chinese investors looking to establish operations in Bangladesh. The communication infrastructure in Bangladesh is poor, with limited access to modern technologies such as high-speed internet. This can make it difficult for Chinese investors to effectively communicate with their customers and partners. The port facilities in Bangladesh are often inefficient, leading to long wait times and additional costs for foreign investors.

#### **7D). Poor condition for exploration of natural resources**

We know that Bangladesh is a poor and less developed country. We do not have enough technology and other equipment for the exploration of natural resources. Bangladesh has limited technology and expertise for the exploration of natural resources, which can make it difficult for Chinese investors to effectively explore and extract natural resources in the country. Nevertheless, the population of Bangladesh is increasing day by day they need more resources e.g. power, gas, petroleum oil, coal, food, and other necessities elements<sup>24</sup>. If Bangladesh can produce the gas, then it would be one of the top natural gas and oil producers in the South Asian countries but the main fact is that Bangladesh does not have the capability to use the gas on its own. Such mining requires a huge number of trained experts on the oceans, requires special infrastructures and investment for that Bangladesh will require other countries to help and assistance.<sup>25</sup> Bangladesh government cannot exploration natural resources because of lack of technology, lack of advanced machinery. Therefore, Bangladesh government welcome to Chinese investorsto invest and explore these resources.

#### **7E). Ignorance of culture**

Culture is one of the most important things that influence human kind's behavior directly. Culture is the fact, which is the identity of a nation or of a society. Chinese society

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<sup>24</sup> Moula, G., Parvin, F. and Ferdous, J. (2014). The Prospects and Challenges before Bangladesh in Exploring and Exploiting Marine Resources: An Economic and Legal Study. *Beijing Law Review*, 05(04), pp.249-252

<sup>25</sup> Supra note 34

emphasized literature, but not on science. Confucius and his school have huge popularity throughout China and his classics were the syllabus for civil service examination. Although Bangladeshi people's evaluation of their custom and tradition. In the Asian region, the pattern of the culture is almost the same. As we know that Bangladesh and China share a common history of friendship, which is almost thousands of year old. There are some common things in the culture and norms too, though religion and other pattern are not the same in the countries. Bangladesh is a Muslim country almost 80% of the population of the country is Muslim.<sup>26</sup> Chinese investors may be unfamiliar with the culture and customs of Bangladesh, which can result in misunderstandings and cultural faux pas. There may be language barriers for Chinese investors in Bangladesh, which can limit their ability to effectively communicate with local partners and employees. Chinese and Bangladeshi business practices may differ, which can result in misunderstandings and conflicts between Chinese investors and local partners.

Chinese investors may have different attitudes towards the risk compared to their Bangladeshi counterparts, which can result in disagreements over investment strategies. Chinese investors may be unfamiliar with the local business environment in Bangladesh, which can result in difficulties in establishing partnerships and finding reliable suppliers. Chinese and Bangladeshi cultural values may differ, which can result in misunderstandings and conflicts over business practices and ethical considerations. Chinese investors may be unfamiliar with local business etiquette in Bangladesh, which can result in misunderstandings and reduced trust between Chinese investors and local partners.

Ignorance of culture is a serious problem in eminent social, national, and international territory. Social and environment phenomenon has social psychologists reflects cultural group and residential background.<sup>27</sup>

### **7F). Worries of Civil Society**

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<sup>26</sup> Akhand, A. (2012). Islamic resurgence in Bangladesh's culture and politics: origins dynamics and implications; *Journal of Islamic studies*, vol. 23, issue 2, pp.165-198

<sup>27</sup> Rahman, A. (2009). Culture difference in aggression: A case study in Bangladesh. *Journal of life and earth science*, vol. 3, pp. 43-46

Civil society is a valuable effect of democratic and development process of a country. Civil society is via which connected into citizen and state. Moreover, they contribute to socio-political and economic development. The feature of civil society is that criticizes government activities and look up country national and international treaty when the prime minister visited another country. We know that currently, Myanmar has started oppressing it Rohingya citizens and they are killing people, Child, and raping the women. At this moment, about 1.2 million Rohingya have taken refuge that fled to avoid the oppression by the Myanmar govt. and the army. This problem of Bangladesh is too worse now, being itself a country of developing; it is too hard to manage the huge cost that is arising to host the Rohingya people. It is worth mentioning that civil society was concerned about the Rohingya issue. They are burning the houses of the Rohingya and the Rohingya people are fleeing from their motherland Myanmar to Bangladesh.<sup>28</sup> Bangladesh is in endangering for the Rohingya influx from lots of perspective like the economic, environmental and security-related problems. China has not taken any firm step to stop the massacre of the Rohingya people by Myanmar govt. this problem may disrupt the friendly relation between Bangladesh and China and the people of Bangladesh may not support its govt. to provide any support related to the proposed Maritime Silk Road. Which will not be a good position for China because; Bangladesh is a close partner of China. Some Bangladeshi scholars and civil society claimed that China has been supporting Myanmar on this issue and has ignored the views of Bangladesh.<sup>29</sup> Another challenge is debt trap issues, civil society claiming that China has lent and invested more than \$30 billion in Bangladesh. They alleged that China has tempted countries of strategic significance into the debt trap by giving them huge loans, then taking over infrastructure projects thereafter these less developed countries fail to repay the debt. The concerns of civil society because of debt trap are sensitive topics for local peoples. Bangladesh government wants to growth-based development at any cost. They are not bothering about the devastation of land, forest, water, river, environment and the ecosystem for the monopolistic behavior for this cause civil society concern for government activities. Additionally, civil society in Bangladesh may worry about the environmental impact of

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<sup>28</sup> Sudip, D. (2017). Adverse Rohingya Impacts on Bangladeshi Economy and its Solutions; American Journal of Trade and Policy, vol.4, no.3

<sup>29</sup> Mayesha, A. (2018). How the Rohingya crisis is affecting Bangladesh and why it matters

Chinese investment, as many Chinese companies are known for their lack of environmental protection measures. Civil society may worry about the exploitation of workers in Bangladesh by Chinese companies, as there are often concerns about poor working conditions and low wages in the country. Civil society may worry about the displacement of local workers by Chinese companies, as they may bring in their own workers from China. Civil society may worry about corruption in the allocation of contracts and resources to Chinese companies, as corruption is a major problem in Bangladesh. Civil society may worry about the loss of cultural heritage and traditions due to the influence of Chinese investment and culture. Civil society may worry about unfair competition from Chinese companies, as they may receive preferential treatment from the government or take advantage of loopholes in local regulations. Civil society may worry about the negative impact of Chinese investment on local communities, including the displacement of residents, destruction of natural habitats, and reduced access to resources.

#### **7G). Lack of policies**

Proper policy is a prime condition for development of a country. Lack of policies hampers and mismanage to one sector to other sectors it may also affect the total project. Government plans to Natural resources an integrated approach covering these sectors development. Bangladesh lacks clear regulations and policies for foreign investment, which can make it difficult for Chinese investors to understand their rights and obligations.

The legal system in Bangladesh is often slow and inefficient, which can result in long delays in the resolution of disputes and investments.

Bangladesh has weak intellectual property protection, which can result in theft of technology and trade secrets by local partners or competitors. Bangladesh lacks tax incentives for foreign investment, which can make it less attractive for Chinese investors compared to other countries in the region. The public administration in Bangladesh is often inefficient, which can result in long wait times for approvals and permits for foreign investment.

We have observed that the legal condition and the policy are not proper managed of Bangladesh. Bangladesh over the year had little success in effetely to addressing the growth of economic development. Currently, most of the foreigninvestors have gone into

the energy sectors.<sup>30</sup> The ruling party deals with all development projects, we know that recently visited of the Chinese president in Bangladesh, both states have signed MOU and agreements but government delay to implement this project although government target completed all project in the year of 2021. The government could not properly be planning implement such project they trybut fail to implement target projects. Therefore, I think it's totally government impassivity also liable including authority.

## **8. Legal Issues**

**Regulatory compliance and restrictions:** Chinese investors may face challenges in complying with Bangladesh's regulatory framework and restrictions, such as foreign investment caps, environmental regulations, and labor laws.

**Intellectual property rights:** Intellectual property protection may be weaker in Bangladesh compared to China, which could result in infringement of Chinese companies' patents, trademarks, and copyrights.

**Political instability and corruption:** Bangladesh is prone to political instability, which can lead to uncertainties in policy implementation, and corruption remains a significant challenge in the country.

**Currency and exchange rate fluctuations:** Changes in the exchange rate between the Bangladeshi Taka and the Chinese Yuan may pose a risk to the financial stability of Chinese investments in Bangladesh.

**Local protectionism:** There may be resistance from local businesses and workers to foreign investment, including investment from China, which can lead to protests and social unrest.

**Economic imbalances and infrastructure gaps:** Bangladesh has a large trade deficit with China, which can cause imbalances in the economy. The country also faces significant infrastructure gaps, including in transportation, energy, and telecommunications, which can pose challenges for Chinese investors.

### **8A). China-Bangladesh BITs issues**

The China-Bangladesh Bilateral Investment Treaties (BITs) have been the source of several legal issues and challenges in the relationship between the two countries. These issues may include disputes over investment protection, compensation for expropriation, investment

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<sup>30</sup> Joynal, A. (2009). Bangladesh: A good destination for foreign investment

liberalization, and market access. The BITs may also raise concerns about the balance between protecting the interests of foreign investors and ensuring that the interests of the host country and local communities are negatively impacted. Some criticisms of BITs include the lack of transparency in dispute resolution mechanisms and the potential for abuse by foreign investors. Additionally, there may be concerns about the impact of BITs on the environment and human rights to the influence of BITs on the development domestic legal and regulatory frameworks. These issues highlight the need for comprehensive and well-designed BITs that balance the interests of both parties and promote sustainable development.

Bangladesh has signed 30 BIT while 26 BITs are in force. China-Bangladesh BIT signed in 1996 and was enforced 1997.<sup>31</sup> This bilateral investment treaty illustrates the scope and legal rights of the investors and provides protection of the investment in the host country. It also points out the mutual benefits and common interests of the contracting parties. It incorporated international arbitration mechanism including an adhoc body to try disputes arising out of the BIT.<sup>32</sup> In the second generation BIT, Gradually China becomes more liberal towards its BIT policy. It has been incorporating bilateral investment treaties (BIT) since the 1990s that embrace more essential substantive and procedural investment safety. This was a policy shift from China's conservative stance towards international investment law that emphasized the host country's right of regulating foreign investments a strategy typical for FDI-importing nations. Notwithstanding existing reservations towards some issues, the current Chinese model agreement is comparable to the admission model BIT adopted by capital exporting countries.<sup>33</sup>

Additionally, some BITs issues are identify Chinese investment in Bangladesh which flowing discuss under the below:

**Lack of enforceability:** The bilateral investment treaties (BITs) between China and Bangladesh may not provide adequate protection for Chinese investors due to the lack of enforceability of such agreements in Bangladesh's legal system.

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<sup>31</sup> <https://investmentpolicyhubold.unctad.org/IIA/CountryBits/16#iiaInnerMenu>

<sup>32</sup> Rafiqul, I. (2018). BITs of Bangladesh; The Daily Star, Published ( December 04, 2018)

<sup>33</sup> China Bilateral Investment Treaties (BITs), available at: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/42#iiaInnerMenu>



**Dispute resolution mechanism:** The BITs may have limited dispute resolution mechanisms, which could result in delays and difficulties in resolving disputes between Chinese investors and the Bangladeshi government.

**Different interpretations of treaty provisions:** The BITs may have provisions that are subject to different interpretations by the Chinese and Bangladeshi governments, leading to confusion and disputes.

**Inadequate protection for Chinese investors:** The BITs may not provide adequate protection for Chinese investors, such as protection against expropriation, unequal treatment, and fair and equitable treatment.

**Limited scope of coverage:** The BITs may have limited scope of coverage and may not cover all sectors and types of investment, which can result in uncertainty for Chinese investors.

**Unclear dispute settlement procedures:** The procedures for dispute settlement under the BITs may be unclear, leading to confusion and difficulties in resolving disputes between Chinese investors and the Bangladeshi government.

## **8B). MOU and other agreements**

China and Bangladesh may have signed MOUs to facilitate cooperation and collaboration in various fields, such as trade, investment, energy, and infrastructure. Chinese companies may enter into joint ventures and partnerships with Bangladeshi companies to jointly develop projects in the country. China may provide loans and financing to Bangladesh for infrastructure and development projects, which can be subject to conditions and requirements specified in loan and financing agreements. Chinese companies may enter into technology transfer agreements with Bangladeshi companies to transfer knowledge and expertise in specific fields, such as telecommunications and renewable energy. Chinese companies may provide services to Bangladeshi companies and the government under service agreements, which may include terms and conditions for the provision of services. China and Bangladesh may have signed FTAs to reduce barriers to trade and promote economic cooperation between the two countries. These agreements may include provisions for the protection of investors and the resolution of disputes. Bangladesh accepted China's FTAs offer and signed but BD is also pursuing China to increase trade facility and export items duty free market

access in China.<sup>34</sup> Bangladesh-China has signed 26 agreements and MOU the historical visited of president Xi Jinping.<sup>35</sup> The cooperation deals and MOU signed by both state while include on the BRI, that addressing climate change, power, and renewable energy cooperation, information Silk Road and technology. Sometimes it kept confidential. As a matter of law, MOU does not document binding under international law.<sup>36</sup> Investor and contracting party should follow laws and regulation of the contracting party. Claim to money or to any performance having an economic value. Concession conferred by law, including concession to search for natural resources. Economic entities established in accordance with the laws of Bangladesh and domiciled in the territory. Both contracting parties enjoy mutual profits, and interests. Bangladesh is enjoying preferential treatment from China under the APTA (Asia-Pacific Trade Agreement) and China's initiation of unilateral tariff liberalization for least developed countries.<sup>37</sup>

## **9. Recommendations and suggestion arising Challenges and Legal issues Chinese investment in Bangladesh**

Bangladesh government takes initiative to solve challenge and legal issues arising from Chinese investment under the flowing content:

- 1. Streamline regulations and procedures:** Bangladesh should strengthen its regulatory framework to provide a more predictable and stable investment environment for Chinese investors, including ensuring compliance with international best practices for the protection of intellectual property rights and the prevention of corruption.
- 2. Improve dispute resolution mechanisms:** Bangladesh should improve its dispute resolution mechanisms to provide a more effective and efficient means of resolving disputes between Chinese investors and the Bangladeshi government, including the establishment of specialized investment courts and tribunals.

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<sup>34</sup> Siddiqui(2019).China-BangladeshFTA-anoverview;TheFinancialExpress

<sup>35</sup> Bangladesh, China sign 26 deals, MoUs; the Daily star published (October 14, 2016)

<sup>36</sup> Memorandum of understanding; [https://en.wikipedia.org/wiki/Memorandum\\_of\\_understanding#cite\\_note-4](https://en.wikipedia.org/wiki/Memorandum_of_understanding#cite_note-4)

<sup>37</sup> Supra note 37

3. **Enhance legal protections for Chinese investors:** Bangladesh should enhance legal protections for Chinese investors, including protection against expropriation, unequal treatment, and fair and equitable treatment, as well as access to effective remedies for breaches of these protections.
4. **Address infrastructure gaps:** Bangladesh should address its infrastructure gaps to provide a more attractive investment environment for Chinese investors, including investing in transportation, energy, and telecommunications infrastructure.
5. **Increase transparency and predictability:** Bangladesh should increase transparency and predictability in its policy-making process to provide a more secure investment environment for Chinese investors, including providing clear and stable investment laws and regulations.
6. **Promote cooperation and collaboration:** Bangladesh and China should promote cooperation and collaboration to facilitate mutually beneficial investment opportunities and to resolve any challenges that may arise, including through the establishment of bilateral forums for dialogue and cooperation.
7. **Increase transparency and accountability:** Bangladesh should increase transparency and accountability in the investment process, including by publicly disclosing information about investment regulations and procedures, and by providing a clear and consistent explanation of the roles and responsibilities of government agencies.
8. **Encourage stakeholder engagement:** Bangladesh should encourage stakeholder engagement in the investment process, including by involving private sector organizations, civil society groups, and local communities in the development and implementation of investment policies and regulations.
9. **Strengthen the rule of law:** Bangladesh should strengthen the rule of law to ensure that investment regulations and procedures are consistently applied and that disputes are resolved fairly and transparently.
10. **Promote anti-corruption measures:** Bangladesh should promote anti-corruption measures to reduce the risk of corruption in the investment process, including by implementing measures to prevent corruption and by holding public officials and businesses accountable for corrupt practices.

**11. Provide investment support services:** Bangladesh should provide investment support services to Chinese investors, including information and guidance on investment regulations and procedures, assistance in resolving disputes, and support in navigating the local business environment.

**12. Political and Bureaucratic Red Tape:** An efficient, fair and fast system shall be developed by the govt. to promote and facilitate foreign investment. The pertinent body of the government shall supervise the bureaucracy to eradicate red tape and corruption. A computerized information system shall establish to monitor the activities related to foreign investment. Current policies and by laws shall be improved to meet the current demands. The foreign investors are required to get different permits to run their business, for that short time limit shall be imposed and data shall be updated on the information system.

Moreover, the government may take an extra step to resolve the issue that is relating to investors and investment sectors.

#### **D). Suggestion to resolve lack of infrastructure facilities**

Bangladesh can take advantage of Chinese investment to improve the infrastructure. The government should be the highest priority of infrastructure sectors and may take the necessary step to develop Modern communication system; building, ports, rather big electricity generation and gas acquiring projects should be developed. Although the government already taking some step that is not enough. Regarding the solution to our infrastructure deficit, we first should develop a strong railway network around the country. We also need to pay proper attention to the improvement of our river routes. All the inter-district connecting roads should be built as elevated roads. These elevated roads will be like railway lines. We must ensure strong engineering control over the design and construction of any infrastructure. Government should encourage private sector investment in infrastructure development, including through public-private partnerships (PPPs) and other forms of private sector financing.

Bangladesh government initiative to develop its infrastructure sectors by Chinese assistance and China is keen to help Bangladesh its infrastructure sector. Bangladesh Government may give top priority of China's investor to invest in this field.

## **II). Suggestion to resolve the poor condition for exploration of natural resources**

Bangladesh Government should develop a clear and stable regulatory framework for the exploration and exploitation of natural resources, including transparent and competitive bidding processes and clear rules and procedures for granting licenses and permits. Bangladesh should foster partnerships with international companies to tap into their expertise and technology for the exploration and exploitation of natural resources, including through joint ventures, technology transfer agreements, and other forms of collaboration.

Invest in exploration and technology to enhance its capabilities for the exploration and exploitation of natural resources, including by supporting the development of local expertise and capacity in this area.

Encourage stakeholder engagement in the exploration and exploitation of natural resources, including by involving local communities, civil society organizations, and the private sector in decision-making processes and by ensuring that their concerns are taken into account.

We know that Chinese technology has progressed a lot. So China can supply in Bangladesh advanced technology and other necessary equipment so that run these projects exploration and extraction.

## **III). Suggestion to resolve the cultural issues**

Bangladesh should promote cultural diversity and tolerance, including by supporting the preservation and promotion of cultural heritage and traditions, and by promoting mutual understanding and respect among different cultural groups.

China wants to spread its culture worldwide. Recently, China has taken many steps to make the project popular and attractive from a cultural perspective. Arts exhibition, painting exhibition going to held in many places in the world almost every day. Drama and cartoon series are also being telecasting and played in different cities where the mega-project is going to be implemented. However, this point has been ignored by all kinds of people including the thinkers, Mass Media, and the international norms maybebecause of its less glamour and the amount expended for natural resources and infrastructure development project. Nevertheless, it is very important for the well-being of the people of the region because the business bondage and engage rote level people worked with a mega project. Therefore, the cultural collaboration between Bangladeshand China will be in a new extent and it will be very much

helpful for the bilateral relation of both the country. Therefore, if we promote China-Bangladesh cultural then must be needed awareness of general peoples, ensure media publicity, and exchange their view to each other for that arranges a seminar, movies, etc. Now many Bangladeshi students learn to the Chinese language if the Chinese government more scholarship facility then many Bangladeshi peoples learn the Chinese language.

#### **IV). Suggestion to resolve the worries of Civil Society issues**

The government and Chinese investors should engage in regular consultation and participation with local communities, civil society organizations, and other stakeholders to address their concerns and address their worries. Solve for the Rohingya issues, Bangladesh govt. has taken a project recently to build some refuge center and managing their food, in which a huge amount of spending money though there are coming many international govt. and agencies help, those are not enough to meet the demand. Bangladesh is in a crucial moment, and it will have to give its effort in the foreign sector to solve this severe problem. China will have to understand the fact and make a necessary plan for the problems arising due to the mistrust. Civil society hopefully China pressure creates to Myanmar government and discusses the matter international community and try to solve Rohingya issues. We hope China will take steps to overcome the suspicion of Rohingya issues. Therefore, general peoples and civil society believe that China is a good friend of Bangladesh. Solve the debt trap issues China reduce bank loan rate and provide soft loan for an investment project.

#### **10. Suggestion to resolve the China-Bangladesh BITs issues**

Bangladesh Government takes following stapes to resolve BITs issues:

**Negotiate a new agreement:** Both countries can negotiate a new agreement that addresses the concerns raised by Bangladesh regarding the BITs.

**Alternative dispute resolution:** The parties could consider alternative dispute resolution mechanisms, such as arbitration, to resolve disputes arising from the BITs.

**Address specific concerns:** Bangladesh could raise specific concerns regarding the BITs, such as protection of its domestic industries, and seek clarification or amendment of the agreement to address these issues.

**Bilateral consultation:** The two countries could establish a mechanism for regular bilateral consultations to address any issues that may arise from the BITs.

**International cooperation:** The two countries could seek international support, such as from the World Bank or UNCTAD, to resolve disputes related to the BITs.

## **11. Suggestion to resolve the MOUs and other agreements issues**

To resolve the issues Memorandums of Understanding (MOUs) and other agreements, the following steps can be considered:

**Review of agreements:** A review of the MOUs and other agreements can be conducted to determine if they meet the current needs and requirements of both sides.

**International arbitration:** If needed, the parties can resort to international arbitration to resolve disputes in a neutral and fair manner.

**Strengthening legal framework:** Bangladesh can strengthen its legal framework related to foreign investment to provide a stable and predictable investment environment.

It is important to note that any solution should be in the best interests of both Bangladesh and China and should be based on mutual respect and cooperation.

## **12. Conclusion**

**In conclusion,** the Chinese investment in Bangladesh's natural resources and infrastructure has brought about several challenges and legal issues that need to be addressed. The challenges include concerns over the environmental and social impacts of these investments, issues related to the lack of transparency and accountability, and the need to ensure that the benefits of these investments are fairly distributed.

In terms of legal issues, the lack of a clear and comprehensive legal framework has led to confusion and disputes over the terms of agreements and the rights and responsibilities of the parties involved. Moreover, the absence of an effective dispute resolution mechanism has further complicated the situation.

Therefore, it is crucial for the government of Bangladesh and the Chinese investors to work together to address these challenges and legal issues. This can be achieved by ensuring clear communication and negotiation, conducting regular reviews of agreements, promoting transparency and accountability, strengthening the legal framework, and promoting cultural understanding and cooperation. By doing so, both parties can ensure that the Chinese

investment in Bangladesh's natural resources and infrastructure is mutually beneficial and sustainable.

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