

LAW VISION

Promoting local innovation for public health

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WITH the coronavirus crisis going on, the world is undergoing rapid transformation and multidimensional changes in the discourse of global politics and governance. Within weeks and months Covid-19 unfolded the unequal, insufficient and fragile system of public health of a number of developed and developing countries. Similarly, it also unearths major causes like the absence of agro-ecological development trend ignored in whole process of industrial development. Under the breakdown of economy most of the governments are now looking back to the management of health rights and food safety to meet secure health of their citizens.

Now, at this moment of global epidemic, we have to rethink our development model and strategy that we have followed in the course



achieving public policy objectives. Thus, Bangladesh needs to take cautious approach in legal and policy development of intellectual property rights that might be conducive to human rights, social welfare and economic growth. In ongoing transition process Bangladesh has already enacted laws for Copyrights, Trademark, Geographical Indications, Plant Varieties Protection as well as progressing Patent Act according to the standard of TRIPS Agreement. In compliance with the WTO's trade rules and particularly TRIPS, Bangladesh has to provide indiscriminate national treatment protection to each and every foreign party in trade of intellectual property.

Besides that, except in pharmaceutical product (ten years waiver up to 2033) Bangladesh will be exempted from the benefit of Article 66 of TRIPS from 2024 on its graduation from the least developed country to a developing country. It means once Bangladesh is promoted, it will lose the right to access to any patented

technology and know-how cooperation from the developed countries to create the base of own technology and development in hand. Now question arises how much our local public and private stakeholders, enterprises of technology are sure about the creation of sound and viable local technological base within next few years, adequate to run independently despite foreign aid or technical assistance? As for now, we are very pleased with our local technology: Walton showed capabilities on production of ventilator as well our pharmaceutical (Beximco, Beacon, Incepta) are supplying drugs using knowledge and technology of Gilead for Remdisivir and Fuji for Avigan drugs. But question arises how much our local pharmaceutical and technology based industries are capable to produce and supply drug or any necessary product independently without interference of foreign technical knowledge? It is alarming that most of our private enterprises depending on technology are not aware

about intellectual property rights on patented products or processes.

In post-graduation, Bangladesh has to facilitate patent protection to patent owner which will restrict any third parties to sell, use, produce, reproduce, import or export any patented product or process (TRIPS, Article 28) in absence of permission or license from the Patent Owners. Again, the question comes as to how much our local industries are getting smart to bargain specially in terms of economic cost to pay for license from global corporations or patent owners. Another point is that, Patent has to be given indiscriminately for any technological advancement in any product which is novel, having inventive step and industrial applicability according to TRIPS (Article 27). As for post 1970 most of the developed countries granted patents in biotechnology-based products (medicine, seeds) occurred on plants and animals. Bangladesh has obligation as well as flexibilities in determining what and which subject of bio-invention will be patented and what invention will be incentivised to trigger our development.

With the severity of health and food crisis ahead, Bangladesh cautiously got permission to reproduce drugs to face coronavirus. For now, it requires concerns from the government agencies, policy makers, local industries, market regulators and civil society members to come together on inclusion of TRIPS in Bangladesh. To get access to technology, Bangladesh will get additional five years transitional period up to enforcement of Patent Act. Like our neighboring India introduced product patent in 2005 with different amendment on subject-matter of patent. Before the necessary changes Bangladesh should use the flexibilities open under Articles 7, 8 and 66 of TRIPS Agreement. Bangladesh should adopt eco-friendly technology that might protect our bio-diversity, public interest along with continuous productive capacity of research,

education and maximum knowledge sharing among local industries as they become self-reliant in development of future technology. In our practice, innovation leading research is negligible and most of the technologies are locked in foreign knowledge. To that case, Bangladesh can take resort of “WTO forum for Global Technology Pool for Climate Change” arranged for developing countries as to avail effective technology transfer from developed countries.

Moreover, as per the provision of Article 66, we need to monitor and assess whether our local industries are getting access to knowledge and skill which is adequate in mode for carrying out the existing invention, know-how, technology used through skillful local adoption in continuance of reproduction, sale and export of developed product. Another separate but important point is, our agriculture is carrying 8-10% GDP in a year and booming on dependent technologies. Plant bio-diversity and immense traditional knowledge conserved in indigenous seeds variety, plants and farming methods are as of yet unprotected for open exploitation by different local and foreign corporations. To break the dependency, for food sovereignty and health, Bangladesh immediately needs to develop mass awareness and enact necessary laws supportive to protect local innovation related to bio-diversity through local community- farmers. It also needs to disburse knowledge and sharing about intellectual property knowledge in each level of education as to future innovation, research and entrepreneurship to combat with intellectual property rights that might be friendly for our nature, society and economy.

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of our development endeavours, and how far those policy measures are fit for the large number of people in Bangladesh. Coming to the point of regulatory regime of intellectual property rights- the real impact and extent of which for the common people is far beyond our imagination. Under the Trade Related Aspect of Intellectual Property Rights (TRIPS) Agreement, WTO members have substantial scope to tailor their procedures to intellectual property protection and enforcement in accommodating their priorities and

RIGHTS MONITOR

To protect rights of the consumers during pandemic

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IN a country like Bangladesh, we often see businessmen illegally making profits by using various techniques of syndicate during specific incidents/occasions such as holy Ramadan, Eid, Puja, Christmas, flood, heavy rain, etc. To make such kind of profits, sometimes the capitalists create an artificial crisis in the retail market by stocking the goods on a large scale. Consequently, consumers face numerous challenges to meet up their needs. This artificial crisis of goods is not new to us and the general people of Bangladesh are living with this dilemma since the inception of the country.

To overcome this predicament, in 2009, the government of Bangladesh has enacted the Consumer Rights Protection Act (CRPA) and since the establishment of this Act, the government is providing their limited logistic support and human resource to execute the Act appropriately and consistently. For example, it is very common to see the executive magistrates are imposing a limited amount of fine against the unlawful activities of the manufacturers, wholesalers, retailers, or somebody, else.

Considering the activities of the mobile court, it is to observe how the big fishes are dealing with the limited amount of fine and the CRPA. As of section 38 of the CRPA, a person shall be punished with imprisonment for a term not exceeding 1 (one) year, or with fine not exceeding Taka 50 (fifty) thousand, or with both for not showing the price list of the goods. Similarly, the mobile court may impose fine of not more than 50 thousand taka for selling or offer to sell any goods, medicine, or service at a price higher than the price fixed under any Act or Rules, states section 40 of the CRPA. The main purpose of imposing fine is to prevent the wrongdoers from doing unlawful activities, but the question is whether this limited financial penalty can change the behaviour of the wrongdoers or not? Based on the practices, it seems that for a wholesaler or importer, it is not a big deal to pay 50 thousand taka as fine as far as he/she does not have to go to prison. Thus, an importer or a wholesaler is pleased to pay fine again and again rather than to change their inhuman habit to cheat with the general people. As a result, it became a common habit of paying fine, and in return, the people are suffering continuously. Along with many past incidents, we are yet to forget the synthetic onion crisis of 2019 created by some unscrupulous businessmen. Nonetheless, the crisis that we have faced



last year was in peacetime; but during this Covid-19 pandemic, while the whole nation is fighting against the unseen virus, some unethical businessmen are taking advantage of this vulnerable situation.

To counter this crunch, many executive magistrates are trying to find out the culprits and imposing fine under the CRPA for their involvement in illegal businesses. Nevertheless, it seems that the CRPA itself is not enough to fight against the culprits during this coronavirus crisis. Thus, we may need to think of other related laws which can impose some form of harsh punishments to prevent the businessmen from doing illegal businesses in this intense situation. The Special Powers Act is one such law.

Section 25(1) of the Act defines the offence of hoarding or dealing in the black-market, which is punishable with death, or with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and fine. However, if the person accused of such offence proves that he was hoarding for purposes other than gain, whether financial or otherwise, he shall be punishable with imprisonment for a term which may extend to three months, and shall also be liable to fine.

Moreover, under section 25(C) of the Special Powers Act, a person shall be punishable for adulteration of, or sale of adulterated food, drink, drugs which may extend to five years of imprisonment and shall also be liable to fine, whereas, the same offence has lesser punishment under section 41 of the CRPA 2009 which may extend to 3 years of imprisonment or with fine not exceeding Taka 2 (two) lacs, or with both.

In legal jurisprudence, there are several aspects of punishment and one of the aspects under deterrent theory is not only to prevent the wrongdoer from doing the offence again but also to make the culprit as an example for others who have similar tendencies to do offences. Thus, sometimes we need to impose some form of harsh punishment so that others may take a lesson. Considering the current scenario of Bangladesh, we may think of applying the Special Powers Act along with the CRPA to control the market during this coronavirus outbreak. No matter what, during this pandemic, the government should not let any syndicate regulate the market which creates an artificial crisis in the market.

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RIGHTS WATCH

Covid-19 and State’s obligation to safeguard human rights

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WITH the outbreak of the Covid-19 and the declaration of a global pandemic, nations worldwide have taken unprecedented and unconventional measures with the aim to contain the virus and fortuitously, declared both international and intra-national lockdowns, and asking citizens to self-isolate and to maintain social distancing at all times.

Although this lockdown has proved to be effectual, it has also surfaced the divergence between the upper and lower class of the society. Globally, it has hit hard on the daily wage earners, poor and needy class of the society. Among many other fundamental rights that an individual is entitled to, this pandemic and the incidental lockdown has resulted in such rights being compromised.

The first and foremost right relates to the right to housing, which is enshrined in article 15 of the Bangladesh Constitution. Internationally, the right is recognised under article 25 (1) of the UDHR, and article 11 (1) of the ICESCR. The Committee on Economic, Social and Cultural Rights states that, state parties have the obligations to take steps such as abstaining from forced evictions, devising national housing strategy, monitoring the implementation of the right. In making law or policy, the states are also obliged to give due priority to those living in unfavourable conditions.

With the spread of Covid-19, for instance, nations like the United Kingdom have adopted several action plans to provide shelter to the homeless and to protect them from the pandemic. Moreover, in Bangladesh, at a press conference on 23 March 2020, the Cabinet Secretary, stated that the government has built residential and livelihood facilities in Bhashan Char, Noakhali; and people willing to relocate there have been welcomed to avail such facilities. Furthermore, all district administrations were instructed to send people from low-income groups to make use of the island's facilities. For a developing nation like Bangladesh, where still 24% of the population live under poverty line, this initiative of the government has been an applaudable one. However, none from the low-income groups has responded to the government offer.

Inevitably, ensuring access to other basic necessities such as food, clean water, sanitation is also crucial during this difficult time. In Bangladesh, approximately 32% of the population work in the informal sector and majority of whom are daily wagers and around 4.2% of the population are unemployed. Under such circumstances, approximately



40% of the population struggle to meet their essential needs, which is further worsened by the current hike in unemployment rate.

Article 15 of the Constitution requires state to ensure people's access to basic necessities including food, clothing shelter and medical care. Additionally, under International law, article 25 of the UDHR recognises the right, in the context of an adequate standard of living, also recognised by the ICESCR under article 11(1).

Once again, it is worth mentioning the appreciable steps taken specially in allocating substantial amount of funds by the Bangladesh government in order to ensure access for this portion of the population. Prime Minister Sheikh Hasina announced her support for the coronavirus hit workers and the poor by providing a 5,000-crore taka incentive for export-oriented industries that would hopefully be spent to pay wages for workers; also announcing wider safety net measures for low-income and homeless people. Further ensuring that low-income people will receive government assistance under the “Ghore-Fera” (Returning Home) programme. Additionally, as per government's announcement, the homeless and landless will get free housing, food for six months as well as cash support. Meanwhile, the Disaster Management Ministry has initiated the dispatch of 500 tonnes of rice and cash between Taka 5 lacs and Taka 10 lacs to all the district administrations. Unfortunately, there have incidents of such aid not reaching the affected population due to corrupt local representatives; but it can be expected that with effective delivery mechanisms the situation will be developed as the lockdown progresses.

Another basic right which has come to forefront is the right to health and medical care. article 18 (1) of the Constitution recognises this right, also recognised in the 1966 ICESCR.

As the percentage of Covid-19 positive

cases continue to rise exponentially, the demand for adequate and well-equipped health care organisations is more important than ever. In this regard, the government has announced to allocate Taka 1.0 billion for government physicians and health workers treating Covid-19 patients, Taka 7.5 billion for health and life insurance for those affected while on duty. Furthermore, in order to ensure adequate facilities for coronavirus patients, more than eight hospitals have been designated, in the capital. Other than this, treatment centres and testing centres are also made available in every division and major districts. Notwithstanding, there have been reports of the hospitals lacking sufficient personal protection equipment (PPE) for physicians and nurses and shortage of intensive care unit (ICU) and ventilators facilities. Hence, there is still need for more investment in the healthcare sector

It is apparent that, the Covid-19 pandemic has brought about certain unprecedented developments in the way governments including that of Bangladesh are ensuring the basic fundamental rights. The nature of the pandemic has obligated nations worldwide to take initiatives ensuring these basic human rights if they are to curb the long-term consequences of the pandemic. There is an abrupt change in the approach of the government, who generally show reluctance in addressing human rights issues but are now taking all the apt measures in their capacity. Whilst their relentless and unprecedented efforts in providing shelter, food and other essentials, hence, ensuring the fundamental rights of all citizens, during these unprecedented times is commendable, the question arises – do the statutes and charters ensuring fundamental rights only warrant implementation during a pandemic or when there is a greater need to sustain the world or the whole country?

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