

LAW WATCH

Global warming, cyclones and International Environmental Law

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A recent study conducted by the Department of Geography and Environmental Studies, University of Chittagong, shows that the frequency of cyclones have increased by four-folds in the Bay of Bengal, in the last 60 years. According to the statistics, since 1971 till date, around 33 cyclones have hit the coastal areas of Bangladesh and from 1797 to 2020, in the last 223 years, a total of 78 cyclones have hit the coastal areas. Apparently, till 1960, there were only 30 cyclones whereas from 1960 to 2020, only in last 40 years there were 48 cyclones. In the last one year, three cyclones, Foni, Bulbul and Amphan have hit the coastal areas. The research suggests that the onus for the increase

in more powerful and regular cyclones is owed to the hike in temperatures. Currently, the temperature above the Bay of Bengal is 31 degrees, whereas in 2007 it was 28.7 degrees; thus, the increase in temperature has been 2.7 degrees.

With the prevalence of natural calamities caused due to global warming, environmentalists have emphasised on adhering to the Paris Agreement, as both developed and developing countries alike are required to limit their emissions. Its central aim is to strengthen the global response to the threat of climate change by curbing temperature rise below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further 1.5 degrees Celsius. The Agreement requires all parties to put

forward their efforts through nationally determined contributions (NDCs). This includes requirements that all parties report regularly on their emissions and on their implementation efforts.

On this occasion, Bangladesh has received much appreciation as it has been

not legally bind its parties in terms of submitting their NDC, the parties are, however, legally bound to have their progress tracked by technical experts to assess achievement toward the NDC. Nevertheless, the inactiveness of several developed nations is still evident. As

in their foreign policies. The option to withdraw undermines the purpose of any agreement.

The predominant sources of the law governing creation of international agreements are the 1969 Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties Between States and International Organisations or Between International Organisations 1986. However, the Vienna Conventions do not stipulate any particular ratification process nor do they require any action to comply with the agreement during the ratification process. Thus, the delay in ratification of a treaty in the case of environmental agreements may render the agreement useless if the underlying environmental situation worsens or becomes irreversible.

One of the major hurdles in implementing treaty law to environmental problems is its limited utility until a large number of states ratify the treaty; further, they lack enforcement mechanisms that encourage compliance with the treaty. Hence, in the absence of cooperation and enforcement, the environment will continue to degenerate.

Nevertheless, the situation is not all 'dull and grim', after decades of effort by environmentalists and affected countries like Bangladesh, nations today have set a concrete goal to tackle temperature rise. Furthermore, it can be expected that the ever-growing climate movements happening worldwide will have a constructive impact, consequently, compelling the reluctant nations to abide by their commitments under these environmental treaties. By all means, it is inevitable that international matters concerning the environment is dealt with in 'cooperation' by all nations.

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one of the earliest countries to prepare and submit the NDC to UNFCCC, in 2015. Bangladesh committed to reduce its Green House Gas emissions by 5% below 'business-as-usual' level by 2030 using only domestic resources and this reduction level may be extended up to 15% if sufficient external fund is received. Prime Minister Sheikh Hasina has been announced as one of the winners of the United Nations Champions of the Earth award in recognition of her country's initiatives to address climate change. Bangladesh is also the first country to set up its own Climate Change Trust Fund. In addition, the Bangladesh Constitution was amended in 2010 to include a constitutional directive to the State to protect the environment and natural resources for current and future generations. However, it is also criticised that the emissions reduction target of 5% looks very insignificant compared to the 30-35% reduction plan taken by India. Many other developing nations have also set greater reduction targets than Bangladesh.

Whilst the Paris Agreement does

of February 2020, the only significant emitters which are not parties are Iran and Turkey. In 2017, President Donald Trump announced that the US would withdraw from the Agreement and subsequently initiated the formal withdrawal process.

It is important to comprehend, the reasons behind reluctance among states, in abiding by the agreement and taking pro-active actions to prevent the disastrous environmental consequences. The primary sources of international law are international agreements, custom and general principles of law. In case no explicit agreement exists, one must look to customary rules and general principles of international law. Nevertheless, it is both difficult to obtain a consensus concerning customary norms and also when accused of violating a customary norm, a state may claim that no such norm exists or that it never accepted the norm and therefore is not bound by it. Furthermore, states often defend their sovereignty because they consider their physical integrity and continued political identity as important elements



RIGHTS ADVOCACY

COVID-19 AND RIGHTS OF THE HEALTHCARE WORKERS

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Healthcare workers (HCWs) are at the heart of the current crisis that the whole world is undergoing. Due to the spread of coronavirus, while all offices, services are closed or nearly closed, one institution across the world never closed for a moment is the hospital. Physicians, nurses, cleaning staffs – all the frontline fighters are working day-night restlessly. In Bangladesh, insufficiency of infrastructure, lack of quality medical equipment, diagnosis machinery, and geographic mal-distribution of Human Resource for Health (HRH) are some common issues which we have been grappling with for a long time. Due to lack of administrative preparation, Bangladesh is now paying the cost of this pandemic as the frontline fighters are also getting infected by this virus. According to the report of Bangladesh Medical Association (BMA), a total of forty-one doctors lost the battle against the deadly virus in the country. So far, around 1040 doctors, 901 nurses and 1360 staffs have been tested Covid-19 positive.

The rapid loss of senior doctors of the country is an irreparable loss for the health sector. Right to life and right to health as enshrined in Articles 32 and 18(1) of the Constitution respectively, are equally applicable to HCWs. If we cannot protect them, we run the risk of losing our ability to control the virus. According to the WHO, currently the doctor-patient ratio in Bangladesh is 5.81 per 10,000 people, which places the country at the second position from the bottom in South Asia. Comparing with countries like Austria (51.44), Finland (38.12) and France (32.67), is an absolute luxury for us. Since the country is already suffering from a shortage of HRH, can the country really afford losing more doctors?

Since the social transmission of Covid-19 has already started, the HCWs are facing multifarious problems. Firstly, at the early stage of the pandemic, lack of testing facilities and unavailability of Personal Protective Equipment (PPE) has resulted in doctors to expose directly to this life-threatening virus. Moreover, concealing information or misinformation on symptoms by a significant number of patients resulted in the transmission of the virus to the HCWs. Secondly, social harassment by their landlord to leave the house in fear of virus infection. Thirdly, being blamed by patients, attendants for not providing medical equipment such as oxygen tubes and ventilation even if they are not responsible for the supply of these equipment and technical services. Fourthly, facing the allegation of denial of treatment to patients. However, in reality, without any safety gear, doctors and nurses are in no position to treat infected patients. Fifthly, working under extreme pressure, fear, lack

of familiarity with PPE use and disposal, inappropriate working hours, and so on.

In this unprecedented period, while doctors are performing heroic tasks, one senior doctor, Dr. Abdur Rakib Khan from Khulna was beaten to death by a patient's family members on allegation of wrong treatment of pregnant woman causing her death. Evidently, the doctor-patient relationship in Bangladesh has reached rock bottom level and their rights in question.

To protect the HCWs against violence, very recently, India has promulgated the Epidemic Diseases (Amendment) Ordinance, 2020, which amends century old the Epidemic Diseases Act, 1897. This amendment makes 'act of violence' against the HCWs, including doctors and nurses, punishable with three months to five years imprisonment with a fine of ₹50,000 to ₹2,00,000. For grievous injury, imprisonment term can be extended up to 7 years. Last year, China enacted its first comprehensive law on basic medical and healthcare, after a female doctor stabbed to death in Beijing. Article 57 of this Act prohibits any individual and organisation from threatening, harming the personal security of medical staff, or violating their dignity.

The government of Bangladesh has taken several positive measures to cope with the current crisis. On 7 April 2020, Prime Minister Sheikh Hasina announced special insurance and stimulus for the HCWs and other employees of the republic for their frontline roles in the fight against coronavirus. Special incentives include health insurance of Tk 5-10 lakh (according to rank), and the amount will be five times higher if anyone is at higher risk of death or dies from the virus. Also, the government will bear the treatment cost of frontline medical staff contracting the virus while on duty. The respective total amounts are Tk. 100 crore for medical staff treating Covid-19 patients, and Tk. 750 crore for life insurance. The Anti-Corruption Commission has sent out a warning to landlords against giving eviction notice to the HCWs. Various private entities have also come forward to build hospitals, supplying protective equipment.

Despite all these, a few more steps must be taken to protect the rights of the HCWs. The allocation of budget for health sector should be increased remarkably to ensure the safety of the HCWs. For the security of the HCWs, appropriate laws must be applied in consulting with professionals working in this sector to protect them against violence. After all, nothing can justify hostility against the very people who are our first line of defence in this pandemic.

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RIGHTS MONITOR

IP rights management for companies and SMEs

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Now a days, intellectual property (IP) assets have become the currency of business, used not only to protect technology rights, but also to gain competitive advantage and drive new revenue opportunities. Today, a modern company/SME employs multiple approaches to protect IP rights. The IP Rights Management Strategy (IPRMS) is one instance of such approaches. The IPRMS is to achieve both short and long-term benefits, and eventually to exist in the front row of a business world. Commonly, an IPRMS designs to maintain the complete record of IP, ascertain value of IP assets and expected revenue, estimates IP's contribution to profitability by mapping each IP asset, building structure and system for IPRMS and dissemination of IP assets.

A company/SME can use IPRMS as an integral part of its business strategies in marketing, capital raising, research and development or business development. However, the management in many companies/SMEs fails to connect IPRMS with business strategy.

The IPRMS requires a centralised infrastructure responsible for overseeing the creation and commercialisation of IP rights namely, patent, trademark, copyright, industrial design, trade secret, databases and database rights, unregistered design rights, topography rights and any other immaterial asset including, of course, inventions prior to patent application, and should also extend to any other right such as domain names, contracts i.e. non-disclosure contract, rights in the name of an organisation and rights that have been acquired by way of a license or assignment from third parties.

Moreover, well-protected IP rights of a product provide confidence to the consumers and the supply chain. The uniqueness of a product/brand is reasonably assumable, if we say so, when the IP rights have been well protected and the whole world knows about such protection. Also, enforcement of IP rights through IPRMS ensure the company/SME to preserve the legal validity of its IP rights before the relevant authority, prevent infringement from occurring or continuing in the marketplace in order to avoid damage including loss of goodwill or reputation and seek compensation for actual damage, e.g. loss of profit, resulting from any instance of infringement in the marketplace. The nature of IPRMS or how would it be implemented depends upon the nature of products, activities and objectives of a company/SME.

Implementation of IPRMS requires help of both the legal experts and business experts otherwise it would be a challenge for a company/SME to have sufficient information on deliverables and associated categories of IP. As there is no common strategy for all businesses, therefore, the appropriate approach is to gain knowledge regarding the nature of business, products and supply chain etc., identify contract variables, target consumer or users, associated IP rights, enforcement policy of IP rights, etc. and then to formulate the best probable strategy. Perhaps the function of IPRMS may be called "monetisation" IP or "commercialisation of assets" and as it is said such monetisation is possible by maintaining a comprehensive portfolio. Strategically, a portfolio can also help companies identify opportunities in markets or creating new markets.

Significant aspects of IPRMS, therefore,

ability to leverage IP depends on IPRMS. If a company wants to make effective use of its intangible properties, the following are the basic ingredients of a robust IPRMS: (a) regular IP audits, (b) team education, (c) regulatory compliance, (d) detailed records, (f) highly organised information, (g) data visualisation (h) creating brand value, and (h) Sharing experience, etc.

Though a spinout or SME company may not be able to engage experts or appoint appropriate manpower to deal with its IP issues. But the recent trends in business indicate that IP issues should be pulled off. Because creating a brand value for ensuring existence in this corporate world is a basic condition and for this purpose there is no option but to protect IP rights.

The IPRMS inevitably varies with size and type of company/SME. It might be said that the elements of an IPRMS



include but not limited to: (a) the continuous monitoring of rights which have been, or are likely to be created, (b) ensuring ownership of such rights, (c) the organisation and documentation of existing rights (registered and unregistered), (d) the documentation and preparation of licensing contracts and other agreements (collaborative projects or joint ventures), (e) the documentation of ownership and valuation of rights or, the establishment of non-disclosure or IP audit policies, (f) Assistance in formulating internal IP policies and administration of licensing and other agreements (exploitation or collaborative), and (g) detection of potential commercial partners and administration of agreements including assisting in or conducting negotiations, etc.

The overall capacity to leverage IP rights to attain and maintain competitive advantage indicates the real value of IP and also increases the value. However, the

involve both external and internal factors. External factors include issues of licensing/certificate and litigation; internal factors include issues of valuation, information, coordination, and education, etc. Overall, both the types are applicable to all types of company/SME to some extent.

Public institutions should have the tendency to emphasise more on licensing, information, and education. Spinouts and SMEs should emphasise on external issues of licensing and litigation, and, consequently, valuation. Large companies should be concerned equally with all issues, and the companies may be more aware of IP issues due to their in-house IP departments. Be it a large company or SME or spinout, it should be aware of its successful existence by way of adopting and implementing appropriate IPRMS.

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