

## INTELLECTUAL PROPERTY RIGHTS SPECIAL

# Taking intellectual property rights seriously

### INTELLECTUAL PROPERTY

#### INDUSTRIAL PROPERTY

#### COPYRIGHT & RELATED RIGHTS

#### TRADITIONAL KNOWLEDGE

#### INDUSTRIAL DESIGNS

#### PATENTS

#### TRADE MARKS

#### GEOGRAPHICAL INDICATIONS

DR MOHAMMAD TOWHIDUL ISLAM

**A**n intellectual property is a property in all features the term 'property' stands for. The features which include owning, transferring, offering rights and obligations, violation of rights, remedying in violations are also available in the case of an intellectual property. The tasks of preservation and protection of property rights are with the law enforcement agencies (LEAs) be it a corporeal (ordinary) property or an intellectual (incorporeal) property. The LEAs carry out their functions of preserving and protecting property rights by adopting prevention and cure methods. The prevention method is the technique of modern proactive policing flourishes on the idea that crime should be prevented from taking place in the first place by capacity building and raising social awareness. This method is made quite useful regarding intellectual property related matters in western countries. In Bangladesh, the LEAs' achievement in proactive policing in the field of intellectual property is not visible although they have a commendable performance in responding to any complaint concerning intellectual property violation. The number of police personnel and logistics that LEA's uses are quite figure-hugging compared to the population in Bangladesh. However, to the best of the knowledge, the training modules of the LEAs or their working manual do not have specific reference to intellectual property issues. For an example, the websites of the LEAs or their strategic plan 2012-2014 do not contain anything about intellectual property. This negligence is partly attributed to the lack of awareness among the LEAs and partly to the country's general economic condition.

Like other property rights, intellectual property rights are also rights enjoyed by private individuals or institutions, the end result of its violation or infringement may also affect the public and state affairs. For example, a fake medicine made by an unlicensed company may cause serious harm to public health, or gross violation of trademark standards may erect a barrier against foreign investment in the country. The LEAs, as parts of state machinery are set to protect intellectual property rights by preventing intellectual property theft. In performing their duties, the LEAs in other jurisdictions take on the methods of modern proactive policing which focuses on preventing the crime before it happens rather than remedying afterwards.

In addition, intellectual property rights are a kind of stimulus to the creativity of people and it significantly boosts the country's economic prospects by preserving the rights and engaging more people in creative works, research and development. Bangladesh as a member of the international community and as a country of making a creative environment is firmly committed to assure the intellectual property of creators and inventors are fully protected by ensuring a strong regulatory framework. As the role of LEAs are to prevent intellectual property theft, discovering and seizure of counterfeit goods, a clear knowledge of national intellectual property regime will help them in the operation. Currently, the agencies respond to a breach of intellectual property only after a complaint is lodged, but the changing nature and the threat of the crime will require, in future, surveillance and taking preemptive action before the crime comes off. To deal with the multitude modes of intellectual property violations effectively, the members and officers of the LEAs in other jurisdictions usually take special training in intellectual property. Reason behind the special training is the unconventional character of the intel-

lectual property crime than any other crimes that the agencies habitually deal with.

Furthermore, as part of the proactive policing, the LEAs are involved with different outreach programs including awareness-raising initiatives. This outreach program which aims to educate and aware people are largely depends on its ability to aptly choose the targeted audience group. In the case of Bangladesh, if we can make our people understand and appreciate the value of intellectual property and motivate their own sense of creativity by rewarding them in some way, we can successfully instill in them, an appreciation of what intellectual property is and why it is important. This sensibility will eventually contribute in reduction of crime in the society at large.

The initiatives to be taken by the LEAs can be divided into two parts:

1. Awareness within Agencies.

2. Public awareness-raising initiatives taken by the agencies.

As intellectual property related crimes are increasing in the country and trans-national threats to intellectual property theft are posing national security at risk, the capabilities of the LEAs should also be developed to deal with these crimes. Members of the LEAs who work directly with intellectual property related issues and other members in general should be educated in intellectual property matters. They should have clear understanding of national and international intellectual property laws, and how rights in intellectual property are created and protected through copyright, patent, trademark, and other related rights.

As part of awareness building, the LEAs must arrange periodic training programs aiming to educate their officials in intellectual property. These training programs may be conducted by internal instructors or with the help from external resource persons. Additionally, these training programs can be organised jointly with other public and private authorities to share the experience and expertise in an inter-agency basis.

The agencies may initiate public outreach programs specifically aiming at intellectual property issues. These initiatives may use standard communication tools such as: campaign, brochure/guides, competitions, exhibitions, helpline, essay competitions, media coverage, school visit, social media etc. The increasing appeal of social media as an effective communication tool can be used by the LEAs to create and grow public awareness in intellectual property. To create awareness about intellectual property crimes, our LEAs can publish information regarding intellectual property rights matters on their website, and the statistics on intellectual property related crimes in a different category rather than "other" category which render it impossible to get any clear picture.

Therefore, by providing sufficient information of intellectual property as a different category either in office records or in the website, the LEAs can vitally improve their policing consistent with government's promise to e-governance and citizen's right to information. In addition, the LEAs must bear in mind that intellectual property rights which are private rights and if these rights are infringed then it will affect the public and state affairs. So, in order to ensure effective intellectual property rights regime, the LEAs should adopt the methods of growing intellectual property rights awareness as part of modern proactive policing.



### Rights discourse of Hijras

*Hijras*, who are neither male nor female, is a community of Bangladesh. This is regretful to mention that unlike other majority groups, *Hijras* have no socio-legal recognition and hence they are not subjects of any social benefits and human rights discourse offering rights to any particular group though the Government of Bangladesh recently recognised them as a separate gender. However, none of historical, social or, biological arguments deny their very humanity in essence. If this premise has epistemological and factual truth that they are human, there should not be any legitimacy of denying them legal recognition as person and their natural rights.

Factually, it seems almost inevitable that the *Hijras* represent the most vulnerable among the marginalised groups, unlike other groups since their non-recognition by the legal regime. This dejection bears the likelihood to produce more social isolation bringing more poverty and sufferings. As it is mentioned, their isolation from legal recognition or empowerment discourses in no way legitimises their not being subjects of law or rights.

Article 27 of the Constitution of the People's Republic of Bangladesh provides that, all citizens are equal before law and all are entitled to equal protection of law.

So, being citizen of Bangladesh by birth, *Hijras* have the constitutional and fundamental rights to be treated equally before law as other citizens treated. Article 28(1) of the constitution provides that, the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

Further in accordance with Article 28(3) there is no scope of discrimination among the citizen only on grounds of religion, sex, caste, race or place of birth and it is the fundamental rights of every citizen including *Hijras* to access any public entertainment or admission to any educational institution or admission to any educational institution.

For the recognition, protection and promotion of *Hijras* rights the following steps may be taken by the Government-

- Making special provisions for the recognition, protection and promotion of the rights of *Hijras* as the backward sections of citizens.
- Making system of rehabilitation for the *Hijras*.
- Establishing special educational system for the *Hijras*.
- Ensuring free educational system for the *Hijras*.
- Ensuring the participation of *Hijras* in national life.
- Creating awareness among the common people about the rights of *Hijras*.

T. M. ABEED HASAN  
Student of LL.M. BUBT



*This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.*

#### Query

I am a European national working in Chittagong, Bangladesh for the Bangladesh office of a foreign company for about two years. But I do not have any work permit in Bangladesh. I have requested by employer to arrange for a work permit for me but they are not very keen in this regard. When insisted they told me that if I can obtain my own work permit they will not have objection. But, they will not increase my salary for any income tax matters. So far, I have been using either Tourist or business VISA to come and stay here. Please advise if I really need a work permit and if so, can I obtain it on my own. Is there any sanction for not having a work permit?

#### Response

Thank you very much for your query. Private sector industrial enterprises (outside EPZs), branch or liaison offices of foreign origin and local commercial enterprises desiring to employ foreign nationals are required to have work permit from the Board of Investment ('BOI'). Without work permit you are not actually allowed to be employed in Bangladesh. Hence, your employment for almost last two years can be considered as unauthorised and in violation of the laws of the land. It appears that you have not also paid the income tax on your salary and hence you and your company have violated the provisions of the Income Tax Ordinance, which amounts to criminal offences.

Hence, on a practical note, I would advise you to resign from the job immediately and leave Bangladesh at the soonest as you run the risk of being prosecuted. On a contrary note, if you want to stay and continue your job, honestly you have to do the following process immediately with BOI. From the following description, you will realise that obtaining work permit is very much corporate oriented process and opposed to a personal one.

For expatriate employment, the guidelines are as follows:

- Nationals of the countries recognised by

Bangladesh can only be considered for employment. You being a European need not worry about this.

- Your employer needs to be an industrial establishment or commercial enterprise duly registered/permited by the BOI. So, please check whether your employer satisfies this.
- Number of the expatriate employees in an industrial enterprise should not exceed 1:20 (foreign: local) ratio at any time during regular production and the ratio for commercial

office is 1:5 (foreign: local).

- Employment of foreign nationals is normally considered for the job for which local candidates are not available. Accordingly, before you can apply for a work permit, the company has to publish a job circular in the newspaper and/or web-job portals and take interview of the local candidates, if any. If no local suitable candidate is found, only then BOI will consider issuing a work permit in favour of a foreigner.
- Decision of the Board of Directors of the company concerned for new employment/extension has to be furnished specifically stating that the company has decided to appoint you along with your salary breakdown, date of joining, term of posting, designation etc.

## Ensuring IP Rights

*'Be aware to protect your IP rights'*

MOHAMMAD GOLAM SARWAR

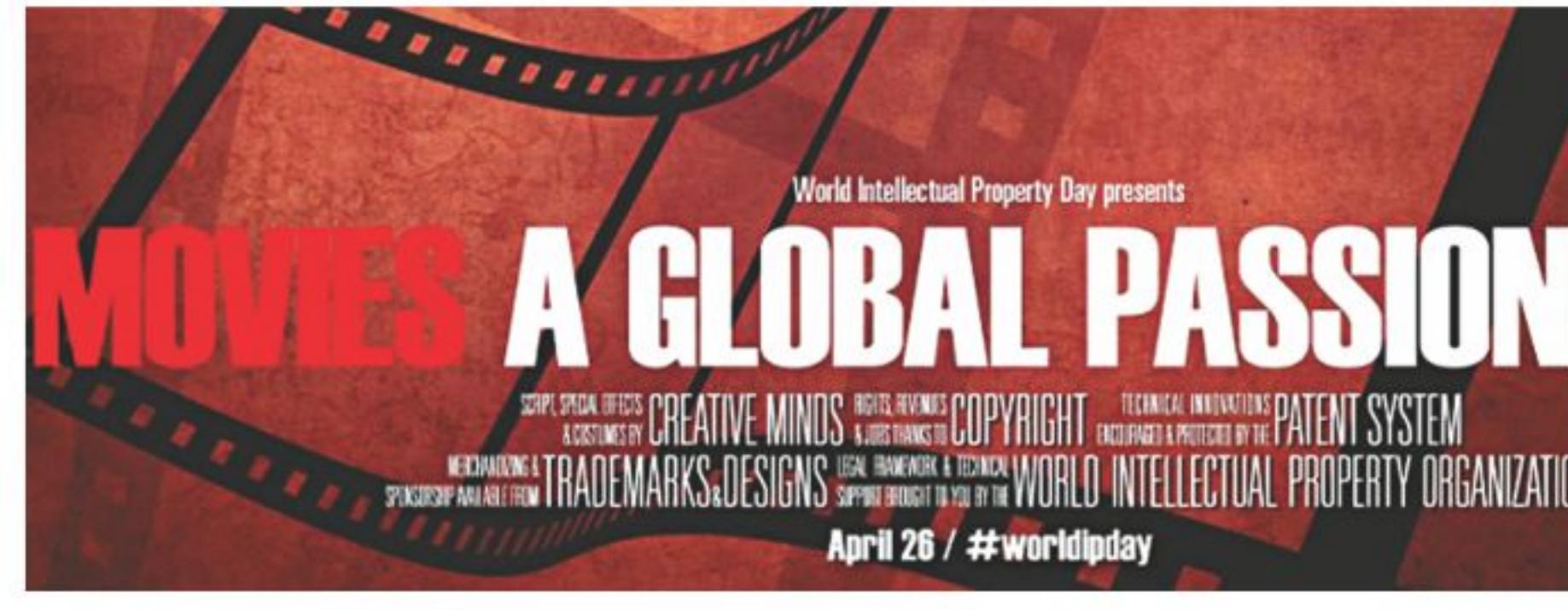
**I**n order to attain the benefits of modern innovations and at the same time to retain the intellectual creativity along with the sense of belongingness, a strong Intellectual Property Rights (IPR) system needs to be strengthened. Only a strong IPR system can ensure reward for the ideas of the inventors and innovators. IPR protections foster an environment in which creative and innovative industries can thrive and contribute to economic development worldwide.

However, it is very much unfortunate that in this modern world we have failed to create a strong intellectual property rights system. Most of the laws relating to intellectual property rights are outdated and often fail to address modern innovations and creatures. In addition existing laws including the draft legislation regarding patent, trademark and industrial design are not compatible with the international standards dealing with IPR rights. As a result we are far away from the integration of our innovations and ideas into the global market place.

The drafted laws in relation to intellectual property rights need to be immediately passed with proper plan of action. It should also be revisited with due care and attention in order to make it more people centered. In addition, the draft laws should be redefined with a view to comply with the International instruments (as for example: TRIPS, WTO, PARIS Convention etc) dealing with various dimensions of intellectual property rights.

Laws in Bangladesh often see proper implementation rather these remain in letters without giving any benefit to the target groups. Laws should reach to the people so that they can ensure their rights through the application of law. The Legislation must be designed to ensure access for indigent, vulnerable groups and downtrodden sections of the society with particular emphasis.

Implementation of any law involves many factors as for example the role of implementing agencies, the understanding and awareness of law among the right holders and duty bearers etc. In this regard the role of the Department of Patent, Designs, and Trademarks (DPDT) is vital. The practical evidence suggests that this department is



suffering from lack of resources and equipment. It often takes the help of outside examiners which remain this department far away from institutionalisation. The implementing agencies need to be equipped with trained human resources and other logistics. The beneficiaries of intellectual property rights should be empowered through the dissemination of IPR knowledge and information. Courts in Bangladesh can play a proactive role to define and interpret IPR issues by virtue of judicial activism. Courts can hold the duty bearer accountable and provide impetus to perform their respective obligations.

Another important challenge regarding implementation of IP laws is to rely on the exemption clauses in relation to pharmaceuticals and agriculture. Relying upon these temporary "exemptions" is a choice fraught with risks. An economy built on weak IPR foundations is one in which the abuse of foreign and domestic IPR occurs hand-in-hand. In order to improve the public health condition as well to ensure the farmer's rights IPR protection measures should be powered.

Lack of knowledge and information regarding IP rights among the maximum population of Bangladesh is still prevalent which makes them more indifferent to avail their entitlements in regard to their creations. In terms of creating awareness the focus on the involvement of the various communities should be prioritised. Educational policy makers, Trade bodies and Industry, Scientific community and institutions, Non Governmental institutions (NGO's) should be engaged for a well developed approach of awareness rising.

In this regard, the Intellectual Property Association of Bangladesh (IPAB) staged an announcement on April 27 for enhancing public awareness to "Stop IPR Violation, Build the Nation; Save Film Industry" while observing intellectual property day 2014. This programme is undertaken with a view to address this year's global IP day theme 'Movies: A Global Passion'. IPAB underscored the importance of Film Industry which has significant impact to the national economic development, whereas our local Film Industry is suffering from protection for many years. Like IPAB, the concerned authorities, be it government or non government organization, should come forward to aware people in regard to IP rights.



### YOUR ADVOCATE



*This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.*

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**Permit to work must be obtained**

the E-VISA (may be in our country or may be in any other country).

- Thereafter, the employee will have to travel to Bangladesh with the E-VISA and apply for work permit within 15 days of reaching Bangladesh in the prescribed form with almost the same supporting documents.
- Necessary security clearance has to be obtained from the Ministry of Home Affairs (NSI and SB-Police) after issuance of Work Permit. The duration of visa would be extended up to the period of Work Permit.

I hope that the above shall help you and your employer company to understand your query regarding the work permit.