

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk



# Royalties for Music

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**T**HE music industry banks on royalties collected by the licensing of copyrighted songs and recordings as a key form of payment for musicians. Intellectual property law and licensing systems have gone through considerable revisions over recent years as a result of the upsurge of digital music. However, in Bangladesh much of the industry's legal framework for royalties remains unsettled.

Generally, there are two types of musicians – songwriters and performing artists including singers. For any given musical track, two distinct copyrights come around: songwriters hold the rights to the lyrics and melody of a piece of music, while performing artists hold the rights to a particular recording of a song, which is called a master recording. Songwriters may only claim copyright for a full song, and cannot split lyrics and melody into separate rights. The copyright for the song is marked by a © ("c" with a circle around it) and the sound recording copyright is marked by a (P) ("p" with a circle around it).

Instead of attempting to track a song's use and pursue for payment individually, both songwriters and recording artists usually assign their rights to a third party for management – music publishers and record companies, also referred to as labels or producers or the masters. Song copyrights are commonly assigned to music publishers, while master recording copyrights are given to a record label. Publishers sign publishing contracts with individual songwriters. The contract may enumerate that the publisher will represent the work of a composer or lyricist and promote its use. In return, the publisher holds part of the copyright to this work and turn into rightholders. Further, record companies furnish contracts with recording artists. Under the contract, the record company often becomes the owner of the master tape of recordings. In many cases, it is also the record company that pays copyright remunerations to produce CDs from recordings of songs and



develops into the music user. It is to be noted that these contracts cannot override any of the existing legal provisions.

In traditional music businesses, the sound recording copyright is always owned by the record company. As a result, the writers do not have anything to do with it but to accept the royalty how scanty it is. To get relieved of the grievances, writers or publishers now a days tend to own the sound recording because it is easier to self-distribute than it used to be and because the sound recording proves to be cost-effective and lucrative. This dual role makes them holders of both © copyright and (P) copyrights. Further, there is only one © copyright, but there might be multiple sound recordings, or (P) copyrights for a song as in the case of cover versions.

A musician can earn, from the use of an original music, two different types of publishing royalties – performance royalties and mechanical royalties.

A performance royalty is owed to the songwriter and publisher of a particular song whenever that composition is "broadcast" or performed "in public." These cases include: plays on terrestrial and

satellite radio, usages on network and cable TV, film, commercials, games, ringtones etc., plays on internet radio, plays on online music streaming services (torrent, Pandora, etc.), usages in hotels, restaurants, stores or intercoms etc., and performances in live venues. However, musicians are not bystanders and they do not have time to get hold of every individual. Consequently, Performing Rights Organizations (PRO) come in play as facilitators. As a musician, for an example in the USA, one needs to affiliate with a PRO such as ASCAP or BMI. These societies collect and distribute performance royalties on behalf of songwriters and publishers. However, in countries such as Bangladesh where awareness for copyright is pitiable, the absence of such effective societies affects musicians insufferably.

Further, musicians are owed a mechanical royalty every time a song is reproduced on vinyl, tape, CD, MP3, etc. and sold, or downloaded on a digital music retail site, or streamed through services. In the western world, this royalty is statutorily set to a rate and often paid straight to the publisher. For example, the US Copyright Act 1976 and its rules

set mechanical royalty to 1.75 cents per minute of composition, or 9.1 cents per reproduced "copy" of that song whichever is greater, regardless of whether those albums or singles are sold. If someone covers one of the musicians's songs and they manufacture 1000 CDs – they owe the musician \$91, regardless of whether those CDs ever get purchased by customers. Further, if a song is sold on iTunes for \$0.99, they keep \$0.29 leaving \$0.70. Out of that comes for songwriter/publisher \$0.091 leaving \$0.609 for whom ever owns the sound recording aka master. That is 60.9 cents for the sound recording copyright owner and only 9.1 cents for the songwriter and publisher.

Such mechanical royalties are sometimes collected by mechanical rights agency. For example, Harry Fox Agency in the USA, which is the licensing subsidiary of the National Music Publishers' Association collects the royalties and charges the publisher a commission of approximately 4.5% of the gross royalties collected. In either case – mechanical or performance, the collected royalties are then shared with the publisher and the copyright owner, following their own songwriting agreements. This agency also registers music albums with foreign collection societies.

However, in many countries including Bangladesh, mechanical royalties are not set yet and frequently a lump sum payment is made without following any calculation or standard contract. In addition, no agency stands in the fore as of today to register music home and abroad and collect royalties therefrom.

Given this, Bangladesh can have facilitating societies to collect and distribute stakeholders' royalties in music. For setting equitable royalties, it can follow the international best practices by adding specific provisions in the Copyright Act 2000 and the Copyright Rules 2006.

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## NATIONAL LEGAL AID DAY 2015

### Legal Aid to ensure access to justice

MOHAMMAD NAYEEM FIROZ

**F**ESTOONED with august democratic ideals, the sacred words of the Bangladesh Constitution guaranteed the rights to 'access to justice' and entitlements to be equally treated at the refuge of legal protection in all sort legal crises for 'we, the people', irrespective of our societal, racial and political orientations. Followed by the historic judicial pronouncement of the long-awaited 'Independence (via separation from the executive) of the Judiciary' adjudicating the celebrated Masdar Hossain Case by the Apex Court the people of Bangladesh are enjoying the privilege of getting legal remedies from a more influence-free judicial system in comparison to earlier era. Given this situation the disposal rate of the cases and the rate of access to justice for the common people have been improved manifestly.

The spirit of judicial independence was, by all feasible means, to foster objective, cost-effective and speedy legal justice and equitable relief to the litigant people. But do all the justice seeking people avail simple access to justice in the current judicial service domain? Ironically it's a big NO. Nonetheless, it is a matter of great gladness that the real situation has been tackled by the Government and is under several 'sustainable scheme of mitigation' through providing legal aid to the marginalised and impoverished people all over the country.

The legal framework of state-offered legal aid program was institutionalised with enacting the Legal Aid Services Act, 2000 and Legal Aid Services Regulation, 2001 by setting up the National Legal Aid Service Organization (NLASO) under the Ministry of Law, Justice and Parliamentary Affairs and initiating Court-Annexed Legal Aid Service in every district.

According to its objective as embodied in its official website, NLASO provides legal aid to the poor litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and also for various socio-economic conditions. The general direction and administration of the affairs and functions of NLASO vest in a National Board of Management. DLAC maintains a legal aid fund allocated by the government which is spent for poor litigants upon their applications. There are



National Legal Aid Services Organization

Upazilla and Union level committees also working to spread the legal aid program at grassroots.

NLASO's Mission is - 'To provide high quality legal aid services to the poor in accordance with the provisions of the Legal Aid Services Act'. While its Vision is - 'To ensure equal protection of the law for all and equal access to justice for the poor and disadvantaged'. And its Mandate is set - 'To provide legal aid to the litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness, physical and mental disability, gender disparity and other socio-economic conditions'.

28<sup>th</sup> April has been declared to be the National Legal Aid day since 2013 and being spontaneously observed through various awareness generating program both in national and local level every year. Seminars, discussion sessions, legal aid rally, information fair, legal aid related publications on that very day are arranged, organised and participated by the District, Upazilla and Union committees to uphold and magnify the significance of Government Legal Aid interventions. The NLASO has taken various candid endeavors to observe this year Legal Aid Day with utmost importance to convey the significance of Government Legal Aid Service for the impoverished and forlorn people seeking justice.

The Court-annexed Legal Aid program of Bangladesh Government has seen a far-reaching success in last few years through necessary policy reforms, awareness building programs and activating the monitoring mechanisms of the activities of District Legal Aid Offices and District Legal Aid Committees by the NLASO.

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## AVOID ANOTHER RANA PLAZA? Augment democracy for workers

MS. CHAUMTOLI HUQ

**A**S we approach two years since the horrific Rana Plaza tragedy where over 1100 workers lost their lives, and countless others are surviving under miserable conditions without employment or meager source of support, the question that remains: How do we avoid another Rana Plaza? We have to increase democracy for workers both in the workplace and in their government. Had there been a union at the factories at Rana Plaza, workers may have opted to refuse to work that day. Had there been more elected representative reflecting the interests of labor in the Government of Bangladesh, then, we would have better labour laws to protect efforts by workers to organize. If consumers abroad were mobilised to lobby their own governments to regulate their multinationals, then global brands may be held legally accountable for their failure to create safe workplaces based on their business model of seeking cheap labour. Democracy demands that citizens have an active say in decisions and policies that affect their lives. In Bangladesh, workers need democracy at their workplace, and in their government.



Unions are a form of democratic governance at the workplace. While we espouse democracy for civil society, it is curious how even the best meaning is virulently opposed to unions often citing violence and corruption as the reason. Yet, despite our imperfect democratic forms of government, we never abandon democracy as a guiding principle for our lives, and so why shouldn't democracy operate in the working lives of garment workers. Mechanisms should exist for workers to demand improved working conditions that include wages, benefits like maternity leave, and affordable housing. Through unions, workers can address inequities in their workplace just as voting and elections are a process by which citizens can register their demands to their government.

Obstacles and threats to organising is a failure to allow workers to have democratic rights, and are in part based on our classism and sexism in our society. When we deprive women of equal participation in our society, of course, it is easy to deny their participation in their workplaces as garment workers. It is not surprising that from my studies women are the most ardent supporters and leaders of unions because they understand that through unions they are able to address both class and gender inequities in our society.

Since Rana Plaza, there has been a focus on the Accord and Alliance, two international workplace safety programs as the focal point of advocacy to improve workers' rights. While these programs are helpful to improve factory condi-

tions, they will not completely address safety without fully engaging workers or creating structures that empower workers to address safety issues themselves. My research has shown that workers are not aware of these programs, and have not been fully engaged in them. This is a huge shortcoming for these programs.

Moreover, while consumers abroad have been mobilised and engaged to support the Accord, they have not pushed to lobby their own governments to change the ways their own companies do business in Bangladesh. Democratic, including electoral and governmental spaces, have not been activated internationally around Rana Plaza.

When asked about avoiding Rana Plaza, it is not surprising that workers uniformly demand unions in every factory. They demand that global brands source from factories that have worker elected and constituted unions. If factories provide wages aligned with workers' living costs as well as essential benefits like health care this

will address some quality of life concerns that often result in high social costs for workers' families. In essence, what workers want is greater say over their workplace lives, which can translate to an improved quality of life.

Outside of the workplace, there is no political organization that can demand for better laws for workers in Bangladesh. Many representatives in government are garment owners who are invested in protecting their own and industry's economic interests. In the on-going Dhaka City elections, who is the labour candidate? Babul Akter, of Bangladesh Garment and Industrial Workers Federation, spoke to me of the need to evaluate political candidates on the grounds of policies they make that improve workers' lives. He is right. Workers need a political voice to lobby for their interests in government that is independent from partisan politics.

Outside of the factory gates, workers need democracy in laws and policies that impact their working lives, and unless there are candidates that are explicitly taking on a labor agenda, we will continue to see laws that favor owners' interests over that of workers' lives. Both at the workplace through unions and outside of the factory through an independent political platform, workers need democracy. Without institutions protecting their democratic interests, and most importantly, their lives, another Rana Plaza is inevitable, and we will sadly have new tragedies to mourn.

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## LAW NEWS

### Women's empowerment key to end sexual violence



**A**S the great moral issue of our time, sexual violence in conflict is used to terrorise, displace and subjugate victims, the Special Representative of the Secretary-General on the issue told the Security Council on April 15, urging the body to take action to deal with this growing threat.

"The history of warzone rape has been a history of denial. It is time to bring these crimes, and those who commit them, into the spotlight of international scrutiny" Zainab Hawa Bangura said as she presented to Council members the Secretary-General's 2015 Report on Sexual Violence in Conflict.

Stressing that the time has come "to send a clear message that the world will not tolerate the use of sexual violence as a tactic of war and terror," she told Council members that the text before them today served not only as an annual report of record, "but as a global advocacy instrument and vehicle for refining our common understanding of critical themes, to enhance coordination and build global consensus."

"For the first time, (the report) articulates how sexual violence is integrally linked with the strategic objectives, ideology and finding of extremist groups, noting therefore that women's empowerment and sexual violence prevention should be central to international response," she explained.

The annual report sheds light on a number of new themes, including a list of 45 parties, mostly armed groups, suspected of committing sexual violence as a tactic to terrorise. It also links sexual violence in conflict with forced dispossession of land and property and the denial of women to vital sources of livelihood.

It also highlights the vulnerability and targeting of ethnic and religious minorities, including LGBTI individuals by armed groups, who are keen on imposing morality and exert social control.

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