



TRIPS Agreement and Bangladesh

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INTELLECTUAL property refers to creations of the mind such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the main international legislation dealing with different kinds of intellectual property rights (IPRs) i.e. patents, industrial designs, trademarks, copyright and related rights, trade-secrets, layout designs for integrated-circuits, geographical indications (GI) and plant varieties protection (PVP).
 In Bangladesh, IPRs cover a wide range of ingenious works: inventions by patents,

1911 is concerned, "any manner of new manufacture including an improvement thereof" is patentable. So the patentability criteria seem to be very wide and flexible. More so, it could be argued that even a new plant variety could be patented. However, the farmers are not able to patent their varieties, since their varieties have been in the public domain and do not fulfil the criteria of "novelty" to get patented.
 Nevertheless, bio-pirates collect local varieties, put them into bio-prospecting and develop new varieties. Since the country is yet to formulate the provision on right to access to benefit sharing and disclosure requirement in patenting such inventions, the country's indigenous

Copyright Act 2000 seems to be archaic, for it does not offer provisions to combat online copyright piracy. Further, this Act has not adopted the principles of "prohibition of anti-circumvention" and "Digital Rights Management" (DRM) of the WIPO Internet Treaties for taking technological measures to control access and copy of copyrighted materials. Moreover, the Act has no provision for the protection of copyright in database and prohibition of deep-linking, meta-tagging or p-2-p transmission of copyright materials.
 The copyright regime has also failed to delineate a minimum framework for the right to equitable royalty of the stakeholders in the music industry. In addition, in the absence of traditional cultural

regime has made no provision for post-grant quality surveillance system.
 With the development of the corpus juris of IPRs, cross-cutting IPRs issues like GI, traditional knowledge (TK), e-commerce and telecommunications have developed. However, the bifurcated IPRs management system, namely, the Department of Patents, Designs and Trademarks (DPDT) and the Copyright Office suffers from lack of coordination and expertise on cross cutting issues.
 In addition, the Registrar of the DPDT is the only forum to dispose opposition disputes. Again, an appeal may be preferred to the government against his decision. However, the appellate authority may not have expertise on IPRs issues.
 Furthermore, since Bangladesh has not signed and ratified the international treaties providing international protection of IPRs like PCT for patent, Madrid system for trademarks, Lisbon Agreements for GIs, the IPRs owners of the country will have to pay for respective foreign country's registrations fees otherwise their goods will be susceptible in the foreign markets.
 Having said the above, separate laws should be enacted for the protection of industrial designs, utility models, PVP, cross-cutting IPRs, trade-secrets, preventing unfair competition, and integrating IP offices, and necessary amendments need to be made to the existing laws. Despite the TRIPS' transition period until 2021 or 2033 for pharmaceuticals, the government should be serious to implement its TRIPS obligations in phases to develop a culture of IPRs protection and enforcement since it would not be possible to comply with the TRIPS overnight once the transition period is over. For better compliance, the country should focus on IPRs education to create awareness among the stakeholders. This awareness building would improve both IPRs creation and enforcement.
 Finally, for effective IPRs protection and enforcement, there should be an appellate intellectual property tribunal comprising of intellectual property law experts, a special unit of law enforcing agencies for enforcing IPRs, and special judges for disposing of IPRs disputes. Until this is done, law enforcing agencies and judges dealing with IPRs should have appropriate training.

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distinctive shapes by designs under the provisions of the Patents and Designs Act 1911; literary, dramatic and musical works by copyright under the Copyright Act 2000; business names and logos are protected by trademarks under the Trademarks Act 2009. In addition to that, distinctive goods famous for their special qualities or characteristics are protected by geographical indications under the Geographical Indication of Goods (Registration and Protection) Act 2013. Further, if someone performs in a song either as a vocalist or otherwise e.g. as a guitarist s(he) has some rights as a performer, and is entitled to protection under the Copyright Act 2000.
 So far as the Patents and Designs Act

germplasm is in danger of misappropriation by the seed conglomerates.
 Further, the Patents and Designs Act does not give the inventor of a design any right *qua* design, rather it gives copyright on designs. Again, the Patents and Designs Act has no provision for "petty patents" or "utility models" so as to encourage small inventions by the SMEs or even by the individuals.
 Additionally, the country has no legislation to protect trade-secrets except under the general provisions of the Contract Act 1872 or the Competition Act 2012. The country also lacks legislation to protect layout design of topographies and integrated circuits or to prevent unfair competition.
 As regards copyright protection, the

expression (TCE) law, our folk music remains unprotected.
 As regards trademarks, the existing regime contained in the Trademarks Act 2009 seems to be incapable of regulating trademark issues arising out of e-commerce. Further, the Act has not elaborated the passing off action for unregistered trademarks. For this, businesses often find infringement of brands - distinctive not being registered or descriptive incapable of being registered but cannot successfully litigate the wrongdoers for passing off actions.
 As regards GI, the definition of genericide in the GI Act 2013 seems to be very wide making the Bangladeshi GIs vulnerable to genericide since a GI can easily become generic. Moreover, the GI

Need for witness protection law

ASHABUR TURAN
THE word 'witness' can be defined as any person, who is required to give evidence in any investigative or judicial proceedings in relation to the commission of an offence. At present the criminals have become organised and are creating a challenge to the existing state of law and order. In Bangladesh, it is seen that, in most of the cases involving rich and influential persons, essential witnesses turn hostile. Witnesses often get threats, intimidation and harassment by the accused party for preventing them from giving their evidence. Our legal framework to tackle such situation is inadequate.
 Section 506 of the Penal Code, 1860 provides for punishment for committing criminal intimidation but it is very much insufficient for the protection of the witness. On the other hand, sections 151 and 152 of the Evidence Act, 1872 prohibit insulting questions to the witness while examining in the court of law.
 Unfortunately, Bangladesh still does not have any separate law for the protection of witnesses. Recently while hearing a bail petition on 7 December 2015, a bench of the High Court Division of Bangladesh Supreme Court has directed the government to take necessary steps to enact a law for the security of the witnesses of criminal cases in order to ensure that witnesses



appeared before courts without fear. And for the reason criminal cases could be disposed off quickly. The bench asked the secretaries to the Home Ministry and Law Ministry to include necessary rules in the relevant law so that the Public Prosecutors and Police remain accountable for absence of witnesses.
 Under the English law, threatening a witness from giving evidence is contempt of Court. So any act of threat against a witness after he has given evidence in Court, is also considered as contempt. The UK Government has a law known as Criminal Justice and Public Order Act, 1994 which provides for punishment for intimidation of witnesses. Section 51 of the Act not only protects a person who is actually going to give evidence at a trial, but also protects a person who is helping the investigation of a crime.
 In the United States, the Witness Security Reform Act, 1984 ensures the protection of a witness in an official proceeding concerning any serious offence. Protection is also being provided to the family of such witness if the family remains endangered on account of the participation of the witness in the judicial proceeding.
 In the matter of *Swaran Singh v State of Punjab* (AIR 2000 SC 1017), the Supreme Court held that "A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot." The Court also said that "Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him."
 Therefore, there is an urgent need for making a specific law providing for the rights and protection of the witnesses. It is necessary to ensure that the persons participating in the legal process are out of fear and undue influence, so that justice can be assured. Closed-circuit camera can be set up in all courts which can ensure security of the witnesses as well as all other persons related to court. Evidence through video conference can be given from a safe, secure and secret place, far from the court which should be legalised by the law.
 Finally, equipping the courts with the modern technologies can make the witness free from any shadow of threat or intimidation which can enhance the quality of justice.

THE WRITER IS ADVOCATE, DHAKA JUDGE COURT.

LAW EVENT

Ensuring rule of law and human rights

RECENTLY on 19 January 2016, a special talk on the topic of *Human Rights: The Role of Young Lawyers* was held at the Department of Law, State University of Bangladesh (SUB). Eminent jurist and architect of Bangladesh Constitution, Dr. Kamal Hossain spoke in this event. In his speech, he underscored the importance of collective and strong protest against the grave human right violations occurring at present days in Bangladesh and beyond.
 Dr. Hossain also maintained that exercising and asserting human being's freedom to protest in all sorts of situations could play a significant role to establish rule of law - and eventually to protect human rights - in a country. According to him, the young lawyers have a particular obligation to protest against human rights violation and they could do it through defending the victims in an honest and courageous way. Furthermore, he highlighted the role of media along with that of young lawyers, in this connection as well.



In addition to sharing his experience of professional life, Dr. Hossain encouraged country's law students to pursue the honest path of practicing in Bangladesh's both lower and higher courts. He believed that good legal practices would ultimately help society reach the highest peak of desired justice, peace and solidarity.
 Students participated in this session and interacted with Dr. Hossain by way of asking him about different aspects of legal profession. Referring to few historical antecedents of Bangladesh's liberation war movement, Dr. Hossain in details shared his story of professional life development from Pakistan era to Bangladesh emergence and now onwards.
 Among others, the event was attended by Dr. M. Shahjahan, Acting Vice-Chancellor of SUB; Dr. Asif Nazrul, Advisor of SUB Department of Law; and Mr. A Y M Ekram-ud-Daulah, Registrar of SUB.

THE EVENT WAS COVERED BY ASHFAQUR RAHMAN, LECTURER OF LAW, STATE UNIVERSITY OF BANGLADESH.

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.



QUERY
 Dear your advocate, it is our pleasure to write to you. We are an International NGO (INGO) operating in Bangladesh in Multiple development sectors. So far we have been receiving grants from our head office or sometimes directly from government of different European countries or other reputed donors. However, we have been approached by several local organisations, which are willing to be our donor and requesting us to implement projects with their grant amounts. We are desirous to know if we are allowed to receive local grants being an INGO. Thank you.

RESPONSE
 Dear reader, thank you very much for your query. You are in particular desirous to know whether as an International Non-Government Organisation (INGO), your organisation can receive donations/funds from any local/ national donor.
 Local NGOs can receive donations/funds from both international and national donors. In case of foreign donation, local NGOs need to take permission from NGOAB. As regards INGOS, the situation is little vague. It is generally perceived that INGOS by default shall be receiving funds/donations only from foreign donors. However, it is merely a presumption and there exists no legal bar in receiving donations/funds from local/national donors.
 The above is, however, subject to at least two practical conditions. Firstly, your organisation must ensure that there is no restriction on receiving donations/funds from national or local donor in Bangladesh

in the charter/constitution of your organisation. Your constitution must allow such receipts and utilisation of donations/funds from national or local donor in Bangladesh or at least the charter shall not impose any bar. Secondly, since your organisation is registered under NGO Affairs Bureau of Bangladesh (NGOAB), it is requisite that the permission or registration certificate issued by the NGOAB allows, or at least does not bar or restrict, you to receive and utilise donations/funds from national or local donor in Bangladesh. While such bar is unlikely, nevertheless you should carefully look into the terms of your registration document and any extension thereof.
 Should there be no bar/restriction in both your constitution as well as the permission/registration issued by the NGOAB, then there is no legal bar in receiving and utilising donations/funds received from national or local donor in Bangladesh.
 On a practical note, I would also advise your organisation to perform the followings before receiving or utilising such local amounts:
 • Whether the donor is a person or an organisation; carrying out a due diligence is highly encouraged to assess the donor and the source of amount offered;
 • You may attempt to acquire a general 'No Objection Certificate' from NGOAB;
 • You should maintain a book of accounts on all the donations received locally. This would aid you in proving how much money they have received and from whom, how they have utilised it etc. so that the document is readily available for inspection by NGOAB or relevant authorities.
 I hope that the above shall help you to ascertain the legal position of your organisation and act accordingly.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.