

Need for protecting IPR

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Our GI products, such as jamdani, hilsha, fazli mangoes, nakshikantha, sweetmeats, etc., are well-known across the world due to their geographical location or the qualities essentially attributable to them. Similarly, there exist traditional knowledge, techniques and expressions behind local medicines and forms of entertainment. Such knowledge or cultural expressions can be protected via IPRs with provision for access and benefit sharing.

To make progressive development in all sectors of economy, Vision 2021 aims to achieve a knowledge driven economy based on ICT, science and technology and digital communications system. Since the protection of IPRs favours this objective by promoting innovation and investment, it is absolutely essential to ensure legal protection of IPRs for achieving the goal of progressive development. In addition, effective protection may lead to the commercialisation of the technologies and may in turn bring in foreign currency. The protection of IPRs has the potential to increase market efficiency, ensure fair competition in businesses, and create a sustainable economy.

To turn Vision 2021 into reality, foreign direct investment (FDI) and technology transfer are also needed. For transferring technology across borders, there are interdependent channels, namely trade in goods, FDI within multinational enterprises and contractual licensing of technologies and trademarks to unaffiliated firms, subsidiaries and joint ventures. As a lower middle income nation, Bangladesh is trying to shape its economy by attracting FDI from various countries and multinational corporations (MNCs) by

improving investment policies and the regulatory framework, and by encouraging FDI in emerging high-return sectors. However, FDI is largely preconditioned upon the effective IPRs regime at the domestic level. In the absence of adequate protection for IPRs, MNCs and other foreign investors may be discouraged to invest here in the apprehension of their valuable IPRs and technical know-how being endangered.

In addition, the inclusion of IPRs within the World Trade Organisation (WTO) through the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS) has various trade implications for member countries like Bangladesh. For instance, the misappropriation of IPRs through free riding of internationally known trademarks is very common in Bangladesh. Inadequate legal protection in this regard may discourage FDI and technology transfer. Furthermore, the non-inclusion of IPRs within the multilateral trading regime attracts the jurisdiction of the WTO dispute settlement body in cases of non-compliance with TRIPS. This bears a serious challenge for countries like Bangladesh where the absence of effective protection and enforcement of IPRs allows widespread violation. So, in order to obtain maximum benefit from the multilateral trading regime, Bangladesh needs to formulate an appropriate policy regarding IPRs that fulfils its international obligations.

Moreover, IPRs protection prevents unfair competition and suppresses dishonest trade practices. In the absence of adequate legal protection of IPRs, Bangladesh is experiencing a wide range of unfair commercial practices, which affect the IPRs holders, distort markets

and mislead consumers. Practices like trademark dilution, copyright piracy, violation of trade secrets, and misappropriation of the goodwill of well-known trademarks, make foreign brands wary of investing here. Besides, honest businesspeople are economically prejudiced due to unfair competition. In order to ensure a knowledge-based economy free from unfair competition, it is essential to confer adequate legal protection to IPRs.

In an epoch of rapid economic development activities and expansion of FDI across the country, some guidelines and policies must be enacted in regards to the adequate legal protection for IPRs. Without promotion and investment in R&D, it is not possible to achieve the objectives of Vision 2021. As such, both public and private funding must be increased to stimulate further innovation and technology. To this end, the government and other private entities may establish scientific research and innovation centres in various public and private universities. In addition, the government should encourage new inventions in public research institutions like BRRI, BCSIR, etc. Apart from encouraging innovation, the government should facilitate the adequate legal protection of inventions through patents or utility models and ensure proper licensing agreements. For this purpose, a national innovation council may be established to promote and protect innovation.

Further, in this period of increased research in the field of agriculture, climate adaptation technology, and green environment techniques, Bangladesh needs to enact a new patent law to replace the century-old colonial patent law, the Patents and Designs Act

1911, to provide adequate protection to national inventions and to promote innovation. The patent law can also accommodate the flexibilities entailed in the TRIPS Agreement, i.e. a transition period during which patents on medical and agricultural necessities are ignored; import of cheap patented products; and compulsory licensing of medicines for purposes of export. In this regard, Bangladesh may also adopt an innovation law or policy to encourage national scientific inventions on the basis of relevant best practices of countries like South Korea or Brazil, which adopted national innovation policies to achieve a cutting-edge science-based economy, and also provide financial incentives to researchers for their inventions.

There are other IPRs laws in force in Bangladesh including the Trademarks Act of 2009, the Copyright Act of 2000, and the Geographical Indication of Goods (Registration and Protection) Act of 2013. However, these laws are silent on how the low-priced editions of foreign books can be made available in the country to create knowledge, or how royalties for artists, musicians, performers, composers and writers can be insured to encourage them for continued creation. Further, the value addition to an existing technology or utility model is in no way protected in the country. There are no laws on trade secrets protection, unfair competition, traditional knowledge or traditional cultural expressions. The existing laws are not properly enforced and intellectual property offices are not adequately staffed and structured. So, in order to obtain maximum trade-offs under the current multilateral trading regime, Bangladesh needs to concentrate on

those areas of IPRs over which it has comparative advantage.

Additionally, stronger protection of IPRs implies various political, legal and international trade-offs for the country. It should compare costs stemming from the increased protection, administration and enforcement of IPRs with benefits such as the additional economic incentive and the attraction of FDI. Plus, formulating an appropriate IPRs regime depends on the breadth, strength and depth of protection. Therefore, it is essential to introduce an appropriate policy for creating and diffusing new knowledge and technologies that will ensure effective IPRs protection in light of our development needs. Public awareness must be raised since most Bangladeshis are unaware of the benefit of IPRs protection and the consequences of their violation.

In conclusion, it can be said that the present market economy is driven not only by physical resources, but by innovation and knowledge as well. To ensure an innovative society based on creative ideas, adequate protection of IPRs can be made a viable tool. Vision 2021 is an ambitious dream of achieving a technology-based modern Bangladesh. To achieve this ideal, the country requires development based on a thorough and effective IPRs regime, which favours increased innovation, attracts FDI and ensures adequate protection to IPRs at the domestic level. To attain an ICT-driven sophisticated Bangladesh, it needs to protect IPRs, build capacity and formulate appropriate policies.

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