



Enforcement of IPRs

ARIF AHMED

THE present world is witnessing increased attention on the issues concerning Intellectual Property Rights (IPRs) in the policy making at both national and global levels. IPRs are the rights given to people over the creations of their minds and often considered the ownership rights for the use of innovative works and is measured to promote innovation, investment in science and technology for the public welfare. This right is outlined in Article 27(2)

people should be appreciated. The IPRs provide the owners of IP the legally enforceable power to prevent others from using an intellectual creation or to set the terms on which it can be used. Only a strong system of IP protection can create an atmosphere where the innovative industries flourish to promote the overall economic development of a country.

The enforcement and implementation of IPRs in Bangladesh has been a much debated issue during the recent years. Enforcement of

Industries (MOI) and the Copyright Office under the Ministry of Cultural Affairs (MOCA). The Trademarks Act (2009), the Copyright Act (2000), and the Patents and Designs Act (1911) have given certain IPRs to trademark and copyright holder and patentee. These laws have defined some violations of the rights as crime. The Penal Code (1860) and the Customs Act (1969) also have declared certain activities as criminal offence.

The Government of Bangladesh has constituted different regular and special agencies empowering to limit the infringements of IPRs that must also be competent to protect the IPRs guaranteed by the existing legal framework in Bangladesh. The present functional agencies are: the DPDT, the Copyright Office, Mobile Courts, Rapid Action Battalion (RAB) and the local police who are working under different teams in different areas of Bangladesh.

The DPDT is a quasi-judicial body and the Registrar thereof acts as a tribunal against the decision of whom an appeal shall be instituted before the High Court Division. In case of violation of rights as to trademarks, no suit can be filed before any Court inferior to the Court of an Assistant Judge or a Joint District Judge. Since all the criminal proceedings at the first place are entertained by the Magistrate's Court, thus the criminal cases as to false trademarks, trade mark counterfeiting etc. are tried by the Court of First Class or the Second Class Magistrate, and in the metropolitan area by the Metropolitan Magistrate. An appeal against the decision of a Magistrate Court shall lie before the Court of District or Sessions Judge.

The IPRs are one of the susceptible areas in Bangladesh whose effective enforcement could renovate the socio-economic conditions of this country. Bangladesh has introduced a stronger IPRs protection system through enacting a number of legislations and becoming the party to various global instruments regarding IPRs. However, extensive violations due to having a fragile enforcement mechanism have discouraged the creativity and deprived inventive works of their pecuniary value and protection of uniqueness in this developing country.

THE WRITER IS A SENIOR LECTURER IN LAW, SOUTHEAST UNIVERSITY.



Clouds over privacy in virtual world

RAISUL ISLAM SOURAV

ONLINE surveillance, interception and collection of personal data have increased vastly in Bangladesh as the user on internet has increased rapidly in last couple of years. Online surveillance means close and continuous observation of a person or group who are under suspicion or the act or observing or the condition of being observed on online and interception means opening electronic transmission before they reach to the intended recipient.

However, the government recently plans to take a variety of projects to tackle growing cyber threats by monitoring online and social media activities round-the-clock. A 'Cyber Threat Detection and Response Network' centre will be set up and the government will be able to remove any contents and even block any sites anytime that includes online activities as well. Under the system, all international internet gateways will be connected with the network and a team will monitor online activities. The system will also identify the user who uses private internet protocol, project documents show. A similar cell named National Telecom Monitoring Cell (NTMC) has been working under the home ministry since February 2014. It conducts interception to help intelligence and law enforcement agencies in the name of state security. New sophisticated equipment used under these projects apparently enables the government to keep watch on internet users 24/7. Thus, it may criminalise online activities and shrink space for intellectual discourse by promoting self-censorship.

Hence internet users will be monitored under the internet surveillance technology that has the potential to infiltrate people's digital footprint on a mass scale. With these types of technologies the lines between mass surveillance, noble intentions of curbing online radicalisation and reducing cyber crimes can, and most likely will be blurred. People are at risk of being "monitored" through their personal data and internet activity regardless of their intention. In addition, these mechanisms may unreasonably deny citizen's right and restrict critical thinking, the questioning of the status quo, and take away from individuals one of their most powerful weapons — the right to speak freely without fear.

Nevertheless, the right to privacy is not an absolute right. Once an individual is under suspicion and subject to formal investigation by intelligence or law enforcement agencies, that individual may be subjected to surveillance for entirely legitimate counter-terrorism and law enforcement purposes. However, there is an urgent need for states to revise national laws regulating modern forms of surveillance and interception to ensure that these practices are consistent with domestic and international human rights law. The absence of clear and up-to-date legislation creates an environment in which arbitrary interferences with the right to privacy can occur without commensurate safeguards. State must protect the privacy of its citizens in compatible with Article 17 of the International Covenant on Civil & Political Rights (ICCPR) and Article 43 of the Constitution of Bangladesh.

However, regarding the right to privacy, the UN General Assembly affirmed that the rights held by people offline must also be sheltered online, and it called upon all States to respect and protect the right to privacy in digital communication. The General Assembly called on all States to review their procedures, practices and legislation related to communications surveillance, interception and collection of personal data and emphasised the need for States to ensure the full and effective implementation of their obligations under international human rights law.

Collecting massive amounts of computer-accessible information has become very easy these days. The reality is that snooping on emails, Facebook chats and Viber calls is tremendously easy for the tech brokers who enable this practice as part of a booming industry. Internet surveillance to tech companies is as same as what war time is for arms producers. For them it is a propitious time for soaring profits and stock prices. As the relationship between national security and individual liberties becomes murkier, the state surveillance, policing, and control gain favour globally.

In light of the absence of internet privacy law, the government has enormous power over the use of citizens' personal information and internet activity since nothing demarcates lawful use of user data from its unlawful use. However, a law is needed to ensure safe online environment for people; not to infringe their privacy.

THE WRITER IS AN ASSISTANT PROFESSOR OF LAW AT DHAKA INTERNATIONAL UNIVERSITY.

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of the Universal Declaration of Human Rights (1948) which provides that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

Protection and promotion of this right is a sine qua non for ensuring that the technological and economic developments resulted from the labours of innovative

these rights has taken a large place in the maximum global trade agreements. In Bangladesh the protection of IPRs is governed by several means, e.g., administrative, civil and criminal sanctions and IP is administered by two separate Ministries. The two offices responsible for IP matters in these two ministries are: the Department of Patents, Designs and Trade Marks (DPDT) under the Ministry of



WORLD INTELLECTUAL PROPERTY DAY Innovation-Improving lives



WORLD Intellectual Property Day is observed internationally on every 26 April. The observance of WIPD is organised by World Intellectual Property Organization (WIPO). The aim is to learn about the role that intellectual property rights (patents, trademarks, industrial designs, copyright) play in encouraging innovation and creativity.

This year, the underlying idea behind observing the WIPD is to explore how innovation is making our lives healthier, safer, and more comfortable by turning problems into progress. In line therewith, the theme of this year's WIPD is 'Innovation- Improving lives'. WIPO this year, through the celebration, will attempt to look into how the intellectual property system supports innovation by attracting investment, rewarding creators, encouraging them to develop their ideas, and ensuring that their new knowledge is freely available so that tomorrow's innovators can build on today's new technology.

The epoch-making changes that have been undergone by the world in the past was given birth to by the ordinary people who innovate extraordinary things for the better. Their innovations take myriad forms, from the mundane to the seemingly miraculous. Innovation is a human force that knows no limits which turns problems into progress pushing the boundaries of possibility, creating unprecedented new capabilities. 26th April only celebrates the relentless efforts made by the human community for a better and more prosperous tomorrow.

International instruments for the protection of Intellectual property rights are many in number. Bangladesh, even though has not observed IP as a very popular branch of law, is a member of a number of international instruments for the promotion and protection of IPRs. Those instruments include both multilateral treaties and WIPO-administered treaties and regional economic integration treaties. Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment (July 25, 1989) is the only bilateral treaty entered into by Bangladesh. Alongside the international instruments, Bangladesh also has a number of domestic legislations in order to strengthen the protection and promotion of IPRs.

COMPILED BY LAW DESK (SOURCE: WIPO.ORG).



Strengthening labour adjudication

IMTIAZ AHMED SAJAL & MD. SABBIR HOSSAIN

AT present, Labour Courts in Bangladesh are functioning under the Bangladesh Labour Act, 2006. According to this Act, the Labour Court is a unique and distinct court, constitution of which is based on tripartite representation model. The Court consists of a chairman and two members; one representing the workers and the other representing the employer. There is a panel of members of the Labour Court from which the Chairman appoints two members to constitute the court for the purpose of hearing an industrial dispute or a dispute relating to the service/employment of the workers. The Court while trying offences under the Act or resolving a dispute relating to the payment of wages or of compensation to workers for accidents, consists only of the Chairman.

Appeal from the judgments, decisions, or awards of Labour Court lies to the Labour Appellate Tribunal. The Tribunal may be constituted with one Chairman alone or with the Chairman and such other members as the Government thinks fit. The Chairman may be appointed from among the persons who are or had been a Judge or Additional Judge of the Supreme Court. Ordinarily the decisions of the Tribunal is final, no appeal lies against the order or judgment of the Tribunal.

Keeping the practical aspects aside, the Act itself too can be legally scrutinised for delving deeper into the problem. The Act has not provided for any criteria of judicial knowledge, experience or minimum qualification for members except for that of the Chairman. Though the Labour Court is a specialised judicial body but there is no provision requiring any prior experience (in dealing with labour law matters) or for minimum training for judges before getting them appointed from lower judiciary. As a result, indifference, inefficiency and unprofessionalism of judges and members hinder the proceedings of Labour Courts.

Though the Act mandated the Government to establish required number of Labour Courts, as of now, there are only 7 Labour Courts across the country (3 in Dhaka, 2 in Chittagong, and 1 each in Rajshahi and Khulna). There is only one Labour Appellate Tribunal at Dhaka. Among these, Courts of Dhaka and Chittagong are situated in the divisional headquarters. As a result a tea garden worker of Sylhet and a rice-mill worker of Brahmanbaria has to go the Labour Court of

Chittagong to file cases for their grievance, unpaid wages and compensation. A worker of Syedpur has to go the Labour Court of Rajshahi and a worker of Barisal has to go Khulna for seeking labour justice. Therefore, instead of going courts traveling hundreds of kilometres for their redress many workers have to embrace injustice. Harassing the toiling masses and workers in such a way in the name of delivering justice is contrary to the spirit of our Constitution.

The Act mandated the completion of trial in the Labour Courts and Tribunals within 60 days. However, it is found that about 50% cases take time from 1-3 years while around 20% cases take more

than 3 years. In most of the cases the reason behind this delay is adjournment of judicial proceedings on the request from the employers' side. As a result, a worker who is being terminated from one factory fighting for his unpaid wages and other dues and joined in a new factory, by appearing in the Court frequently s/he gets terminated from the new factory also.

By analysing court registers, it is found that, till September 2016: in the Labour Courts of Bangladesh, 15128 cases were pending and among these, 11272 cases have been pending for more than six months. It is also found that, case filing rate is higher than case disposal rate causing great sufferings to the working masses. A few number of labour courts are overburdened with cases resulting in the

backlogging and delay in disposal of cases. Disputes between employers and workers are inevitable in industrial relations. Resolving these disputes peacefully while keeping the working environment sound, will result in production, growth, investment, industry and economy of the country. To make the Labour Courts accessible for the workers and to facilitate them to recover their legal rights, at least one Labour Court (constituted with a Joint District Judge) should be established in every district and two in every district having industrial area and at least one Labour Appellate Tribunal (constituted with a District Judge) in every division of Bangladesh. Compulsory court sponsored ADR system should be introduced in the Bangladesh Labour Act 2006 to reduce inordinate delay and backlogging of labour disputes.

THE WRITERS ARE STUDENTS OF LAW, UNIVERSITY OF DHAKA.

