"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

LAW VISION

Intellectual Property regime in the age of Artificial Intelligence

Mohammad Ataul Karim

ARTIFICIAL intelligence (AI) generated contents have been posing formidable challenges to the existing Intellectual Property (IP) regime. It remains a critical question as to how far prevailing IP system, dominantly premised on the consequentialist and/or utilitarian approaches, is ready to accommodate AI generated contents. Besides, there are a good number of ethical and legal conundrums with regard to AI; for instance, lack of a regulatory regime, misuse of data, bias and discrimination. Perhaps, the most striking issue at hand is that since AI creates or invents contents based upon the provided data, the IP protection would transform the proprietary right on data potentially contravening the principles of data protection laws. Yet again, one cannot negate the ramifications of AIs in the current

stature. Thus, there have been contentious legal and policy debates on several yet to be answered issues: To what extent and magnitude, AI generated contents could be protectable under patent, copyright or design, and if it happens to be so, who would be the inventor, author or designer respectively?; What implications AI generated contents would have if legal personality, capable of possessing rights and duties, is awarded to AI?; What are the legal and policy options available for dealing with this new technology?

On the philosophical paradigm, as per the Hegelian approach, the inventor or creator has a legitimate justification to enjoy the results and benefits of such property due to the connection between the work and the person. However, the creative computers cannot be placed as the beneficiaries of their labors. Similarly, the *ex-ante* justification of inventiveness is also unsuited for AI generated contents. The semantic of romanticism that 'lone genius inventor or creator who invents or creates only if strongly incentivised' does not seem to be well fitted to justify protection of AI generated contents. The computers do not create or invent contents on own incentives rather they are instructed to do so. Furthermore, AI may create socially or culturally unacceptable or immoral contents since computers are value-neutral; this may lead to contrary proposition of 'social planning theory'. There may be concerns based on the 'free-ridding' doctrine, meaning, if AI generated contents are not protected then they will be open to copying, and undue benefits may be taken by others, thereby, it will go against the deontological justification of the IP regime like any other branch of law.

There are legislative hurdles involved in protection of AI generated inventions, particularly, with regard to patentability requirements of the human inventorship, prior arts, examination of the inventive steps and novelty. AI generated inventions involves a great deal of challenges, namely, what would be 'prior art' for machine generated inventions? Would it be possible for an ordinary skilled person such as patent examiners to reasonably locate 'prior arts' produced by the sophisticated machines? Do we need sophisticated machine AI examiners to search for 'prior art' instead of human patent examiners? Moreover, since the inventive steps are judged based on the 'non-obviousness' which implies the gap or improvement between the proposed invention and existing 'prior arts,' such differences would be difficult to be measured by a person having ordinary skill in the relevant art. Furthermore, computer generated claims may be designed in a way that would block the future developments of knowledge.

Human inventorship as requirement for a patent application is another issue worth discussing. Even though, EU approach of 'first to file' justifies non-examination of inventor in true sense, failure to meet formal requirement of human inventorship shall lead to rejection of patent application. In contrast, the US approach of 'first to invent' inherently requires disclosure of the inventor, otherwise it would face the EU-style consequences. Similar notion can be found in copyright system, where human authorship is mandatory and thus, AI generated works are excluded from copyright. An alternative argument, analogous though, can be put in line with the ratio of *Famous Monkey Selfie Case* (*Naruto* v *Slater*) where the US Court did not allow authorship to Monkeys although selfies were taken independently by Monkeys who surely had independent thinking abilities. In the European Union, the jurisprudence of *Infopaq Case* (*Infopaq International A/S* v *Danske Dagbaldes Forening*) may also exclude AI generated works from copyright protection. In this case, it was held that copyright is only granted to original works, and the originality must be stamped with "author's personality". Identical challenges may be found in AI generated designs as well.

Thus, there is ambiguity, lack of legal precision and policy uncertainty on the IP protection of AI generated contents. The policy makers including, relevant stakeholders of digital Bangladesh, should consider the possible legislative and policy options to protect the investments of AI industry to promote creativity and innovations in this booming sector.

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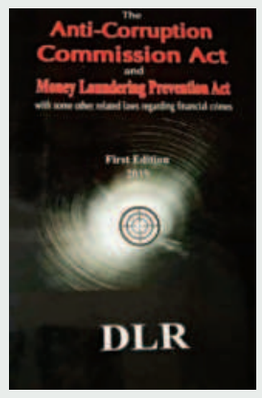
BOOK REVIEW

Comprehensive book on corruption related laws



THE word 'corruption' has multidimensional facets and corrupt practices have far reaching effects. Offences as such are often termed as white-collar crimes and are committed and carried out by individuals, corporations or organised groups for the purpose of generating huge profits. Anti-corruption commission Act, Money Laundering Prevention Act and the allied laws regarding financial crimes therefore are very important criminal laws in place to legally combat financial crimes. Judicial decisions concerning these laws too are of utmost significance in order to study the area of law concerning corruption and to equip the legal practitioners with the latest observations of the Courts.

First edition of the book titled *'Anti-corruption Commission Act and Money Laundering Prevention Act,'* is a significant contribution to the realm of academic work with regard to corruption related crimes. It has tried to accommodate the relevant laws with relevant judicial decisions. There have been quite a good number of laws that govern the area of corruption as well as financial crimes in Bangladesh. An important feature of the book is that it has not right away discarded the laws that have subsequently been repealed. Considering the value of the old and already repealed laws, the book has accommodated them with due regard and has discussed judicial decisions in their contexts too. For instance, it is not only the recent Anti-corruption Commission Act of 2004 or the Rules of 2007 that this book has accommodated, rather also the Prevention of Corruption Act 1947, Anti-corruption Act of 1957 that it has thoroughly discussed. Besides these, there have been separate discussion on Emergency Powers Ordinance 2007, Emergency Powers Rules 2007, Competition Act 2012. Furthermore, Criminal Law Amendment Act 1958, Criminal Law Amendment Rules 1977 too have been dealt with, among others. Discussion on relevant sections of the Income Tax Ordinance 1984 and those of the Penal Code have helped to make the book comprehensive.

This book has also dedicated a significant portion to the discussion regarding fugitive from justice and maintainability of writ petitions in criminal proceedings. The text of the statutes appears in the book as it appears in the version prepared and circulated by the Ministry of Law, Justice and Parliamentary Affairs.

The compilation of statutes along with the latest decisions of the apex court is both an arduous and a challenging task undertaken by Mr Md Khurshid Alam Khan, Advocate Supreme Court, senior prosecutor of Durnity Daman Commission and editor of Dhaka Law Reports. The work has been 'accomplished methodically, with care and dexterity', the publisher rightly opined in the preface.

The in-depth study and analysis made of important topics relating to corruption, money laundering, financial crimes, with the help of the pronouncements of the Apex Court has made it possible for the book to accordingly be treated as a useful tool fort the busy lawyers, judges, researchers and anyone undertaking training in legal skills.

FROM LAW DESK.

WRITING FOR EQUALITY

Can we make our justice system disabiled-friendly?

Md. Abdur Razzak

SUDEEP DAS, a visually impaired law graduate from the University of Chittagong, recently filed a writ petition seeking the Apex Court ruling to allow him to participate in the thirteenth Bangladesh Judicial Service Commission (hereinafter BJSC) examination with the aid of a writing assistant. Unfortunately, the High Court Division dropped the petition from its hearing list. It was reported on media that the BJSC successively refused to provide adequate assistance to enable him to effectively participate in the BJSC examination twice in the last two years. By virtue of the BJSC Rules 2007, blind and physically disabled persons are not eligible to be appointed for the post of Assistant Judge. The provision is clearly inconsistent with the disabled persons' right to access to justice guaranteed in Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter CRPD) to which Bangladesh is a State Party.

The concept of access to justice as articulated in the CRPD travels beyond the pre-existing notions of remedy, fair trial and equality. It has added several new dimensions to the right that entail much more than ensuring equal access to Courts. It requires the States Parties to make available the provision of procedural and age-appropriate accommodations to facilitate the effective role of disabled persons as direct and indirect participants in the field of administration of justice. In the disability context, the phrase 'provision of procedural accommodation' and 'indirect participation' in the administration of justice merit deeper attention and nuanced analysis.

A 2017 Report of the Office of the High Commissioner for Human Rights on Article 13 of the CRPD emphasised that procedural accommodation is indispensable to the effective realisation of the right of disabled persons to participate in the administration of justice. The report, however, raised the concern that such an obligation is narrowly understood by the States Parties in the absence of any general comment on Article 13. This is evident in most of the State Party reports submitted under the CRPD. Addressing the issue, the committee on the CRPD has guided how procedural accommodation for

disabled persons can appear in practice. For example, to cater to the needs of various forms of disabilities in the justice system, it is imperative to make available, among others, the provision of a sign language interpreter, accessible formats of legal and judicial information, multiple means of communication, easy-to-read versions of documents and Braille. Disability rights scholars have argued that the obligation to provide procedural accommodation is deeply intertwined with the principle of non-discrimination. In line with this, the CRPD Committee stressed that the failure to provide procedural accommodation when required by a person with disability potentially constitutes a form of discrimination based on disability.

In addition to direct participation as litigants, the CPRD provides for the indirect participation of the disabled persons in the administration of justice in various capacities including as a lawyer, judge or witness. To enable the disabled persons to contribute to the justice system through active participation, States Parties are required to eliminate all kinds of barriers including physical and legislative ones disabled persons encounter in their interaction with the administration of justice. The CRPD committee in its concluding observation on the initial state party report of South Africa recommended the States Parties to review their legislation to explicitly include the duty to provide procedural accommodation for disabled persons at all levels of the administration of justice on an equal basis with others.

Many State parties to the CRPD are gradually engaging in improving their justice systems for the disabled persons. For example, Chile has repealed the prohibition against blind and deaf persons to become magistrates. Likewise, the House of Federation in Ethiopia ruled against a customary practice which prohibited blind persons from acting as judges and ordered courts to provide for necessary accommodations for disabled judges to effectively perform their duties. In Peru, reasonable accommodations are made available for blind candidates participating in the examinations to become judges or prosecutors. In Germany, there are approximately seventy visually impaired judges currently serving at different levels of judiciary including the highest judicial office. Countries like India, Pakistan and the USA have appointed blind judges.

Indeed, the case of Sudeep reflects the broader concerns of inequality and unfair treatment experienced by the differently-abled persons in Bangladesh. Our judiciary missed a great opportunity to address these concerns in this case. We should not remain oblivious of the recent advances in the disability rights movement worldwide.

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LAW ANALYSIS

Legal approaches to curb air pollution

Raihan Rahman Rafid

THE air quality of Dhaka has been "unhealthy" and "extremely unhealthy" for an increased duration in recent years, says an analysis of Air Quality Index data, monitored by the Department of Environment under its Clean Air and Sustainable Environment (CASE) project. The capital has consistently occupied a top place for its worst air quality in the Index, maintaining an unhealthy competition with Delhi—a city that has turned into a "gas chamber".

Very alarmingly, stark similarities can be noticed between the causes of air pollution in Delhi and Dhaka. This raises the question: Will Dhaka embrace a similar fate as Delhi?

The major reasons behind air quality degradation are pollution from vehicles and construction works and indifferent operation of brick kilns. The government has commendably introduced legal measures to address these causes recently.

Section 46 of the Road Transport Act, 2018 prohibits driving of vehicles that exceeds the permitted emission of pollutants. Punishment for the violation of this prohibition under Section 89 is imprisonment for 3 months and fine along with deduction of a point on the driver's part.

Brick kilns, which are most responsible for air pollution due to the use of fire, have been planned to be converted into non-fire ones. The Brick Manufacturing and Brick Kiln Establishment (Control) (Amendment) Bill, 2019 is aimed to modify the existing law that prohibits conventional technologies in the brick-making industry. But the legislation is still to come into force.

Another proposed instrument targeted at controlling air pollution is the Bangladesh Clean Air Bill, 2019. The Bill focuses on a National Air Quality Management Plan. According to the proposed legislation, the government may declare an area "critical" if air quality deteriorates there or if it needs specific attention to deal with the situation. It also prescribes that for an offence by government agency, its head will be held accountable. However, the effectiveness of adopting such a plan can be questioned.

Earlier this year, India launched a similar five-year Action Plan to curb air pollution that focuses on 102 polluted Indian cities. But it failed to produce any remarkable results.

In Bangladesh, implementation of the laws is always the primary hindrance; then there is a lack of dedication and diligence on part of different government agencies particularly in environmental issues. Therefore, even after breaking the law, offenders are seldom held accountable.

At the beginning of this year, the Director General of the Department of Environment was asked by the Court to take steps and conduct mobile court twice a week against perpetrators for air pollution. The directive came after a writ petition filed by Human Rights and Peace for Bangladesh (HRPB). Unfortunately, the report submitted by DoE to explain their compliance was ambiguous and dissatisfactory.

In this regard, the government can seek reparation for transboundary harm in international platforms. That said, the neighbouring countries need to work together to check this aggravating threat.

According to the State of Global Air 2019, air pollution led to 1.23 lakh deaths in Bangladesh in 2017. Therefore, it is an undeniable threat to the citizens and the government must strive to fulfil its constitutional pledges and ensure the constitutional rights of its people. To avoid the fate of Delhi, their failure in policy implementation can be studied. Footsteps of cities like Beijing who were able to ameliorate the air quality can be followed.

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