"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 ANALYSIS

How far the Biological Diversity Act 2017 complies with international obligations?

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ACCESS under the Convention on Biological Diversity (CBD) is meant to be of biological or genetic resources, and benefit-sharing refers to the benefits that might ensue from the use of genetic resources or associated traditional knowledge (TK). Access and Benefit-Sharing (ABS) constitutes one of the three objectives of the CBD, next to conservation and sustainable use of biodiversity. With the rise of the bio-industries and accompanying intellectual property rights (IPRs) protection on life forms, genetic resources have become more valuable and lucrative. The CBD declared the States' sovereignty over their biological resources and authorised them to regulate access to genetic resources and negotiate terms for benefit-sharing as per the principles of prior informed consent (PIC) and mutually agreed terms (MAT) respectively. Hence, the questions of ownership and tenure on genetic resources and TK by indigenous and local communities invariably have an important bearing on the practical modalities of ABS.

Bangladesh is a party to the CBD and signatory of the Nagoya Protocol. As a dualist country, Bangladesh requires implementing domestic legislation to give legal effect to the provisions of international treaties. After 25 years of the adoption of the CBD, the Bangladesh Biological Diversity Act 2017 was enacted to fulfil the State's international obligations. Since the existing environmental laws broadly covered conservation of biodiversity and biosafety issues, the significance of this Act lies basically in introducing an ABS mechanism. The Act promotes research on biodiversity and biological resources – leading towards biotechnological inventions and their commercial utilisation through preparing a nation-wide biodiversity register and documentation of TK. The commercial utilisation will, of course, generate economic benefits which need to be shared in a fair and equitable manner. Here lies the importance of this legislation as a tool of economic development for the holders of TK related to biological resources.

Sections 4-7 of the Act regulate the access to biological resources within the territory of Bangladesh. A non-citizen, non-resident citizen or any organisation not incorporated in Bangladesh requires to take the prior approval of the National Committee on Biodiversity (NCB) to collect or obtain any biodiversity, biological resource or TK for research or for commercial utilisation or for bio-survey/bio-utilisation. Moreover, no other person or organisation can, without prior approval of the NCB, transfer to them the results of any research relating to biodiversity or biological resources.

It is further clarified that the publication of any research paper and dissemination of that knowledge in any seminar or workshop is allowed and will not be considered as 'transfer' of research result if such paper is published as per the guidelines of the government. Furthermore, for any person – be a citizen or non-citizen, prior approval of the NCB is required to apply for a patent or any other form of IPRs for any invention based on Bangladesh's biological resources. Every refusal on any such application will have to be grounded, and every refusal can be appealed. It means Bangladesh provides for facilitative access and not prohibitive access to biological resources.

The Act does not recognise any collective or individual rights of indigenous or local communities in determining access to their biological resources and TK. Rather the sole control over biological resources and TK is conferred to the bureaucrats-run NCB, which even has no legal personality. There is no provision of adherence to PIC and MAT procedures in relation to indigenous or local communities. Even the Act contains no mention of the term 'indigenous', rather it used 'local community or people'. Indigenous communities of Bangladesh are mostly forest dwellers but their forest rights on ancestral lands and right to access in the forest lands and resources are not recognised. In CHT region, their land title and community ownership still remain unresolved. The Act just institutionalises this historical injustice – the absence of proprietary rights over their biological resources and TK. By giving over-emphasis to the state sovereignty, it has denied the indigenous peoples' sovereignty over their resources.

Section 30 of the Act deals with equitable sharing of benefits arising out of genetic or biological resources. The formulation of the benefit-sharing mechanism in the Act is of serious concern. It is provided that the NCB will determine the fair and equitable benefit by applying different parameters like, granting ownership or joint-ownership of IPRs, transfer of technology to the benefit claimers, installing plants in a suitable place for benefit claimers, engaging Bangladeshi scientists or their organisations in research and development, and payment of monetary compensation and non-monetary benefits to the claimants.

The Act indicated six methods of determining fair and equitable benefit-sharing and suggested to follow all or any of those. Under the CBD and the Nagoya Protocol, any domestic ABS system must be based on PIC and MAT. Among the six methods only first method provides for PIC and MAT which is clearly falling short of CBD or Nagoya standard. From the plain reading of the Section, it is quite understandable that the first method was drafted as a method; however, it is submitted that it should be placed in the chapeau of the Section as a pre-requisite for any method of fair and equitable benefit sharing. Moreover, though it is provided for granting joint ownership of IPRs to the NCB, it is unclear as to how without legal personality it will own, claim or enforce the IPRs.

It is submitted to bring necessary amendments or enactments to make the domestic ABS regime, compliant with the CBD and the Nagoya Protocol. It is further submitted that Rules need to be framed to provide more clarity on PIC & MAT requirements and quantum of benefit sharing, particularly with respect to indigenous and local communities for creating a functional domestic ABS system.

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FOR YOUR INFORMATION

Combating intolerance

TOLERANCE recognises the universal human rights and fundamental freedoms of others, irrespective of their differences. Only tolerance can ensure the survival of diversity and mixed communities across the globe. On the day of UNESCO's fiftieth anniversary in 1995, its Member States adopted a Declaration of Principles on Tolerance. This Declaration affirms that tolerance means respect and appreciation of the rich variety of our world's cultures, our forms of expression and ways of being human.

The Declaration stresses that tolerance is not only a moral duty, but is also a political and legal obligation for individuals, groups and States. It situates tolerance in relation to the international human rights instruments drawn up over the past years and emphasises that States should enact new legislation to ensure equality of treatment and of opportunity for all groups and individuals in the society. In 1996, the UN General Assembly invited UN Member States to observe the International Day for Tolerance on 16 November.

Discrimination and marginalisation are the most common forms of intolerance besides outright injustice and violence. One of the tools to combat intolerance is education. Education should aim at countering influences that lead to fear and exclusion of others, and should help young people develop capacities for independent judgement, critical thinking and ethical reasoning. The diversity of our world's many religions, languages, cultures and ethnicities, is not a pretext for conflict, but is a treasure that enriches us all.

Fighting intolerance requires proper legislative measures - governments are responsible for enforcing human rights laws. Proper actions must be undertaken to ensure the banning and ensuring punishment of hate crimes and discrimination against minorities. Furthermore, greater efforts must be made to teach children about tolerance, human rights and different ways of life, both at home and in school. Besides, policies must be developed to generate and promote press freedom and press pluralism, to allow the public to differentiate between facts and opinions.

Another key consideration is individual awareness on the issue of intolerance. People should be made aware of the link between their behaviour and the vicious cycle of mistrust and violence in the society. Other tools of nonviolent action include discrediting hateful propaganda, co-organising groups to confront problems and establishing grassroot networks to demonstrate solidarity with victims of intolerance.

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

To celebrate the World Human Rights Day 2019, **LAW & OUR RIGHTS**, *The Daily Star* is pleased to announce a legal write-up competition for all law enthusiasts.

The competition is open for anyone with legal and human rights knowledge.

The write-up should be based on any of the following themes:

a. The Power of Human Rights Education
b. From Inequality to Inclusivity: The Role of Human Rights
c. Human Rights of Refugees and Migrants
d. Climate Change, Displacement and Human Rights
e. Human Rights in the Age of Artificial Intelligence
f. Challenges of the Human Rights Defenders

Guidelines:

- The length of each write-up must be in between 600 and 700 words.
- Write-ups must be original, not published before and sufficiently analysed.
- One individual can submit only one write-up.
- Any plagiarised or already published write-up will not be considered for participation in this competition.

The best two essays will be published in **LAW & OUR RIGHTS** special supplement of *The Daily Star,* after being reviewed by distinguished experts of the legal arena.

The write-up must be submitted by December 2, 2019 at:
dslawdesk@yahoo.co.uk

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. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

On payment of security deposit to landlords

QUERY

We have rented an office for a term of four years in Banani with a monthly rent of BDT 1,45,000 (One lakh and Forty-Five Thousand) only. Now, after the termination of the lease agreement, we are about to shift in our office. When we asked our landlord to refund the security deposit of an amount BDT 10,00,000 (Ten Lakh) only, he denied to refund it and informed us that, he will need that amount to renovate and do some fixtures on the space as we have used that space for a period of 4 years, thus he held us liable to fix those. It is to be mentioned that in the lease agreement, it was nowhere mentioned that we would have to bear any costs for renovation or fixtures. In this scenario what we should do, please let us know.

Aysha Amin
Dhaka

RESPONSE

Dear Ms. Aysha,

Thanks for your query. This is unfortunately a very common scenario in our country, specially in the metropolitan cities where tenants have to go through such turmoil caused by the landlords.

Under section 10 of the Premises Rent Control Act 1991 it is stated that 'the lessor cannot receive any payment or amount in the form of security, in addition to the monthly rent or claim or receive any amount exceeding one month's rent as rent in advance without the prior permission of the Rent Controller.'

Thus, it appears from the given fact that the landlord has taken BDT 10,00,000 (Ten Lakh) only as a security deposit which he was not allowed to take at the first place in accordance with the existing law. Further, section 10 of this Act states that no person shall in consideration of the grant, renewal or continuance of a tenancy of any premises -

a. Claim, receive or ask for payment of any premium, salami, security or any other like sum in addition to the rent; or

b. Except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

It is evident from the Act that such deposit in form of security is not permissible, and if one has to take any deposit or any sum as rent in advance in excess of one month's rent shall require a written consent from the Rent Controller. If one fails to do so, in that case he/

she will be fined which may extend to double the amount received in excess of one month's rent and in every subsequent occasion to a fine which may extend to three times the amount received in excess of one month rent as stated under section 23 of the Act.

Furthermore, the same section also states that if the landlord receives any amount as security deposit, he will be fined up to BDT 2000 (Two Thousand) only on the first occasion and on every subsequent occasion to a fine which may extend to BDT 5000 (Five Thousand). Thus, the landlord will be held liable for receiving such amount as security.

Although in section 11 of the Act, it states that the landlord can receive an amount, which is more than the rent of one month, if it is a case of a long lease, not less than 20 years. But in your situation, it is a lease agreement for supposedly 4 years, as appears from the facts given by you. Further since in the lease agreement there was no clause as to whether the landlord can use the security deposit for the purpose of the fixtures or renovation of the premises hence the landlord is least likely to use such amount of BDT 10,00,000 (Ten Lakh) only for any fixtures.

In general it is advisable for you that, if there is any major damage or any damage that might have been caused particularly for your poor maintenance of the premises or negligence, in such circumstance it is better you and your landlord come to a consensus, where you can take the responsibility for fixing the damages caused by you or by inspecting the work done by the landlord to keep an account of the cost that is required for the repair work, and then you can settle the cost with the deposit money. But here there should be a limit to how much cost you should bear as to the damages made by you over the period of 4 years. In a situation, the discussion fails, you can send a legal notice to the landlord and finally may resort to court.

All tenants and landlords shall draw up their agreements in a precise manner by keeping the handing over clauses very clear. Moreover, a joint inspection shall be carried out by both the parties during the handover so that the damages, if any, can be mutually identified and agreed at the time of the handover of the premises. This may avoid unnecessary dispute over recovery of security deposits.