

LAW OPINION

Intellectual Property Rights: Next corporate political mechanism to rule the world

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As human being is ingenious in nature, the chain of introducing new ideas, inventing new things and presenting old inventions in a new fashion will continue till the last breath of the world. At the same time, globalisation is making the world smaller providing more opportunities to mix up cultures as well as adopting another's ideas. Ordinary people will find no wrong here but here is the inception of intellectual property rights (IPR) war. Such IPR controversy can be found in years back

Marconi's Wireless Detector!

Intellectual Property Rights (IPR) as corporate political instrument

The developed countries are more concerned about the implementation IPR related laws with the vision of establishing a proprietary market advantage and protecting core technologies. In contrast, the developing or the less developed countries hold totally opposite view.

The WTO TRIPS Agreement, being the most ambitious and influential instrument for IPR protection, obliges the developed countries to provide technical and financial cooperation

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the company tried to stop harvesting and farming Basmati rice in India and Southeast Asia by claiming its Royalty. However, the Indian government tackled the issue strongly and rejected the USA's claim saying that it is registered as their regional food.

Controlling the commercial world through IPR

The IPR mechanism has already taken its stance as an influential commercial instrument. The IPR jurisprudence protects every commercially important registered works from being copied or used without permission. The mechanism is monitored and controlled by several international treaties and protocols, amongst those the Paris Convention, 1883 for patents, the Berne Convention 1886 for Copyrights, the Madrid Protocol, 1991 for marks, the Hague Agreement, 1925 for designs, and the WTO administered TRIPS Agreement, 1994 for overall IPR mechanism are mentioned worthy. Reality shows that the developed countries indirectly compel the less developed countries to enter into bilateral and multilateral treaties, the pressure of which cause the developing and the less developed countries to enact non-practical and frustrating laws that hinder its intellectual potentials. Normally, liberal international rules do not apply in between countries in presence of bilateral treaties. For example: the TIFFA treaty between Bangladesh and America is, in my opinion, a commercial burden for Bangladesh. In near future, we may have to pay handsome amount of money for using some facilities what we are now using free, i.e. software. Imposing trade restrictions and refusing to provide tariffs (as USA is denying providing us GSP tariff) are some examples of pressure mechanism.

What should Bangladesh do?
Bangladesh may find some international IP mechanisms burdensome, while being a less developed country, it enjoys some incentives as well. Recently, the WTO extended the exemption period from paying patent royalty on drugs till 2032. That means we can copy and develop pharmaceutical products without paying any patent royalty to any country till 2032. We should take the

100% advantage of this prospect. There is no better option than creating mass awareness. Bangladesh needs three-tier strategy: national, regional and international. As bilateral treaties can debar us from getting the benefits of international treaties, the policy makers should acquire clear understanding regarding the IPR matters and be more operational to protect the national interest. In addition, the general people should be well informed and aware of their rights regarding their works and inventions. Besides, the TRIPS Agreement keeps an option of reviewing the impact of the Agreement open to the signing countries which can positively be used to save the collective interest of the developing and the less developed countries.

Post-Coronavirus era

The post-Coronavirus world will be a changed world in terms of commercial and political polarisation. The IPR mechanism has both the aspects: we can rule or be ruled! In other words, it has the power to make us corporate slave, if we keep sleeping over our rights. Alternatively, it can be administered as the easiest way of getting benefited by our inventions, works, identity and heritages. As being a less developed country, we have points of arguments as well as scope of negotiation with the modern giant corporate leaders who will, by hook or crook, make their way out to make money by selling their ideas to us, and if possible, even by selling our own ideas to us! It is the high time to be aware, to be proactive on our own rights.

You might not be an entrepreneur, but you have an idea that you would like to see exploited, it might have the potential to gift you a better future, to give us a better world. A huge battle in the courts around the world is currently taking place over these rights that may bring positive changes in the governing laws. Before it is too late and before the flexible laws change and before the corporate giants become harsh on us, we should start working on this issue to protect individual interest as well as collective interest of our country.

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in the "Calculus Controversy" between the famous scientists Isaac Newton and Gottfried Wilhelm Leibniz. Both claimed as to be the father of the study of Calculus. However, historians accept both as co-inventor, having come to the idea independently of each other. In addition, let's not forget our own scientist Jagadish Chandra Bose whom we claim as the real inventor of

in favour of the developing and the less developed countries to facilitate the implementation of their IPR mechanism as per the covenants of TRIPS. This has been a winning contribution for the developed countries as strict implementation of IP laws will ultimately benefit the developed countries to increase its industrial capacity and market demand

safely in the developing as well as in the less developed countries.

With the benefit of higher level of IPR protection, the already advanced and well-equipped, the developed countries will easily control the market of other countries. Even if, technologies and knowledge were transferred for free, it will be of no use to the developing and/or the less developed countries, firstly because, IPR mechanism will control the unauthorised reproduction or reuse of those transferred technologies; and secondly, authorisation will cost royalties by which major portion of income will go into the pocket of the developed countries.

If we think that it is better not to implement IP laws in Bangladesh and not to get involved in international mechanism as well as keep copying the new ideas, technologies and works from other countries; I must say: we are still living in the world of fools! First and foremost, we have no way open to escape our liability to the international community as the international rules are devised by influential quarters. Secondly, though it sounds strange, the truth is that the developed countries are also stealing the ideas, works and heritages from the less developed countries more frequently than anyone can imagine. For example, we all know about "BASMATI RICE" which is a type of native rice of our country, also harvested in some parts of India. A few years ago, a USA company filed for a patent on Basmati Rice in USA office and got registration. Then

LAW VISION

COVID-19 and Default of Commercial Loans: Looking Ahead

MD. SAMEER SATTAR

THE time we are living in is unprecedented, to say the least. While claims relating to health, social and political unrest are undeniable, the economic disaster that we are facing now or will be facing in the future due to the pandemic is worrying. The experts are unanimously predicting that the affected countries will face a sharp decline in economic prosperity. It is predicted that Bangladesh will not be immune from this catastrophe either. The World Bank's report suggests that Bangladesh's gross domestic product growth will fall from last year's 8.15 percent to 2 percent by the end of this financial year (June 30), with the highest growth range peaking at a mild 3 percent. At this rate, many companies will face extensive losses and will be forced to wind up their businesses. The inevitable result will be a rise in default of loan repayments. The Government of Bangladesh is very much aware of this economic challenge and, through its actions, has taken an aggressive approach in its fight to keep our economy afloat. The Hon'ble Prime Minister has already declared generous stimulus packages to be distributed through the Bangladesh Bank and several initiatives have also been taken by the Bangladesh Bank to support businesses to navigate through these troubling times.

However, a more aggressive approach may be taken by the Bangladesh Bank to address the problems which will be faced by the borrowers in repaying their loans. As part of its crisis management strategy, the Bangladesh Bank has already directed all scheduled banks and financial institutions not to downgrade the credit classification of any borrowers for defaulted loans between the period of 1 January 2020 and 30 June 2020. This is undoubtedly a helpful step taken which will aid the defaulting borrower's situation given the current circumstances and the looming crisis. However, it is suggested that, in order to effectively mitigate the impact of COVID-19 on the borrowers and, resultantly, the economy, the Bangladesh Bank may consider announcing a more robust regulatory package.

Apart from a stay on credit classification, the Bangladesh Bank may also consider offering a moratorium to the ailing borrowers on their loan repayments. A moratorium can be termed as a payment holiday, which allows the borrowers to defer due payments for a specified period. In simple terms, the effect of a moratorium is that if any bank in Bangladesh grants a moratorium to the borrower, then the borrower will not be required to repay

the loan amount due to such a lender during the moratorium period – thereby giving the borrowers the much needed "breathing space". The moratorium shall defer all instalments, including the interest payable during the moratorium period, and all of the interest accumulated during the moratorium period can be paid at the end of the repayment schedule. For working capital facilities, the moratorium will only suspend the interest payment during the moratorium period, and the interest accrued during this period shall be payable after the end of the moratorium. In this way, the borrowers can concentrate on focussing to keep their businesses afloat and retain their employees rather than going on a spree of employment cuts and lay-offs. It is believed that this may not have a massive adverse effect on the bank's profits as well because, consequently, the repayment schedule for such a loan account will be extended and the amounts payable



during the moratorium will, in any event, be repaid during the said extended period. This proposal has also been suggested by the World Bank and has already been introduced by our neighbouring country India, where the Reserve Bank of India has permitted all commercial banks and financial institutions to grant a moratorium to their borrowers for up to 3 months on the payment of all principal, interest and repayment instalments between 01 March 2020 and 31 May 2020.

Apart from a moratorium, the Bangladesh Bank can also direct the scheduled banks not to trigger the default clauses under the loan agreements. Typically, a financing facility provides for a material adverse effect, popularly known as 'MAE', as a trigger for an event of default. The banks generally negotiate an expansive definition of MAE which includes any event that has a material adverse effect on the business of the borrower. Undoubtedly, due to COVID-19, the future cash flows of many businesses will get negatively impacted. This

may trigger MAE in a financing facility, subject to its terms and conditions. Moreover, the banks do not favour a 'force majeure' clause in their financing documents, since it may allow a borrower to avoid its payment obligations. In the absence of an explicit 'force majeure' clause, the borrowers will be left to argue an implicit 'force majeure' clause – thus increasing disputes and litigation between the parties. A clear guidance from the Bangladesh Bank may certainly avoid such a situation.

Another important area where the Bangladesh Bank can provide some valuable assistance to the ailing borrowers is the valuation of assets kept as security. The COVID-19 pandemic has already upset the stock market, with recession looming large. All these factors have a cascading impact on the valuation of assets. In a secured financing transaction, the security package may have a variety of assets such as shares, immovable properties and moveable assets. If the security depletes, a bank can typically ask a borrower to replenish the security. If the borrower fails to replenish the security, it will constitute an event of default, which entitles the bank to accelerate repayments under the facility and enforce any security. Since most of the assets kept by the borrower as security will devalue, unless the Bangladesh Bank intervenes or gives proper guidance, the banks will be at liberty to sell these assets at the reduced value and then claim additional security from the borrower for their remaining loan amounts – thereby creating more pressure on the ailing businesses. Lastly, the Government of Bangladesh may also consider a temporary suspension of the insolvency provisions contained in our laws. For the time being, this step may shield businesses against insolvency proceedings from their creditors. Recently, the Government of India has also suggested that if the COVID-19 crisis continues beyond 30 April 2020, it may suspend certain provisions of their insolvency laws for a period of 6 months to shield businesses against insolvency proceedings from their creditors.

In this time of crisis, the steps that have already been taken by the Government of Bangladesh under the able leadership of the Hon'ble Prime Minister is certainly praiseworthy. It is believed that if the above steps are also taken by the Government of Bangladesh (if not done already), then such actions will be timely and will go a long way to help keep businesses afloat in this pandemic and its aftermath.

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RIGHTS ADVOCACY

COVID-19 and Human Rights



WHILE countries around the world work to contain and limit the spread of COVID-19, certain human rights and allowable derogations become relevant. While freedom of movement is of foremost importance in discussions about the lockdowns and quarantine measures, other human-rights concerns also arise.

For example, freedom of expression and right to critical information is a pertinent right. The government is responsible for providing necessary information for the protection and promotion of rights including right to health. It must ensure the publication of up-to-date and accurate information on the disease. Regular press briefings, publication of health guidelines etc. must be ensured to ensure right to health.

In case of infectious diseases, people who live in closer proximity to others in confined spaces are more vulnerable than the rest. Groups such as prisoners, residential facilities for people with disabilities, nursing institutions for the elderly, refugees living in camps, slum-dwellers, homeless people etc. are all more likely to both contract and spread the disease. Government and other concerned authorities must take appropriate action to reduce the risk in these places.

Access to potable water is also an essential corollary to preventive

measures and infection containment. Sanitation is crucial in avoiding the spread of the virus: this is made difficult when people do not have access to safe water. Lack of potable water and sanitation at home, school, or in healthcare settings not only make preventative measures difficult, rather, places that do not have adequate sanitation and water may be a locus for the spread of the disease. The International Covenant of Economic, Social and Cultural Rights (ICESCR) to which Bangladesh is a signatory states that governments should create conditions that "would assure all medical service and medical attention in the event of sickness."

The COVID-19 outbreak can possibly have a greater adverse impact on women and girls. The current crisis is resulting in an overloaded health system and shortage of medical supplies. This could obstruct women's access to contraception and pre- and post-natal and birth care. Furthermore, a significant portion of working women are employed in informal labour without job security. The lockdown deprives a huge portion of these women from their source of income. Protection must also be extended to other vulnerable and marginalised groups and discrimination in healthcare access must be prevented.

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