

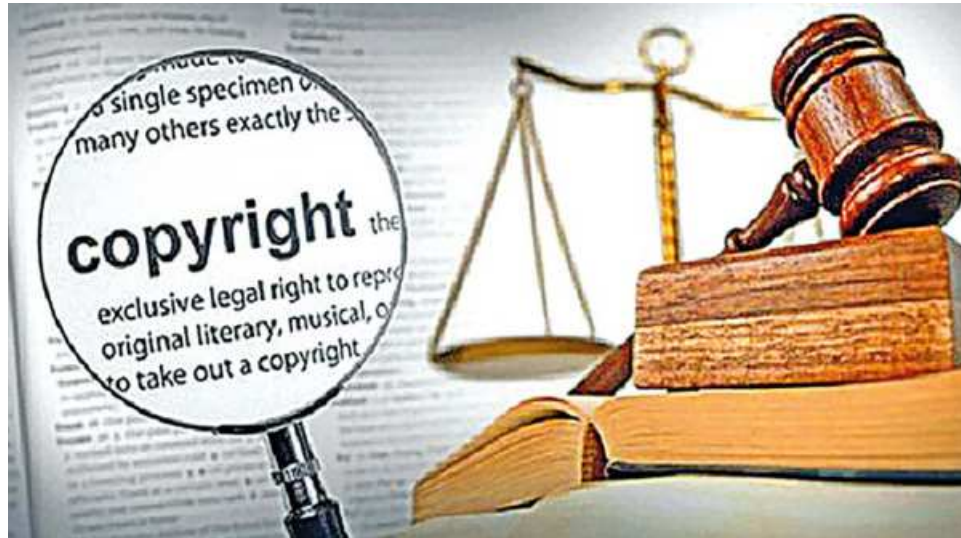
LAW OPINION

Clash of Copyrights: Where is the Singers' Rights?

BARRISTER SHALEH AKRAM SOMRAT

In recent days, we are witnessing frequent controversies regarding copyrights of popular songs. Usually, we find three or four parties involved in such clashes: Producer, Lyricist, Composer/Music Director and the Singer. Though a song is commonly known and promoted in the name of the singer, the copyright of the song, however, does not necessarily belong to the singer. The existing copyright laws are more focused in protecting the rights of the creative people who acted behind-the-scene for presenting a successful song. Nevertheless, you might think that this is an injustice to the popular singers, as more often, the producers or music directors use the singer's goodwill to get an easy feedback.

Bollywood's Nightingale Lata Mangeshkar led Indian Singers' Rights



Bangladesh that singers sign over their rights to a song to the producer. Therefore, the question remains as to whether they are assigning their right to receive royalties as well. Indian courts identified singers' rights as "inalienable Right to Receive Royalty". Therefore, right to receive royalty for the song cannot be given over. The easier interpretation would be something along this line: once a Singer has recorded an original song, everyone except the producer or copyright holder needs to get permission and pay royalty to play/perform/utilise the song commercially.

Judicial response in protecting singers' rights in Bangladesh is still in the process of ossification. Little to no judicial attempt has been taken to identify the grey areas, as both the litigants and the Judges seem to be more comfortable in resolving the issues using traditional legal tools i.e. suit for breach of contract or criminal cases for breach of trust. Whereas, section 35 of our Copyright Act, 2000 clearly gives the singer a Special Right known as the "performers' right". According to this section, a singer of an original song will enjoy "inalienable Right to Receive Royalty" for the next 50 years since the song was first sung or performed. In addition, the same right has been asserted by the international conventions and treaties i.e. Rome Convention in 1961 and in 1996 through the WIPO Copyright Treaty (WCT)

and WIPO Performances and Phonograms Treaty (WPPT).

Despite adequate legal protection has been offered, the singers in Bangladesh seem to be indifferent to their collective rights protection mechanism. Popular singers are frequently fighting with one another, while this is high time to create a common platform for protecting their right to royalties. Deciding copyright charges, fixing a "Tariff Rate and Distribution Scheme" through a common platform (Copyright Society or Singers' Association), and establishing a sound royalty collection mechanism to collect and distribute royalties should be prioritised by the singers.

With the revolution of the internet and sophisticated digital technologies the music industry has become global. At the same time, the scope for both authorised and unauthorised copying and digital manipulation of performances has vastly increased. Statistics say that half of Hollywood's revenues, and a fifth of Bollywood's now come from abroad. Like any other title holder of any tangible property, singers can enforce their performers' rights under the existing national and international copyright laws.

The writer, an Advocate, Supreme Court of Bangladesh, works to promote Intellectual Property Rights in Bangladesh.

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Association (ISRA) in a fight to secure royalty rights for singers. In a case filed by ISRA, a South Delhi restaurant was declared to have been violating the "inalienable Right to Receive Royalty" of performers by playing their songs "without obtaining Rights Clearance Certificate". The restaurant was further asked to refund all the monies earned by it from the unauthorised performance. Similar Order was passed by another court on September 30, 2016 against a lounge bar based in North Delhi. Now it is established in India that Singers have the "Right to Receive Royalty" if the song is performed/utilised commercially. However, it is commonly practised in

RIGHTS ADVOCACY

Human Rights should be at the centre of pandemic recovery plan

Human rights have been battered in the COVID-19 pandemic but recovery represents a chance to improve on the status quo and finally ensure dignity for all, UN Secretary-General António Guterres told the General Assembly on February 24. Amid budget cuts and financial crisis, he appealed for support for the Office of the High Commissioner for Human Rights (OHCHR) and related bodies, noting that funding is critical to achieve transformational change. "Much like COVID-19 vaccines, human rights will not lead to a healthier world if they are only available to the privileged few", he cautioned. The Secretary-General launched his Call to Action just weeks before the pandemic was declared. The biggest international crisis in generations has exposed inequalities and discrimination, with women, minorities, older persons, and persons with disabilities, among those disproportionately affected. At the same time, rights and protection systems have been tested, weakened, and even shattered, and emergency measures during the pandemic have even been used as a pretext to crush dissent or criminalise basic freedoms.

"In building forward together, we have a unique and historic opportunity to forge a world where

every person is afforded dignity; where every society can withstand crises; where everyone's future is built upon a foundation of inalienable rights," said Mr. Guterres.

The President of the UN General Assembly, Volkan Bozkir, underlined that a human rights-based approach is always the right choice, whether in times of crisis, conflict, peace or pandemic. "All responses to the COVID-19 pandemic must be shaped by, and uphold respect for, human rights", he said.

Human rights are a top priority for people worldwide, according to a global survey conducted last year to mark the UN's 75th anniversary, the Secretary-General reported. The UN has issued several policy briefs which outline action in vital areas that incorporates a human rights perspective, such as in maintaining food security or inclusion of refugees and migrants, or in dismantling outdated laws that discriminate against women.

UN teams in countries across the world have also been engaging with governments and civil societies, and children and young people are increasingly becoming part of the conversation on human rights.

Compiled by Law Desk (Source: un.org)

LAW VISION

Resolving confusion over Capital Gain Tax

M. S. SIDDIQUI

Every State remains eager to attract foreign direct investment (FDI). The taxation policy is one of several key determinants that encourage FDI. Therefore, developing countries have adopted a more positive attitude about taxation on profit and facilitate easy and profitable exit to gain confidence of the overseas investors.

In contrast, the tax regime in Bangladesh is the strictest among the South Asian countries. The income tax in other countries is around 25 percent while it is around 35 - 45 percent in Bangladesh. Other taxes such as value added tax and capital gain tax, which are around 15 percent, are also considered higher. The credit of VAT and the application of laws are complicated. Taxpayers often complain of complexity of the laws and rules. The Capital gain Tax (CGT) has also been introduced from the year 2010. There remains a confusion among the stakeholders including the National Board of Revenue (NBR), Bangladesh Bank, Bangladesh Security Exchange Commission, local and overseas portfolio investors about the rate of capital gain tax.

The CGT has been introduced in the financial year of 2009-10 on primary issue of share to promoters and subsequently on sale of primary share. The Finance Act of 2010 has imposed CGT on the basis of section 37(7) of Income tax ordinance 1984 by inserting Section 53L for collection of 3 percent tax from issue of primary share at a premium price or raises of share capital through book building or public offering or rights offering or placement or preference share or in any other way at the value in excess of over face value. However, the CGT on issue of primary share has been omitted in the Finance Act, 2013. The same FA, 2010 inserted another clause, section 53M giving the responsibility to the Security Exchange Commission or Stock Exchange during the transfer of share for collection of CGT 5 percent on the difference between transfer value and cost of acquisition of the securities or mutual fund units.

The rate of advance collection of CGT fixed at 10 percent for the sponsor shareholders in case of companies or firms is imposed irrespective of status of residency of assesses. The rate will be 5 percent for sponsor shareholders of

the Bank, financial institute, insurance, leasing companies, portfolio management companies.

There is an exemption for non-resident foreign national subject to the condition that such assesses is entitled to similar exemption in the country in which he is resident as inserted in the 6th schedule, part A, manual 1 (as per SRO no 59 Law/income tax/2012 dated 28th February 2012).

Capital gains from disposal of government securities are not subject to tax. The amounts received for goodwill and termination of contracts are not capital gains, but taxed under the "other income" head.

Subsequently, by another SRO no 196-Law/income tax/2015 dated June 30, 2015 has exempted the CGT on all categories



of assesses except the income specified in the Section 53M. The footnote 2(s) of Income tax manual Part -1 clarifies that section 53M shall be applicable for income derived from transfer of securities or mutual funds by sponsor shareholders of a publicly listed company.

The laws and rules give idea that the CGT is either 5 or 10 percent for different categories of assesses. The rate of CGT creates some confusions in the mind of different stakeholders. The rule and policies have been changed and the SROs are so confusing that the global research organisations also became puzzled on rate of CGT.

KPMG, the largest audit and consulting firm in a policy paper dated January 2020, mentioned that the CGT for non-resident shareholder is 10 percent in Bangladesh for (capital gains on sale of shares of listed companies). Tax rate from capital gain received from selling capital asset (other than securities of listed companies) is 15 percent. Another advisory and consulting company Seloitte in a paper dated September 24, 2010 mentioned that the Bangladesh Finance Act (No. 33) 2010 introduced a new capital gains tax regime

that applies to gains arising on the sale or transfer of non-government securities, including stock and shares of public companies listed on the Bangladesh stock exchanges. The regime, which imposes a general 10 percent tax or a reduced rate of 5 percent, took effect on July 1, 2010. Previously, gains on the sale or transfer of such listed securities were not subject to tax.

Bangladesh Bank (BB) and NBR are interpreting CGT for non-resident placement holders and trying to establish tax rate at 15 percent as per section 56 of IT Ordinance 1984. BB has claimed from some Banks for 15 percent CGT based on sec 56-1 of Income Tax law of some overseas investors. According to Income tax ordinance 1984, this clause made the regulating authority to deduct the tax from non-residence assesses. Instead of asking the withholding authorities- the BSEC or Stock exchanges, the central bank and revenue department are chasing commercial bank to collect the "evaded" tax from their account holders.

Recently, Bangladesh Securities and Exchange Commission (BSEC) has requested the government to reduce the CGT from capital market investment by the foreign and institutional investors. The commission urged the government to waive the 10 per cent tax on capital gain for the institutional investors or at least reduce it to 5 per cent in the upcoming national budget to encourage institutional investment on the country's capital market.

There is no CGT gains tax from trading in the secondary market for any individual. Despite the exemption, some investors complained that Dhaka Stock Exchange (DSE) and Chattogram Stock Exchange (CSE) have been collecting CGT at 5% for few years. BSEC has also confirmed that the local investors do not have to pay any tax on capital gain from listed securities.

The law, rule and policy should not have confusion and ambiguity and language of law should be easy to interpret. NBR may clarify some of the issues related to rate of CGT on primary share subscribed by local and non-resident investors and sales in subsequent time. The transparency of policies encourages FDI into Bangladesh. The rate of CGT on transaction in the secondary market should also be clarified.

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LAW WATCH

DIGITAL SECURITY ACT



One Mushtaq and the nuances of 'bail'

In May, 2020, puzzling charges were brought under the Digital Security Act (DSA) 2018 against 11 persons, including writer Mushtaq Ahmed, who died on 25 February while in jail. Charges had been brought under four sections of the DSA- Section 21, Section 25(1)(b), Section 31 and Section 35. The provisions are vague and ambiguous, open to interpretation and prone to abuse. The drafting of such provisions grossly falls short on the certainty required from criminal laws in order for them to comply with the criminal justice and human rights standards. Mushtaq was denied bail six times, as per record. This incident has brought to the forefront the procedural issues too, in connection with the uncertainties embedded in the substantive provisions defining offences under the DSA.

Section 21 of the law criminalises propaganda or campaign, 'against the Liberation War of Bangladesh, the cognition of the Liberation War, Father of the Nation, National Anthem or National Flag'. Section 25(1) (b) criminalises acts that tarnish the image of the nation or spread confusions; Section 31 criminalises the publication or transmission of any digital content that 'create hostility, hatred or adversity among people or destroy any communal harmony or create unrest or disorder or deteriorates or threatens to deteriorate law and order'. Finally, Section 35 refers to support offence: offence of 'aiding' anyone in the above-mentioned offences.

While Sections 21 and 31 are non-bailable, section 25 is bailable. Within the criminal justice scheme of Bangladesh, getting bail in bailable offences is considered a right of an accused and non-granting of bail amounts to wrongful confinement. For non-bailable offences, granting of bail is not obligatory as such however, the judge does have a margin of discretion in this regard. In this respect, Section 497(1) says that when any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

The proviso to the Section says that [...] the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

The Section necessitates that there be reasonable, prudent, and judicious exercise of discretion, with due regard to the nuances involved in a case. The current incident, alongside ripping open the draconian nature of the DSA, poses a pertinent question regarding the 'judicious' interpretation of laws and prudent analysis of questions of facts too, both in connection with DSA and otherwise.

Law Desk, The Daily Star.

GLOBAL LAW UPDATES

China court awards compensation to wife for housework

In a recent decision, a Beijing divorce court awarded a compensation of 50,000 yuan along with a monthly alimony of 2,000 yuan to the wife for undertaking a bigger share of the household work. The couple got married in 2015 and the husband filed for divorce last year.

The court decision is based on a recently enacted civil code under which spouses can seek compensation during divorce if they perform the larger portion of household work such as raising children, caring for elderly family members etc.

Previously, the law only allowed spouses to seek compensation if a prenuptial agreement was signed between the couple. The presiding judge observed that the division of a couple's joint



property after marriage usually entails splitting tangible property. "But housework constitutes intangible property value," said the judge.

The judgment has received mixed feedback. Although some see it as a recognition of women's unpaid labour in the house, others have raised concerns that the amount of compensation undervalues the economic cost of such labour. In China, where women spend 2.5 times more time in household work than men, this recognition is a significant

legislative change. However, 50,000 yuan for five years of unpaid labour has been said to be rather inadequate.

Compiled by Law Desk (Source: bbc.com)