



LAW OPINION

Improving higher education in Bangladesh: A national university ranking system?

Taking the western bodies' ranking as the universal standard has serious implications for university academic/research in Bangladesh. This western perception of standard has brought to bear enormous pressure on Bangladeshi university academics/researchers to perform and produce new knowledge at a level worthy of recognition by western ranking bodies.

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The current state of higher education in Bangladesh is at crossroads, often deemed to be falling short of expected standard of research outcomes and new knowledge creation. The existing universities have performed poorly in the Ranking Web of Universities, Bangladesh of July 2021 and the World University Rankings 2022 of Times Higher Education. The ongoing proliferation of public and private universities with less focus on their quality of education has but added to widespread national and international concerns. It is in this context that this short write-up purports to offer a suggestion for the establishment of a national ranking system for universities to boost the quality of higher education and competition among Bangladesh universities. Why this proposal is important and promises to be rewarding is explained below.

Modern progression in identity and prosperity is knowledge-induced. Unprecedented advancement in the production and dissemination of scientific, communication technological, socio-economic, and infrastructural knowledge around the globe has engineered a knowledge-based world economy contributing to improve living standard in many countries. A dominant method of assessing this knowledge is the quality of higher education generally provided by universities. There are few international university ranking bodies, notably the Times Higher Education World University Rankings and the Shanghai Academic Ranking of World Universities, which rank universities worldwide including Bangladesh universities. This periodic university ranking system is widely regarded as standard-setting for higher education, a dominant factor in augmenting the prestige, reputation, and prospects of universities, and their staff and students. In accepting the assessment of these ranking bodies, one must bear foremost in mind that these bodies are mostly from rich western countries, whose higher educational resources, both materials and money, societal needs and values, and most importantly the measuring metrics are markedly different, if not contrasting, from that of developing and least developed countries albeit including Bangladesh.

Historically, some western elite universities have succeeded in disseminating their knowledge credentials worldwide and monopolised the global knowledge market since the colonial era. These institutions enjoy their hierarchical status through access to advanced technology and vast budget and control over research publications outlets operating only in English language which they dominate. The peer review of research publications is not always determined on merit and at arm's length, often influenced by the pre-conceived mindset pre-supposing the high research excellence of academics/researchers from top western universities. Research, publications, and commercialisation of knowledge as the dominant criteria of ranking also favour western universities. The research conducted and knowledge

produced are mostly listed in western citation databases. The knowledge produced and propagated in southern journals and published in languages other than English do not appear on the radar of the western databases. The combined effect of these factors gives an upper hand to western academics and researchers over their counterparts in the South. Notwithstanding these differences, the current international rankings of universities influence the minds of people and authorities in Bangladesh to seeing university performance through the lenses of the western rankers and the standards set by them. This does not necessarily reflect an equitable assessment and evaluation of research accomplished in Bangladesh universities.

Taking the western bodies' ranking as the universal standard has serious implications for university academic/research in Bangladesh. This western perception of standard has brought to bear enormous pressure on Bangladeshi university academics/researchers to perform and produce new knowledge at a level worthy of recognition by western ranking bodies. It is this pressure that may seemingly be responsible for several incidents of plagiarism and predatory publications (publications in lieu of money) by university academics to demonstrate their quality of research and quantity of publications, a pressure that often becomes a race for survival called 'publish or perish'. This race at any cost and under all circumstances is a perfect recipe for publication fatigue among academics/researchers, militating against contributory genuine knowledge creation.

The above differential factors and implications are highlighted not to assert that the expectation of western standard of higher education is wrong, but to highlight the nature of international rankings and stress that escalating this ranking cannot be achieved overnight. It must be planned and executed in an incrementally progressive way. The authorities responsible for higher education in Bangladesh need to recognise and facilitate appropriate social impact and technology-based research, support digital platforms and educational websites, incentivise knowledge production and promote dissemination through publications and commercialisation, and adhere to a depoliticised and merit-based recruitments procedures. The purpose is to launch a holistic national environment for university academics/researchers to engage in competitive knowledge creation through research excellence, whose quality and contributions must be ascertained. A formal and authoritative national university ranking system free from political influence would go a long way in managing and grading such research quality and contributions.

The crucial issue is who will administer this national ranking system and what will be the rankings determination parameters. The ranking may cost-effectively be conducted by the existing university regulator, the University Grants Commission (UGC) which may assign the management of the system to a qualified

group of officials and experts and articulate the criteria of rankings with their weightings (numerical may be preferred) to be readily and publicly available to all universities in advance. This arrangement is consistent with other southern countries. Including Nigeria, Kenya, Libya, and Egypt, ten African and Arab countries have introduced their respective national university ranking system and assigned the task of ranking to their university commissions composed of tertiary education experts analogous to UGC. While publications in high ranking and impact driven international journals remains the predominant criterion of measuring excellence in research, the broader social contributions of research, such as publications in place and language with maximum accessibility of target readership, relevance to the sustainable development goals, local needs, and national interests, partnership with local organisations, and community outreaching engagement and inclusivity are no less significant for measuring the quality and value of a given research and its talent.

The current international ranking system may appear intuitively appealing, but it masks the inherent conundrum that Bangladesh university academics/researchers are being judged internationally and nationally by the systemic criteria and evaluation procedures largely rooted and evolved in the West to create knowledge necessary for northern economy and invest in the flourishing of its universities developed over centuries. This ranking system and its metrics are anything but universal. The proposed university ranking system of Bangladesh must articulate an equitable model for measuring and judging the social value of research backed by demonstrated evidence of excellence, promote the creation and curation of knowledge responsive to the local community and culture, and embrace alternative approaches to disseminating and using knowledge in national public and private arenas and beyond. Collaborative research with relevant stakeholders on cross-border issues may not be gainsaid. In this venture, the establishment of a neutral national university ranking system inclusively recognising indigenous indicators and process for measuring research excellence would be a domestic research capacity-building experience, going from strength to strength every year. And it may well be this experience that will serve as a stepping stone towards improving research performativity and competitiveness in knowledge creation and dissemination, thus leading Bangladesh universities to climb the ladder of international ranking.

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RIGHTS ADVOCACY

The Right to Repair and IP Rights in Bangladesh

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Most of the corporations aim to block repair through making new devices such that they are even hard to be repaired by the third party repairers much less the consumers. For example, it is next to impossible to repair Apple's new iPhone 13 without going to an apple authorised store. The tech corporations choose to exert more control also by making their product obsolesced and slower over time, so that they are forced to buy newer models. This is mostly common in mobile phones and other handy devices. The third way that they choose is authorising only some selected repair shops to have their product, and not making them available at the free market.

However, the problem is that IP rights under national legislation of most of the countries including Bangladesh allow most of these processes of continuing monopoly. The most common IP right that is linked to right to repair (R2R) is that of patent. The companies often,

Repair may also cause trademark infringement when the third-party repairers either use the product by procuring it through an unauthorised way or by amending or modifying the trademarked product.

through patenting their spare parts, make it almost impossible for the third-party repairers and consumers to repair a product on their own without breaching the relevant laws. Section 29(1) of the Patents and Designs Act (PDA) of 1911 provides that a patentee may institute suit for infringement in respect of an invention when a person makes, sells or uses the invention without his license, or counterfeits it, or imitates it. As the Act does not provide any scope for national exhaustion, this particular section may bar third parties from selling spare parts of a product without obtaining a license. As a result, the producers are at will to control who sells

their product and who is not allowed to do so - ultimately rendering the consumers less options, and at times, making it even impossible to repair a thing by not producing the parts required at all.

Likewise, repair may also cause trademark infringement when the third party repairers either use the product by procuring it through an unauthorised way or by amending or modifying the trademarked product. Section 26 (5) of the Trademark Act, 2009 comes up with great difficulty for third party repairers as well as the owner of an item. Accordingly, any person may

be treated as infringer if that person applies, having known or reason to believe that the application of the mark was not duly authorised by the proprietor or a registered user, a registered trademark to material intended to be used for labeling or packaging goods, or for advertisement purpose. Interpretation of this provision would mean that if a repairer or any person through customisation or repair altered the features of any product in a way that applying the registered mark on that customised or repaired item would not be duly authorised by the proprietor or registered user then such application might cause trademark infringement. Also, this provision would attract use of unauthorised billboards containing registered trademarks by third party repairers for advertisement purposes.

Although the existing IP rights legislation in Bangladesh comes as an obstacle to R2R, the situation is the other way around with the Competition Act, 2012. The Act in its section 15(3)(a) prohibits tie-in arrangement as mostly used by the companies to somewhat compel the consumer to purchase the tied products or services (for example, toolbox or other accessories) only from them and not anyone else. Therefore, use of any condition of purchase requiring a purchaser of goods to buy tied products will breach this provision. To give an example, in an otherwise perfect case, Apple's policy to compel the buyer to buy a dongle to connect it to an earphone jack may easily attract this provision. The Act also prohibits 'exclusive distribution agreement' where the agreement limits, restricts or withholds the output or supply of any goods or allocates any area or market for the disposal or sale of the good (section 15(3)(c)). This appears to be in conflict with section 29(1) of the PDA, 1911 as the PDA, in effect, allows exclusive distribution agreement by providing the patentee right to sue for infringement if a person *inter alia*, sells or uses the invention without his license. Of note, in such conflict, the result is obvious as section 15 (4) of the Competition Act upholds the supremacy of the intellectual property legislation in this situation on the one and only condition that to restrain infringement of IP rights, only the reasonable conditions may be imposed.

In the light of the foregoing, it transpires that a new legislation is a must.

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