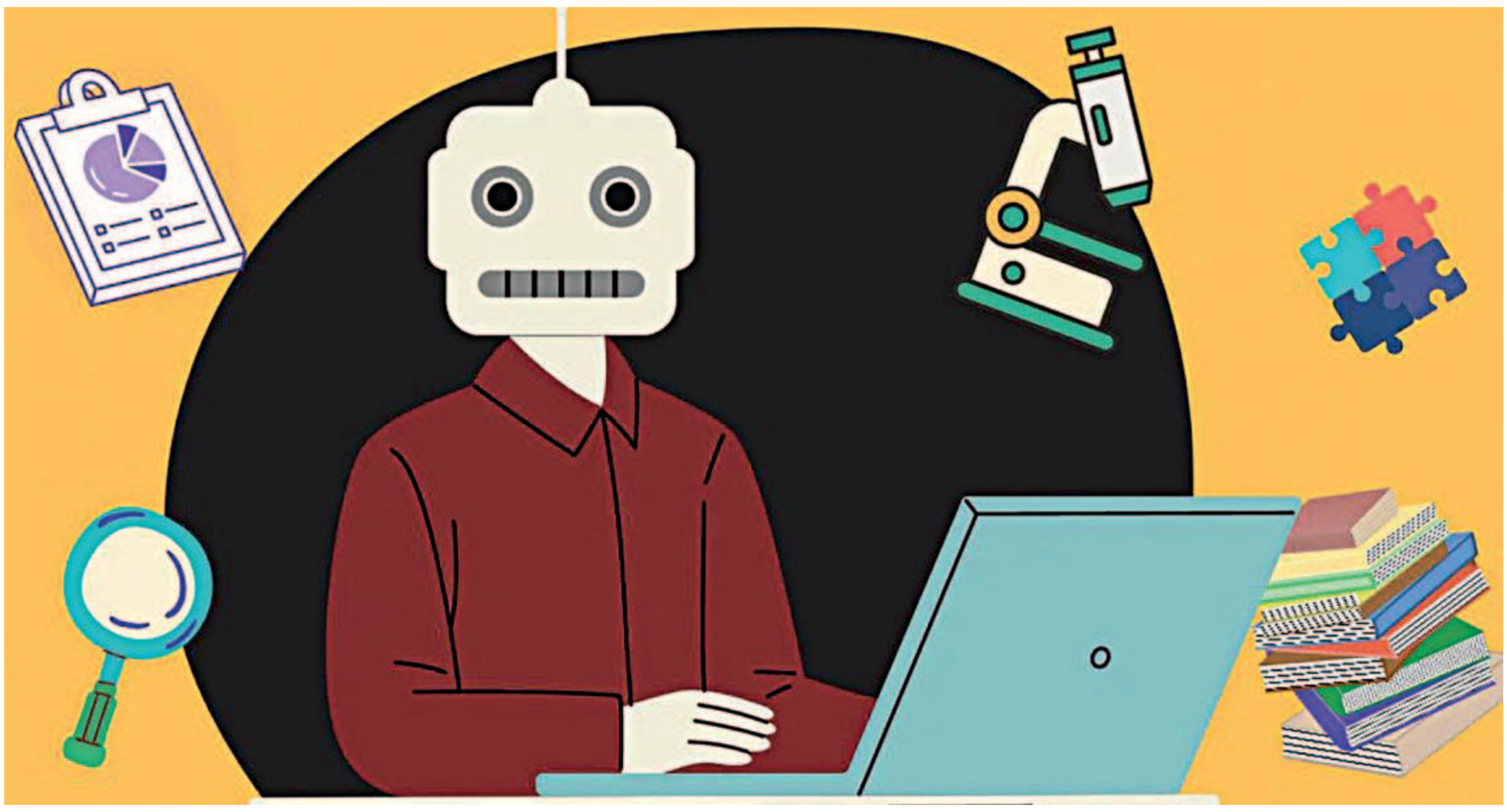


LAW OPINION

The role of judiciary in addressing academic plagiarism

Plagiarism detection software have the potential to considerably decrease the need for judicial intervention in the investigation of plagiarism. However, universities must formulate policies involving human overseers regarding academic dishonesty and editorial and review boards of journals, theses, etc., as there could always be lapses within the software-based results.

ARAFAT IBNUL BASHAR

In academia, plagiarism— the act of borrowing someone else's work without giving due credit is treated as an offence— almost as a mortal sin. In the Western academic world, both the teachers and students are punished for plagiarising. Dismissal, demotion, fine, withholding of a degree, etc. are the common forms of punishment for this offense. The High Court Division of Bangladesh in *Samia Rahman* v *Bangladesh* 2021, dealt with the issue of plagiarism. The writ petition was filed by an Associate Professor, Department of Mass Communication and Journalism, University of Dhaka, who was demoted to the post of Assistant Professor for a period of two years, due to allegations of plagiarism. The High Court Division declared that the order issued by the university syndicate demoting the petitioner was void ab initio and had been made without lawful authority, since no formal charges along with the statement of allegations were framed against the accused, and the penalty proposed to be imposed was not specified as such by the syndicate.

The decision of the High Court Division (HCD) relied on the requirement of observance of natural justice and iterated the notion that procedural due process requirements must be followed in disciplinary issues, even by academic institutions. The court, however, also made some observations with regard to plagiarism and the role of universities in preventing such corrupt practices. The court rightly abstained from deciding whether the article in question was plagiarised or not— as it was an academic question of fact. The High Court Division observed that plagiarism is "an intellectual crime" and "essentially theft and fraud committed simultaneously." The court, however observed that a university is obligated to take measures to detect and prevent plagiarism. The measures may include procuring softwares to check plagiarism, formulating policies, setting criteria for acceptable research work, through using references, training teachers on ethics, citations and publishing, etc. Another bench of the High Court Division even went on to form a seven-member expert committee to formulate guidelines to prevent plagiarism in Ph.D. programmes in all public universities. The order came in pursuance of a public interest litigation filed due to the concerns of a growing number of inauthentic Ph.D. theses. The incidents of plagiarism have compelled the University Grant Commission (UGC) to purchase Turnitin, a software to detect plagiarism. The UGC has provided this software to many universities, and many others are using it on their own initiative.

Unfortunately, in many instances, the High Court Division had to address the issue of plagiarism in academia. The issue of plagiarism should be dealt with administratively by the educational institutions. While the practice of approaching the court in such matters is quite common, it is usually done in response to denial of due process, defamation due to false, unproven allegations and breach of contract. In rare instances, for example in *Faulkner* v *University of Tennessee* (1994), *Ntreh* v *University of Texas* (1997), etc., the courts proceeded to inquire into the allegation of plagiarism. However, it is not warranted that disputed questions of fact be dealt with in writ petitions. Furthermore, it is also not practical for courts to review matters which are purely academic in nature. Plagiarism detection software have the potential to considerably decrease the need for judicial intervention in the investigation of plagiarism. However, universities must formulate policies involving human overseers regarding academic dishonesty and editorial and review boards of journals, theses, etc., as there could always be lapses within the software-based results.

The writer is a Lecturer of Law, Port City International University.

YOUR ADVOCATE

Cross-religious marriage and custody of children

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, family law, labour law, land law, constitutional law, criminal law, and IPR.

Query

I am a Hindu woman and had married a Muslim man under the Special Marriage Act 1872, but my husband also registered our marriage in a Kazi Office, which I did not know. Now after three years of marriage, we have decided to part ways. But now he wants to take custody of our only child. What should I do regarding this issue? My husband claims that I had married him under the Muslim Law by submitting the marriage registration form.

Response

Thank you very much for your query.

It is understood that you are Hindu and married a Muslim man under the Special Marriage Act 1872 ('the 1872 Act'). However, at the time of the marriage, your husband has also registered your marriage in a Kazi Office, and you were unaware of it. Currently, you and your husband have decided to separate after three years of marriage, and he wants to take custody of your only child by claiming that your marriage was solemnised under the Muslim Law.

In light of the aforementioned facts and circumstances, I will firstly elaborate the relevant legal provisions for your understanding. It is vital to be aware of legal matters with the increase in cross-religious marriages.

Marriage is a social and legal union of a man and a woman to live together and often (and certainly not always) have a child. Different laws are applicable to the followers of different religions in Bangladesh. The provisions of the Muslim law are applicable to the Muslims, whereas the Hindu Law provisions are applicable to the Hindus. The 1872 Act legalised cross-religious marriages. However, the 1872 Act is applicable to certain types of marriages. Section 2 of the 1872 Act clearly states that this Act will be applicable only in two circumstances: 1) where neither of the bride or bridegroom is Christian, Jew, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina, or, 2) where each of the party professes Hindu, Buddhist, Sikh and Jaina religion.

Therefore, on one hand, it is significant to note that under the first circumstance, the man and the woman getting married must not be following any of the abovementioned religions, meaning that they would practically be non-believers/ atheists. While on the other hand, the second circumstance explains that the man and the woman getting married must belong to any of the four stated religions, where Islam is not mentioned. Furthermore, it is strictly prohibited for a Muslim man to marry a Hindu woman unless she converts and vice versa.

In Bangladesh, a Muslim person cannot convert to Hinduism, so the alternative would be to become a non-believer (i.e., declare to renounce religions) for the marriage to be legalised or the Hindu person would have to convert to Islam. Moreover, as you are unaware of the registration of the marriage with the Kazi Office, it means that you have not signed any such document and hence, the same is legally questionable from such perspective. Therefore, the fact that your husband has registered the marriage with the Kazi Office would not be considered as valid.

On the contrary, the question arises as to whether your marriage has been legally solemnised under the 1872 Act. To answer that, at the time of marriage under the 1872 Act, both parties are required to sign a 'Declaration Form', confirming the points and the information in the form is true. Hence, while signing the declaration form, both of you declared yourselves as non-believers.

The courts primarily focus on the best interest or welfare of the child when deciding who should get the custody of the child.

The rules for taking custody depend on the personal laws of the religion the parties follow. However, in your case, since it is a cross-religious marriage, in order to take custody of your child, my advice would be to make an application for guardianship of your child under the Guardians and Wards Act 1890. As you were married 3 years ago, your child must be at the age of 2 years or less. Hence, as a mother you have greater right to custody of the child of such a tender age. I refrain from advising on the divorce matter, as you have not solicited for the same. However, a divorce for marriage solemnised under the Special Marriage Act may prove to be a lengthy and cumbersome proceeding. I hope my answer will help you find a solution to your problem.

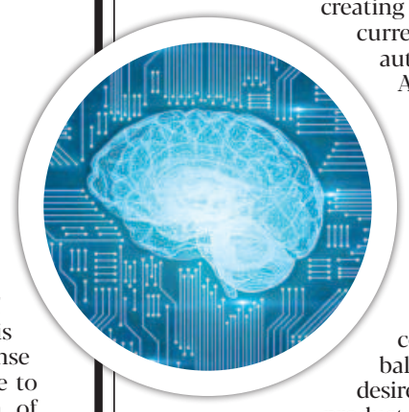
LAW REFORM

AI and Copyright Law

MOHAMMAD AMIR HAMZA

Remember when computer was simply a tool to help humans be more productive? Those quaint days are gone. Now, machines powered by artificial intelligence (AI) actively create – art works, literature, and music that display imagination and inspiration comparable to humans. From deepfakes to dystopian poems, AI algorithms churn out novel content by studying and mimicking patterns in vast datasets. Some AIs like DALL-E 2 and GPT-3.5 even converse intelligibly. We have entered into an era where the machine is the creator.

This transformation strains traditional copyright law, exposing gaps that demand urgent fixes. At its core, copyright grants protections to original works of human authorship like books, films, and software. It incentivises creativity by giving rights holders the exclusive ability to reproduce, distribute, display, or adapt their works. But can an intelligent machine qualify as an "author"? If AI autonomously generates music, art or inventions, who owns the rights – the programmer, the user, or the algorithm itself? These complex questions ricochet through courtrooms as inevitably, legal battles erupt over AI outputs. In the recent US case Thaler v US Copyright Office, an AI system named DABUS was rejected for copyright over creating a digital artwork because current law requires human authorship. However, as AI creativity advances, denying copyright protection may stifle innovation by creators of generative AI. The spectre of rampant piracy of AI works also looms if rights are unclear.



The fundamental conflict is how to strike a balance between society's desire to benefit from AI's products and the need to provide incentives for the development of more sophisticated algorithms. But there are middle paths between open access and overzealous rights restrictions. In the Europe, database rights protect data collections like phone directories that involve effort but minimal creativity. Similar "neighbouring rights" tailored for AI outputs could be viable. However, criteria like minimum creative effort may be needed to avoid a copyright land grab on trivial AI works. Another thorny issue is potential copyright infringement by AI systems. The recent lawsuit by Getty Images against AI startup Stability AI argued that Stability's image generator copied and processed millions of Getty's photos without permission during training. However, the extent to which this qualifies as fair use for machine learning remains hotly contested. Similarly, if AI like GPT-3.5 generates content resembling copyrighted poems or lyrics, it risks allegations of infringement.

AI is both empowering and perilous. Our task is forging a balanced copyright framework that nurtures AI's creative potential while protecting rights holders and the public good. This calls for nuanced open-mindedness, not reactionary resistance nor precipitous overhauls of copyright itself.

Defining the lawful use of copyrighted works for AI training data is crucial. Again, compromises like permitting circumscribed uses of data to develop non-commercial AI may balance interests. Encrypting training data can also limit risks. There have been calls for copyright exceptions to enable text and data mining for *bona fide* machine learning research. However, given AI's vast capacity to rapidly generate high value works derived from copyrighted sources, boundaries of fair use need rethinking. Guarding against abusive applications of AI that infringe on rights is pivotal. Generative models that can churn out cheap AI knockoffs of hit songs, bestsellers, or box office formula films threaten creators' livelihoods. Expanding the arsenal against infringement by recognizing AI's agency in lawsuits and employing blockchain or watermarking to audit distribution and creation pipelines can help stem misuse. But overbearing surveillance may stymie lawful creativity. Curbing harmful scenarios requires international consensus on what constitutes responsible AI innovation versus destructive ends.

AI is both empowering and perilous. Our task is forging a balanced copyright framework that nurtures AI's creative potential while protecting rights holders and the public good. This calls for nuanced open-mindedness, not reactionary resistance nor precipitous overhauls of copyright itself. Achieving equilibrium hinges on inclusive dialogue between creators, tech innovators, ethicists, social scientists, governments, and civil society to illuminate challenges and spur measured reforms.

The writer is student of law, North South University