WOMEN AND LAW

Observing International Women's Day

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Global observance of the International Women's Day (IWD) on March 8 every year sheds light on gender equality, women's rights, and the challenges faced by women worldwide. The official commemoration of the International Women's Day by the UN began in 1975 during International Women's Year, and two years later, the UN General Assembly formally established the day.

While the direct impact of International Women's Day on substantive gender equality may be limited, it serves as a powerful platform to initiate conversations, raise awareness, and inspire actions contributing to the overarching goal of achieving gender equality. The effectiveness of these efforts depends on various factors, including the level of engagement, the nature of specific initiatives and events, culture of different nations and the broader societal contexts. These actions must go beyond mere rhetoric and reflect a genuine commitment to change.

Legally speaking, a significant landmark in the journey towards recognising women's human rights was the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948. This declaration acknowledged the existence of basic inalienable rights and fundamental freedoms for every individual, including women. Women's rights got further entrenched within the international human rights paradigm through the International Convention on the Elimination of all forms of Discrimination against Women 1979.

Despite these commitments, gender equality remains an elusive ideal across countries. This ambivalence highlights the need for a closer examination of factors such as engagement levels, specific initiatives, and societal contexts. Pertinently, Bangladesh has reservations to two important articles of the CEDAW, which many think go against the object and purpose of the treaty.

Examining the broader societal context reveals a deeply ingrained patriarchal culture in Bangladesh. This cultural backdrop reinforces traditional attitudes towards women, portraying them as dependent and sacrificial. This perspective not only hinders the effectiveness of initiatives but also perpetuates a rhetorical commitment rather than genuine implementation agenda.

In our country, gender inequality is manifested prominently through violence against women. Despite commendable government initiatives, including special laws such as Domestic Violence (Prevention and Protection) Act, 2010, the Dowry Prohibition Act, 2018, the Women and Children Repression and Protection Act, 2000 (Nari O Shishu Nirjaton Daman Ain, 2000), the Acid Control Act, 2002 and the Pornography Control Act, 2012 and a parliamentary quota system to advance women, challenges persist. Unfortunately, effective implementation remains a significant hurdle. Issues such as lengthy legal processes and financial constraints impede justice, leaving women victims vulnerable and lacking protection.

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Despite the annual celebrations of Women's Day in Bangladesh, the reality suggests a substantial gap between the intended goals of raising awareness about gender equality and women's rights within the societal landscape. Closing this gap requires a comprehensive approach that not only emphasises legal frameworks and protective measures but also challenges ingrained cultural norms that perpetuate gender inequality.

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LAW AND TECHNOLOGY

Technological advances and the right to freedom of thought: The liminal space

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Freedom of thought is known as one of the foundations of a democratic society. Article 39(1) of our Constitution guarantees the right to freedom of thought without any exception, pointing towards its absoluteness. The right receives similar treatment in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which states: "Everyone shall have the right to freedom of thought, conscience and religion." Though enshrined as a fundamental right, or its presence in international documents, the right often remains neglected within our regular discourse. But thanks to the recent technological developments, this oft-forgotten right has once again gained prominence.

In general, the right to freedom of thought comprises three elements: (a) the right not to reveal one's thoughts or opinions, (b) the right not to have one's thoughts or opinions manipulated, and (c) the right not to be penalised for one's thoughts. This right has to be distinguished from the right to manifest one's thoughts, beliefs or opinions. While the former deals with thoughts as mental processes (*forum internum*), the latter deals with the same manifested onto the external world (*forum externum*), e.g., speech. In General Comment No. 22 on Article 18 of the ICCPR, the Human Rights Committee acknowledges this distinction and elaborates the 'absolute' impermeability of the *forum internum*, compared to the qualified nature of the right in *forum externum*.

What is more concerning is our daily online activities being tracked by big tech companies to understand our psychological state, likes, dislikes and so on. As the internet has become a staple for our day-to-day communications and social relationships, there seems no way to escape this circle.

For a long time, as hinted above, freedom of thought had received little to no attention from the courts and the academics because of its presumed inviolability for practical reasons. As William Blackstone puts it: "[A]s no temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by outward actions, it therefore cannot punish for what it cannot know." But now, new technologies has emerged that can sufficiently penetrate our mind and reveal our thoughts. For example, fMRI can be used to infer suicidal thoughts with staggering 91% accuracy. This indicates the presumed inviolable right is now penetrable by modern technologies.

What is more concerning is our daily online activities being tracked by big tech companies to understand our psychological state, likes, dislikes and so on. As the internet has become a staple for our day-to-day communications and social relationships, there seems no way to escape this circle. Eben Moglen points out the phenomenon this way: "the 20th Century, people were tortured to reveal their thoughts and inform on their friends and family but in the 21st Century you just build social networks, and everyone informs on everyone else."

Today Facebook and Google hold an unprecedented amount of user data, which can be analysed using advanced machine learning algorithms to infer the unobservable inner mental states of a person. On the other hand, research shows that detailed personal information can be predicted based on what pages on Facebook they had 'liked'. Similarly, a 2015 Cambridge University study conducted by Wu Youyou and others revealed that psychological profiling based on Facebook likes allowed researchers more insight into a user's personality than their close friends and family. The power of Facebook to alter the emotional state of users by manipulating their news feeds has also been found in a 2012 research conducted by A.D.I. Kramer and others.

However, the absolute status of freedom of thought posits us before a new dilemma. If new technologies are deemed to violate one's absolute right to freedom of thought, this could hinder the further development of these technologies. But given the general benefits of these technologies, such an approach does not appear desirable. To strike a balance, two options are delineated by Richard Mullender (2000). The first one, driven by precautionary principle, is to recognise "the right as intrinsically valuable while acknowledging that both the right and the culture in which it can flourish are worthy of protection." This approach demands clear reasons for putting it at risk by brain or behaviour reading technologies. The other option, referred to as a qualified consequentialist approach, is to prioritise the beneficial outcomes from such technologies while acknowledging the obligation to put limitations on them for their potential detrimental impact of the freedom of thought.

In this backdrop, it is notable that the 2021 UN Report on Freedom of Thought suggests that technology companies examine how their products or services might infringe the right to freedom of thought and to make it more human rights compliant. The neurotechnology companies are also urged to 'ensure a robust, privacy-focused and human rights-compliant framework for the collection, processing and storage of neurodata'. Thus, it is necessary for the national and international bodies to develop new legal policy and regulatory frameworks to map the right in the new context.

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LAW VISION

Safeguarding novel designs in business

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A common scenario prevalent in Bangladesh is replicating foreign or local brand clothes and accessories and selling them at a lower price in the market. In fact, if any design or product becomes popular or *viral* on social media, many local designers try to replicate that design. Moreover, many local designers often complain about getting their designs replicated without their consent. These conducts are considered as infringement of the intellectual property rights of the creators.

Nonetheless, large portion of the population is unaware of intellectual property rights. As a result, some of them are infringing the intellectual property rights of the creators, but the creators also do not initiate legal steps against the infringer. Replicating designs without authorisation also increases unfair business practices. They can initiate legal action if they are aware of their rights and the steps necessary to obtain the damages. In addition to that, to attract foreign companies to business here and to maintain fair business practices, strict regulation of intellectual property is needed. In order to safeguard these products with unique aesthetics, industrial designs— a type of intellectual property—may be used in this situation.

'Industrial design' refers to- "the aesthetic visibility of the characteristic shape, line, colour, graphical user interface, calligraphy, etc. of any manufactured product." An industrial design concerns the product's appearance; it is the ornamental or visually appealing element of the item. If any product's visibility is distinct and novel, then that product's visibility can be protected. Unlike patent, industrial design protects the ornamental or aesthetic aspects of the product. It focuses on the aesthetic nature of a finished product, excluding technical or functional aspects of the finished product. One may argue that products' appearance can be protected through copyright or trademark laws, but it may not always be correct. Trademark means a sign that may be used to differentiate the goods or services of one business from those of other businesses. Thus, a trademark's exclusivity forbids others from using the same or a similar trademark in business for the same or a similar product or service. On the other hand, copyright protects the right of the creator over their literary and artistic works. It is apparent that the scope of protection of these forms of Intellectual Property is different and focuses on different aspects of the creation.

While both the Paris Convention and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) have provisions for the protection of industrial design, the WIPO member states adopted the Riyadh Design Law Treaty in a Diplomatic Conference in November 2024. This treaty aims to expedite and simplify design protection procedures, as well as enable designers, micro, small, and medium-sized businesses to acquire domestic and international design registrations at reasonable costs.

In Bangladesh, industrial designs have been protected since the colonial period, but recently, a new Act was passed in 2023 by repealing the previous Act. Let us delve into the key provisions of the Bangladesh Industrial Design Act 2023 (hereinafter The Act) for venturing into the new industrial design regime. Section 5 of the Act incorporates conditions for registrability of an industrial design in Bangladesh while section 4 categorically excludes certain designs that shall not be given protection. Moreover, the Act provides exclusive rights to the owner of the industrial design on registration of their industrial design. Hence, if any person uses the industrial design without authorisation of the owner for commercial purposes, then that person will infringe the rights of the owner, and the owner may initiate legal steps against the infringer under this Act. Exceptions to the protection under section 14 are included in the Act, such as actions carried out at educational or research institutes for educational and research purposes or for non-commercial reasons. Furthermore, section 6permits employers to register industrial designs made by employees under a contract unless the contract specifies otherwise. Additionally, this provision permits joint ownership of any industrial design. The Act's sections 22–26 further grant the owner of the design administrative, civil, and other remedies for infringement.

Now, it remains to be seen how pragmatic this Act can be in terms of design protection in Bangladesh. In the future, the Act could require certain changes to conform to the new design treaty. It is expected that the implementation of the Act may establish confidence in conducting business in Bangladesh for local designers as well as foreign big fashion houses. Simultaneously, the Act may safeguard customers from the malpractices by fraud designers. In fact, it will boost credibility in the region's seller-buyer relationships.

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