

SHORT ARTICLE**DEVELOPMENT AND NECESSITY OF INTELLECTUAL
PROPERTY LAWS: BANGLADESH PERSPECTIVE**

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1. Introduction:

Human beings from their civilization used to invent many things for their comfort of life. In ancient times, in a Greek colony named Sybaris, the inventor of new food recipe was granted one year exclusive right for the recipe.¹ With the growth of civilization this ancient form of protection turned out to be a vital demand of the time. Today the general belief is that Intellectual Property is crucial to the economic, social and technological development of a country.

And "in this new millennium, the Intellectual Property (IP) community has entered a new era characterized by the rapid expansion of demand for new forms of intellectual property protection, greater global coverage and unprecedented growth in the exploitation and use of intellectual property rights. Significantly in the knowledge based new economy IP is no longer to be perceived as a distinct or self-contained domain, but rather as an important and efficient policy investment that is relevant to a wide range of socio-economic, technological and political concern."² Recent years have witnessed increased attention to intellectual property considerations in the policy making mainstream at both international and national levels, in a wide range of legal, technological, economic, commercial and social fields. Developments in these fields increasingly effect international co-operation in intellectual property, which can no longer be viewed as a distinct or self-contained domain. Moreover, intellectual property issues and concerns are becoming increasingly integrated with other global issues.

2. Intellectual Property Defined

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¹ World Intellectual Property Organization (WIPO), Introduction to Intellectual Property: Theory and Practice at p. 580.

² P. G Mankind, Secretary, Dept. Of Industrial Policy and Promotion, Ministry of Commerce & Industry, Govt. of India, India. "Building Synergies in the Modernization of Intellectual Property Administration, Development of skills and the teaching of Intellectual Property Rights": Paper presented at WIPO Sub-Regional Forum on Intellectual Property Cooperation among Member States of the South Asian Association for Regional Cooperation, held in March 20 and 21,2001, Dhaka, Bangladesh.

Jeremy Philips & Alison Firth say that intellectual property has two meanings, one colloquial and other legal.³ The colloquial description of intellectual property is that it simply comprises all those things, which emanate from the exercise of human brain, such as ideas, inventions, poems, designs etc. The legal description of intellectual property differs from colloquial one and it focuses on the rights, which are enjoyed in the produce of mind, rather than upon that produce it. For example, we call a piece of land or a motor car 'property' not because it is solid, but because individuals or legal entities such as companies can assert a right in it against other persons. Intellectual property rights may be defined as legal devices, which guarantee the exclusive right to exploit for a period a time "a prescribed body of knowledge, signs or symbols."⁴ There are many types of intellectual property rights, which dominantly include: patents, utility model, designs, trademarks, copyrights, industrial designs, trade secretes, technical know-how etc. According to the list of TRIPS agreement intellectual property rights cover the following areas: - (a) Copyrights and related rights (i.e., rights of performers, producer of sound recordings and broadcasting organizations) (b) Trademarks including service marks (c) Geographical Indications including appellation of origins (d) Industrial designs. (e) Patents including protection of new varieties of plants (f) Layout designs (Topographies) of integrated circuits (g) Protection of undisclosed information including trade secret and test data.

With the exception of trademarks, the basic function of all types of intellectual property rights is the same. Regardless of type, the basic purpose of all IPRs is to encourage creative activity and the development of goods or knowledge to bring prosperity to the country.

3. Obligation to Introduce Intellectual Property System

"The thrust of intellectual property is today usually expressed in economic terms: the perceived need to enable creators and producers of knowledge-based commodities to capture the full or at least fuller, benefits of those commodities. In broad terms there are two models which address this objective in contemporary legal systems. The first, the protective model, creates a series of discrete protective laws, which give proprietary protection on closely defined terms. The second, 'the state support model',

³ Jeremy Philips & Alison Firth, *Introduction to Intellectual Property Law*, Third Edition, Butterworths-London, (1995).

⁴ Transnational Corporation and Management Division, *Intellectual Property Rights and Foreign Direct Investment*. New York: United Nations, (1993) at p. 8.

gives creators direct support or rewards, in one form or another, but allows relatively free appropriation by producers. Both models endeavor to encourage creation and dissemination of intellectual creations.”⁵ The components of Intellectual Property system contribute to the social, economic and human development of a country. Industrial design protection encourages people with creative faculty to devote their talent and energy in developing new designs for products. This is particularly so in the case of consumer products including toys, garments, furniture and so on. Protection of trademarks enables consumers to obtain their products of the right quality, which they are accustomed to get identifying the product by the mark. Thus generally the IP protection is an incentive to the inventor or author, and this was the main reason for such protection in the early society. The enormous technological development of transport and communications has resulted in the globalization of trade and commerce. This globalization has made the intellectual property a subject matter of international concern.

The international character of IP is recognized in the various international conventions, i.e., The Bern Convention, the Paris convention, The Universal Copyright Convention, The TRIPS Agreement, The Patent Cooperation Treaty etc. Among all these Conventions the TRIPS Agreement is the most important and vital one.

The Agreement on Trade Related Aspects and Intellectual property Rights (TRIPS Agreement) has marked the emergence of intellectual property rights as an issue in multilateral trade negotiations. The link between the intellectual property system and the global trade has been brought into sharp focus by the TRIPS Agreement. Consequently unprecedented levels of growth and changes have been experienced about the demands on an effective internal intellectual property system, its explosion and development, its potential to serve economic and social needs.

TRIPS is the aspiration of the industrialized countries of the world. They forced the developing countries to initiate regulation with the clear objective of universalizing the standards of IPR protection, which they had incorporated in their legislation. The developing countries negotiated to get benefits from other trade-related issues and acquiesced in making important concessions in terms of reforms of their intellectual property

⁵ DAVID I. BAIN BRIDGE, *Cases & Materials in Intellectual Property Law*, pp. 3-4.

legislation.⁶ The developing countries thought that the benefits of the agreement would outweigh the economic and social costs of the TRIPS Agreement. However, the wave of globalization created by the New World trading system is continuously forcing most of the developing and least developed countries of the world to implement IP legislation. Under the TRIPS Agreement as a member of Least Developed Country Bangladesh is obliged to implement IP laws by the 2006.

4. Main Fields of Application of IP Rights:

Types of IPR	Subject	Main Fields
Patents	New, non-obvious, industrially applicable inventions	Chemicals, drugs, plastics, engines, turbines, electronics, industrial control & scientific equipment
Trade Marks	Signs or symbols to identify goods and services	All industries
Copyright	Original works of authorship	Printing, entertainment (audio, video, motion pictures), software, broadcasting
Integrated circuits	Original layout designs	Micro-electronics industry
Breeder's rights	New, stable, homogeneous, distinguishable varieties	Agriculture and food industry
Trade secrets	Secret business information	All industries
Geographical indications	Geographical origin of goods and services	Wines, sprits, cheese and other food products
Industrial designs	Ornamental designs	Clothing, automobiles, electronics, etc.
Utility models	Functional models/ designs	Mechanical industry

Source: South Centre (2000), The TRIPS Agreement: A Guide for the South.

5. Intellectual Property Laws in Bangladesh:

Being one of the founder members of WTO, Bangladesh must introduce an Intellectual Property Rights Protection system in compliance with the TRIPS Agreement. Problem is with Bangladesh's capacity and economic condition to bear the onslaught of intellectual property right.

⁶ Carlos M. Correa, Intellectual Property Rights, the WTO and Developing Countries, The TRIPS Agreement and Policy Option. at p. 3.

The technological efforts in Bangladesh are negligible, which raises dispute about implementation of strong IP rights. Many claim that, if a country has no meaningful technological activity then for that country Intellectual Property Rights are irrelevant and not cost effective.

However, the fact is, TRIPS is not a mere legal document. It comprises economic, environmental and social issues, and certain measures are necessary to cope with IP issues, TRIPS Agreement and WTO obligation.

Bangladesh has few IP laws. All these IP laws are the enactment of the British colonial system and in a very premature form. All these laws provide for national treatment for its citizens as well as for foreigners who have filed an application for protection. But all these laws specially the patent law, do not specifically describe the inventions which will be given protection. Moreover in many cases the implementation process as suggested in the particular law is not effective leaving a concern of the international community. During the post liberation period no measure was taken to remove the anomalies. The reason may be that the amount of technological invention in Bangladesh is negligible and demands no attraction. But with the emergence of the TRIPS Agreement it is obligatory to amend IP laws.

The Copyright Ordinance of 1962 has been replaced by the Copyright Act of 2000. This Act of 2000 is the final step in the TRIPS implementation process. Copyrights are protected in most cases for 60 years. Under this Act the government is under an obligation to establish a Copyright Office and a 6 member Copyright Board headed by a person qualified to be the judge of the High Court Division. This Act provides punishment for international violation of Copyright, which may extend from fine to imprisonment.

Two other Acts are The Patent and Design Act, 1911 and The Trade marks Act of 1940. Here patent rights are granted for industrially applicable inventions that utilize a law of nature. Under this Act there must be a Patent Office, which shall be under the control of the Controller of Patents. However this Act is in rudimentary form and has not yet been amended as per TRIPS Agreement. To be noted, for the protection of patent right there exists in Bangladesh an amended Patent and Design Act 2001. The draft of the proposed Patent Act based on the TRIPS Agreement is still in the process of examination. It is not sure when the law will be finalized. However, information reveals that a draft has been prepared and submitted to WIPO (World Intellectual Property Organization). In the international periphery, as has already been mentioned earlier, Bangladesh is a member of TRIPS Agreement, WTO

and also of WIPO. Bangladesh also acceded to The Bern Convention, but has not yet signed the Patent Co-operation Treaty.

The government has completed the task of updating and revising the TradeMarks Act 1940. The draft of the Act provides provisions for non-registration of any mark, which is contrary to any existing law or is likely to hurt the religious sentiment of any communities in Bangladesh. The draft also put emphasis on the regulation of the mark in Bangladesh for protection. The Law Commission has prepared the draft but the government has not yet taken, prepared steps to enact it.

As a member of the group of least developed countries, the provisions of the TRIPS have to be implemented by 2005. It is not still clear whether review and updating of the laws would be completed by 2005. Few problems are very much associated with the whole process: firstly, level of skill and awareness of public in general, government officials and professionals is very low. Secondly, whether it would be sufficiently appreciated and supported by the economists and NGOs who are not so much expectant about the positive impact of TRIPS Agreement.

Furthermore, certain provisions of TRIPS have given rise to widespread apprehension for Bangladesh, especially Article 27 which defines the patentable subject matter. Surprisingly, TRIPS Agreement does not constitute a uniform law. It provides a number of minimum standards that will substantially increase the degree of harmonization of intellectual property protection on almost a universal scale, leaving a considerable room for national laws to define a number of important aspects.⁷

6. Challenges for Bangladesh

The developing and least developed countries expect that they should be benefited because of the synergistic impact of free trade and the consequence globalization. They thought that the benefits of different UR Agreements would outweigh the onslaught of the TRIPS Agreement. But the practical scenario is totally different. Confusion has overclouded the hope mainly because of the new interdependence generated in TRIPS. The concept of globalization propounded here does not necessarily reflect equal opportunities for all (scientific and technological experience differs from nation to nation) countries. The common apprehension is that implementation of TRIPS will be burdensome for the developing countries whose IP system is in a very rudimentary stage. So the developing

⁷ Ibid, at p. 97.

countries like Bangladesh is needed to be ensured that implementation of TRIPS provisions will not lead to further deterioration in the economic situation of the country. Being a member of WTO, TRIPS and WIPO Bangladesh is committed to incorporate the TRIPS provisions in its legal system consequently she incurs an obligation to implement the TRIPS Agreement by 2005. Now it is still a question whether the review and updating of the laws would be possible within the specified period. The main points of concern for Bangladesh are- (1) TRIPS related obligation might lead to asymmetrical financial burden on the nation. (2) Pharmaceutical components may mark up the prices of their products many times compared to the cost of production taking advantage of the patent rights. (3) It is apprehended that TRIPS related regulations would become a new tool for exploitation of the developing countries. (4) If a country has no meaningful technological activity, where costs are likely to outweigh the benefits, then for that country IPRs seems to become irrelevant and Bangladesh is not out of this situation.

7. Conclusion

With the proliferation of knowledge and technology circumscribed by the rapid process of globalization intellectual property law has been the fastest growing part of law. This aspect of law bears significance for Bangladesh. Though we have some updated laws on the point yet they are not sufficient. The challenge thrown by the TRIPS agreement needs to be very cautiously dealt with. There should be a consensus and transparent idea about the real impact of the TRIPS agreement.