

## **Enforcement of Intellectual Property Rights (Iprs) in Bangladesh: An Appraisal**

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**Abstract:** *The present world is witnessing increased attention on the issues concerning Intellectual Property Rights (IPRs) in the policy making at both national and global levels. The IPRs are the rights given to people over the creations of their minds and often considered the ownership rights for the use of innovative works and is measured to promote innovation, investment in science and technology for the public welfare. The intellectual property (IP) confers upon individuals and other entities the right to purge others from the use of certain subtle innovations. Protection and promotion of this right is a sine qua non for ensuring that the technological and economic developments resulted from the labors of innovative people should be appreciated. Only a strong system of IP protection can create an atmosphere where the innovative industries flourish to promote the overall economic development of a country. Though Bangladesh has introduced a stronger IPRs protection system through enacting a number of legislations and becoming the party to various global instruments regarding IPRs, extensive violations due to having a fragile enforcement mechanism have discouraged the creativity and deprived inventive works of their pecuniary value and protection of uniqueness in this developing country. This academic piece of research intends to explore the enforcement mechanism of IPRs and its significance in economic and technological development in Bangladesh. This study briefly presents the historical development of the IPRs in the context of their enforcement in Bangladesh, covering the rationale for the dilemma of Bangladesh for stronger IP regime and also strives to reveal the existing challenges in the effective enforcement of this right. Finally, this study has come with some findings and recommendations to protect and promote IPRs in more efficient and effective manner for Bangladesh.*

**Key words:** *Bangladesh, Intellectual Property (IP), Intellectual Property Rights (IPRs), Enforcement, Protection,*

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### **I. Introduction**

Intellectual Property Rights (IPRs) are one of the susceptible areas in Bangladesh whose effective enforcement could renovate the socio-economic conditions of this country. The enforcement and implementation of IPRs in the developing countries like Bangladesh has been a much debated issue during the recent years. Enforcement of these rights has taken a large place in the maximum global trade agreements in the last few decades.[1] In Bangladesh, the fostering of national technological aptitude through the IP system is thought to be the core determinant of economic and technological development as well as poverty alleviation. Conversely in the developed countries there is outstanding evidence that IP is indispensable for the advancement of invention in some industrial sectors, e.g., the pharmaceutical, chemical and petroleum industries as well as biotechnology and some components of information technology. [2] The enforcement of IPRs protects national trade and commercial innovation, and encourages technology transfer and overseas investment. Thus the enforcement of IPRs is a part of the developing country's overall economic development strategy.[3] Since long time the developing nations have been under demand by developed nations for the enforcement and implementation of IPRs. The prime concern by the developed countries is to protect the innovations in the developing countries from the unlawful replication. Thus the debate between the developed and developing nations concerning the enforcement of IPRs is getting extreme since the last few decades.[4]

### **II. Research Methodology**

This paper demonstrates a precise overview on the legal and institutional framework on IP in Bangladesh. The study also represents the present situation of IPRs and its protection system under the existing legal arrangements of Bangladesh. In the completion of this study, I relied mainly on both the primary and secondary sources so that the findings can get a multidimensional spectrum. The study is primarily based on an overall combination of analytical reasoning and existing IP laws, global instruments, different books, journal articles, observations of prominent jurists, data collected from relevant organizations and different web sites.

### III. Intellectual Property (IP) And IP Rights (Iprs): Meaning And Definition

A general legal definition of property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.[5] Property generally takes two forms - physical and intellectual. Physical property includes all tangible items, e.g., land, housing, or possessions. Intellectual property represents the property of your mind or intellect.[6] Intellectual property (IP) is a field of law that deals with property rights in intangible things, e.g., new creations or business goodwill.[7] The IP law includes a wide range of subject-matters: inventions protected by patents, literary and artistic works and computer software's protected by copyright, reputation of marks of products and services protected by trademark, important corporate information protected from reaching the hands of competitors by trade secret, distinctive quality of products corresponding to a specific geographical location or origin by geographical indication etc.[8] Though the term "intellectual property" is not defined in the Convention establishing the World Intellectual Property Organization (WIPO), the WIPO member states that drafted the Convention that drafted the Convention which was signed at Stockholm on 14<sup>th</sup> July, 1967, chose to offer an inclusive list of the rights relating to:

*"literary artistic and scientific works; Performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."*

The IP refers to innovations of a creative human mind that is elusive in nature and for which a control is assigned to the designated owners by law. In other words, IP means the creations of the human mind, e.g., inventions; literary and artistic works; designs; and symbols, names and images used in commerce.[9] Very broadly, it means the legal right that results from intellectual activity in the industrial, scientific, literary and artistic sectors.[10] The thoughts of inventors do not have any geographical limitation that also can create value where nothing existed before. Jeremy Philips and Alison Firth (1995) observe that intellectual property has two meanings, one colloquial and other legal.[11] The informal explanation of IP is that it simply comprises all those things, which derive from the exercise of human brain, e.g., ideas, inventions, poems, designs etc. The legal description of IP differs from colloquial one and it focuses on the rights, which are enjoyed in the produce of mind, rather than upon that produce it.[12] The IP law aims at safeguarding the creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions.[13] This right is outlined in the 1948 Universal Declaration of Human Rights (UDHR) that provides that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." [14]

The Intellectual Property Rights (IPRs) are legal mechanisms to protect the rights of inventors, and the interest of consumers. IPRs not only protect the rights of the creative people and large firms, local entrepreneurs' and artists also enjoy the advantage of protection.[15] The IPRs 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." [16] An IP right is a legal right that is based on the relevant national law encompassing that particular type of IP right. Such a legal right comes into existence only when the requirements of the relevant IP law are met and, if required; it is granted or registered after following the prescribed procedure under that law.[17] The salient feature of this right is that it confers upon individuals, enterprises or other entities the right to exclude others from the use of specific intangible creations. These rights relate to pieces of information that can be incorporated in tangible objects.[18]

### IV. Intellectual Property Rights (Iprs): Different Categories

Intellectual property since the Paris Convention, 1883 [19] was divided into two parts: one is 'industrial property' as organized under the Paris Convention and another is 'non-industrial property' incorporated under the Berne Convention, 1886. Moreover, there are some common types of IPRs, which dominantly include: trademarks, copyrights, patents, utility model, industrial design rights, technical know-how and in some jurisdictions trade secrets: all these cover music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs etc.[20]

The 1967 Convention Establishing the World Intellectual Property Organization (WIPO) provides that "intellectual property shall include rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields." [21] The term "intellectual property" refers to all categories of IP that are the subjects of Sections 1 through 7 of Part II.[22] The subjects of sections 1 through 7 of Part II are as follows which are treated as IP:

1. Copyright and Related Rights,
2. Trademarks,
3. Geographical Indications,
4. Industrial Designs,
5. Patents,
6. Layout-Designs (Topographies) of Integrated Circuits,
7. Undisclosed information, and
8. Control of Anti-Competitive Practices in Contractual Licenses.

All the IPRs usually exclude the third parties from exploiting protected subject matters without explicit authorization of the right holder, for certain duration of time.[23] The IPRs provide the owners of IP the legally enforceable power to prevent others from using an intellectual creation or to set the terms on which it can be used.[24]

## **V. Iprs Laws In Bangladesh: Brief Historical Development**

Bangladesh has a long history of IP system that has inherited its legal framework on IP dating back to the British-India and its ancient, medieval, and colonial history covers an era from the antiquity to 1947, while India was partitioned. Bangladesh owes the origin of its statutory IP laws from the British rulers as like India and Pakistan and its existing legislations on IP protection is entirely based on those laws.[25] The currently enforceable IPRs laws in Bangladesh are in place for its compliance with the global IPRs protection regimes.[26] Most of them are older than its membership[27] in international IPRs regime. The Patents, Designs and Trademarks Act, 1883 is the earliest legislation found to protect the IP in Bangladesh, but subsequently it was repealed and the new Patents and Designs Act and the Trademarks Act were enacted in 1911 and 1940 respectively.[28] There was no specific legislation in Bangladesh for the protection of trademark until 1940 and it was governed under the Penal Code, 1860. The Penal Code, 1860 identifies a number of activities as criminal offences to enforce the right of the IP holders.[29] In 2003, both the Patents and Designs Act, 1911[30] and the Trademarks Act, 1940[31] were amended and the Department of Patents, Designs and Trademarks (DPDT) was formulated under the Ministry of Industries. The Trademarks Ordinance was promulgated in 2008 and in the Trademarks Act was enacted in 2009.

After a historic bloody war of nine months in 1971, Bangladesh has brought so many changes in its legal arena that in the meantime, taking into consideration the existing situation in Bangladesh and around the world, the Copyright Act, 1962 has been replaced in 2000 by the Bangladesh Copyright Act, 2000.[32] The copyright system of Bangladesh was originated mainly from the British copyright system and then the Copyright Ordinance, 1962 was promulgated and was administered till 1999. Subsequently the Copyright Act, 2000[33] was enacted in 2000 and was amended in 2005[34]. Bangladesh has participated in the convention establishing the World Intellectual Property Organization (WIPO) in 1985. It has become a member of the Paris Convention for the Protection of Industrial Property in 1991 and the Berne Convention for the Protection of Literary and Artistic Works in 1999.

Bangladesh is now a signatory state of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement under the World Trade Organization (WTO), which was entered into force in 1995. Being a member of LDCs, Bangladesh has been enjoying the extensive transitional period to bring herself into compliance with its rules. At present, the IPRs cover a number of resourceful works in Bangladesh, e.g., inventions by patents, distinctive shapes by designs under the provisions of the Patents and Designs Act, 1911; literary, dramatic and musical works by copyright under the Copyright Act, 2000; business names and logos are protected by trademarks under the Trademarks Act, 2009.[35] Furthermore, different goods renowned for their exceptional qualities are protected by the geographical indications under the Geographical Indication of Goods (Registration and Protection) Act, 2013.[36]

## **VI. Economic And Technological Development In Bangladesh: Role Of Iprs Protection System**

The nexus between IPRs and economic development has been complicated since the beginning of international system for IPRs protection in the 19th century.[37] The significance of IP was first recognized in the 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Works respectively. Since the 1980s, IP has been observed as playing a key role in developing technologies for the next century.[38] There are many theoretical and empirical studies determining the impact of IPRs on economic growth that leads to economic development.[39] The IPRs protection system is a basis of modern economic policy at the domestic level and a means of development that will increasingly become a vital tool for the sustainable development in the LDCs in the knowledge-based society of this era.[40] There are two crucial economic objectives of any IPRs protection system: to promote investments in knowledge creation and business innovation through establishing exclusive rights to use and sell newly developed

technologies, goods, and services; and to promote extensive dissemination of new knowledge through encouraging rights holders to place their inventions and ideas on the market.[41]

The key to growth of the knowledge-based economy exists in the innovation of knowledge and skill, while the IPRs system provides the owner of an innovation the special rights for a certain period, so that they can improve the high amount of input and gains of innovation, to drive economic development. Hence, the stronger the IPRs system in a country, the better that country is able to promote technological dispersion through increasing the access to knowledge-intensive foreign technologies.[42] IPRs exert economic growth, which requires raise in productivity, increase in productivity requires increase in technological innovation and it requires the efficient protection of IPRs.[43] Developed countries have tended to opt for relatively strong IPR systems, with the goal of encouraging creative activities that are observed as a key source of long-run fiscal gain.[44] The protection of IPRs in the developing countries has come to the front in the last few years. Over the past decade, IP has joined fiscal, trade and industrial policies, and foreign development assistance, as a vital area in which developing countries have come under pressure to identify their interests and adopt appropriate policies.[45] According to some studies, IPRs protection in the developing countries can push their technological capacity towards further innovations. This will in turn promote scientific and technological development, ensuring economic growth and poverty reduction.[46]

Bangladesh is no exception concerning the aforementioned trends. The LDCs like Bangladesh could be benefited from the increasing demand and appropriate IPRs especially for patented agricultural and pharmaceutical goods. The protection of the IPRs is an engine and basic component of financial development both in the developed and developing economies.[47] The IPRs protection could be used as a vehicle for economic growth through trade.[48] Theoretically the protection aims to foster beneficial technological development furthering innovation and increasing economic growth.[49] The need to renovate IP system of this State is inspired by the WTO membership aspirations and internal debates.[50] Among the LDCs, Bangladesh has enormous potentiality to become a middle income country within few years. It was envisaged by the WTO that Bangladesh could reach a middle income country status by 2016 if it grows 7% each year. Taking into account its developing economy in pharmaceuticals, ready-made garments, leather industry and in some other businesses and services, Bangladesh has to protect the rights of the IP-holders.[51] Bangladesh has already taken some initiatives to make its IP regime compatible with the TRIPS Agreement. Moreover, the enactment of the Trademark Act, 2009 and the Copyright Act, 2000 are the steps to fulfill its obligations under the WTO Agreement.

## **VII. Enforcement Mechanism Of Iprs In Bangladesh**

Protecting IPRs is a means of promoting technological development and innovation, thus benefiting the public through the activities of inventors and creators.[52] During the 1950s and middle of 1980s, developing countries were able to abstain from the implementation of IPRs, maintaining a special status in the IPR system.[53] The enforcement of IPRs is one of the several significant elements in IP law system, recently, the enforcement issue has often highlighted in both national and global forum.[54] The development of the IP system depends upon the effective enforceability of IPRs and violation of it is a common problem in the developing countries like Bangladesh.[55] The present IP enforcement mechanisms of Bangladesh are well organized and the agencies are now well coordinated and their effective measures can limit the violations. Acquiring or securing IPRs is of little economic value if these rights cannot be enforced effectively.

The protection of IPRs in Bangladesh is governed through several means, e.g., administrative, civil and criminal sanctions. In Bangladesh IP is administered by two separate ministries. The two offices responsible for IP matters in these two ministries are: the Department of Patents, Designs and Trade Marks (DPDT) under the Ministry of Industries (MOI) and the Copyright Office under the Ministry of Cultural Affairs (MOCA).[56] The DPDT is a quasi-judicial body and the Registrar of the department acts as tribunal. If any person becomes aggrieved he or she can file an appeal before the High Court Division (HCD) against the decision of the Registrar.[57] The Trademarks Act, 2009, the Copyright Act, 2000, and the Patents and Designs Act, 1911 have given certain IPRs to trademark and copyright holder and patentee. These laws have defined some violations of the rights as crime. The Penal Code, 1860 and the Customs Act, 1969 also have declared certain activities as criminal offence.[58]

### **(A) Enforcement Of Iprs Under The Copyright Act, 2000**

Copyright protection through its enforcement is indispensable for the overall economic and cultural development of a country. Copyrights are the authors' rights to protect their own works (such works that fall within literary, scientific, artistic, or musical domain that are expression of thoughts or sometimes in a creative way) from being copied or altered without consent.[59] Copyright refers to a bundle of exclusive rights vested in the owner of copyright.[60] It is a right given by the law to the creators of literary (including computer programs), dramatic, musical and artistic works and producers of cinematograph films and sound recordings.

These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner.[61] In Bangladesh copyright is a matter of statutory protection of IP and the pedestals of present copyright protection in this country are the Copyright Act, 2000 and the Copyright Rules, 2006. The present Copyright Act, 2000 has replaced the Copyrights Ordinance, 1962 and amendments have been brought afterwards to this Act under the name Copyright (Amendment) Act, 2005. Full protection has been granted by this Act to all works that include original literary, dramatic, musical or artistic contents.

Copyright in a work is thought to be violated when any person, without a license from the copyright owner or the Registrar of the copyright or any other competent authority, exercises the exclusive right of the copyright owner or permits any place to be used by the public for profit and such communication constitutes a violation of the copyright.[62] However, if any person uses the copyrighted works for the educational or research purposes or in furtherance of knowledge-generation, that cannot be considered violation of copyright.[63] Under the present copyright law, three kinds of remedies are available for the copyright-holder if his or her right is violated, e.g., civil, criminal and administrative remedy. A civil suit can be filed before the Court of District Judge seeking compensation, or search warrant, or injunction, or accounts in case of copyright violation of the copyright-holder. The owner of the copyright can bring civil action in which relieves such as Anton Pillar Order[64] or injunction, accounts and damages can be sought.[65] Criminal remedies can also be sought by copyright-holder under the existing law. If any person violates any right of the copyright-holder, he or she shall be punished with imprisonment for a term which may extend from 6 month to 4 years and fine which may range from tk.50, 000 to tk.2 lakh.[66] In case of piracy of computer programs, the amount of fine is extended by an amendment to the Copyright Act on 18<sup>th</sup> May, 2005, which is now minimum tk.1lakh and maximum tk.4 lakh if it is committed for commercial purpose.[67]

Apart from the civil and criminal remedies, the Copyright Act, 2000 provides for the administrative remedies. The administrative remedies consist of the act of moving to the Registrar of copyrights to ban the import of violating copies into Bangladesh, when the violation is by means of such importation and the delivery of the confiscated infringing copies to the owner of the copyright. Counterfeit or pirated goods, can, if it is proved by the Court as an act of violation, be destroyed by the administrative authority.[68]

#### **(B) Enforcement Of Iprs Under The Trademarks Act, 2009**

Trademark is a visual symbol to specify the origin of any particular good as distinguished from similar good maintained and manufactured by others.[69] Under the Trade Mark Act, 2009, “Trademark” means a registered trade mark or a mark used with regard to goods or service or a mark used or proposed to be used regarding any service or goods indicating a relation in the course of trade between the goods and the person having the right, either as an owner or as registered user, to use the mark.[70] The present legal basis of trademarks is based on the Trademarks Act, 2009 and the Trademark Rules, 1963. The Act provides for civil remedies to the trademark-holders in case any right is violated by any person. No suit can be filed to any Court inferior to the Court of District Judge in case: (1) any registered trademark is violated; (2) it involves any right or amended right related to the registered trademark; and (3) any similar or deceptively similar trademark, whether it is registered or not, is used.[71] In such a suit the Court can order for injunction, and compensation or part or profit as per the intention of the right-holder. The Court can also order to destroy, or wipe away, or eliminate the label and marks.[72]

Criminal case can also be lodged under the Trademarks Act, 2009 for the commission of some offences, e.g., falsifying trademarks, making, processing or disposing of any die, block, machine, plate, etc. Sections 73 - 91 of the Trademarks Act, 2009 are the relevant provisions for criminal proceeding for trademarks right violation in Bangladesh. If anyone commits any offense as mentioned in items (a) to (g) under section 73 shall be liable to pay penalty of tk. 2 lakh for the first offense with the sentence of two years and tk. 3 lakh for the second offense with three years sentence. There are many other provisions in this Act which are also open depending upon the nature and gravity of violations. The Penal Code, 1860 also contains provisions regarding the penalties for infringement of the IPRs of the trademark-holders.[73] The Code circumscribes the offences and provides punishments in this context.

#### **(C) Enforcement Of Iprs Under The Patents And Designs Act, 1911**

Patent is a document issued upon an application by the Government office that describes an invention and creates a legal situation in which patented invention can normally be exploited with the authorization of the owner of the patent.[74] In other words, it is a document issued by the Registrar of the Department of Patents, Designs and Trademarks (DPDT) to the inventor regarding his invention by which he can purge others from its illicit use. In order to create, use or sell something, the owner of a patented invention must seek permission from the DPDT. Under this Act, “Design” means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any

mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 478, or property mark as defined in section 479 of the Penal Code.[75]

The Patentee may use his rights himself or assign them or grant licenses.[76] The existing legal basis of patents and designs in Bangladesh is the Patents and Designs Act, 1911 that provides a detailed procedure to enforce the rights of the patentee. The remedies under this Act are available in the form of injunction, delivering up of violated patented product, compensation for an account of the profits. Apart from the civil remedies, some acts of violations have been made punishable offences triable by the criminal Courts. A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it: Provided that where a counter claim for revocation of the patent is made by the defendant, the suit, along with the counter claim, shall be transferred to the HCD.[77] In a suit for violation of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.[78]

### **VIII. Enforcement Of Iprs In Bangladesh And The Trips-Complaint**

Recently the Bangladesh Government has taken the following several initiatives to protect the IPRs of its citizens as well as to comply with its treaty obligations under the TRIPS Agreement:

1. The Copyright Act, 2000 has been enacted by the Government that has replaced the Copyright Ordinance, 1962 and an amendment has also been brought to the aforesaid Act in 2005 in order to expand the area of computer programs and to increase the penalty for the violation of copyright concerning this matter.
2. The Government has also established the Department of Patents, Designs and Trademarks (DPDT) in 2003 through assimilating the two separate and independent offices, i.e., the Patent Office and the Trade Marks Registry Office.[79]
3. The Government has enacted the Trademarks Ordinance, 2008, that was subsequently replaced by the Trademarks Act, 2009.[80]
4. The Law Commission of Bangladesh has prepared a draft law on patents in 2001, though the Patents and Designs Act, 1911 is still regulated in Bangladesh. The draft law on patent proposes that every patent shall be granted for 20 years from the date of filing an application for patent. This proposal has been made as per Article 33 of the TRIPS Agreement.[81]
5. Recently the Department of Patents, Designs and Trademarks (DPDT) has enhanced its work power through employing some people to strengthen its workability. Software from the WIPO will be adapted for computerizing the whole procedure of registration.
6. In Bangladesh, separate draft laws on design, geographical indication and utility model have been finalized. These amended IP laws in Bangladesh have guaranteed the civil, criminal and administrative remedies and have also taken some significant interim steps against the violations of IPRs that the TRIPS Agreement requires the WTO member states to put in place. Almost all these measures have been taken by the Bangladesh Government to make its IP regime TRIPS-complaint can be considered a good sign to comply with its WTO obligation.

### **IX. Protection Of Iprs In Bangladesh: Concern Causative Agencies**

The Government of Bangladesh has constituted different regular and special agencies empowering to limit the infringements of IPRs that must also be competent to protect the IPRs guaranteed by the existing legal framework in Bangladesh. The present functional agencies are: the DPDT, the Copyright Office, Mobile Courts, Rapid Action Battalion (RAB) and the local police who are working under different teams in different areas of Bangladesh. The DPDT is a quasi-judicial body and the Registrar thereof acts as a tribunal against the decision of whom an appeal shall be instituted before the HCD. In case of violation of rights as to trademarks, no suit can be filed before any Court inferior to the Court of an Assistant Judge or a Joint District Judge. Since all the criminal proceedings at the first place are entertained by the Magistrate's Court, thus the criminal cases as to false trademarks, trade mark counterfeiting etc. are tried by the Court of First Class or the Second Class Magistrate, and in the metropolitan area by the Metropolitan Magistrate. An appeal against the decision of a Magistrate Court shall lie before the Court of District or Sessions Judge.[82]

Again, the customs officers generally deal with the tax related issues, i.e., if the tax of the goods are not illegal or the tax is paid properly, they cannot confiscate the goods as they have no sufficient information about the trademark of such things and even they do not have much to do with this matter whether the goods are real or pirated. These officers can take proper action only if they are informed by the police after lodging a case. The right-holders can take initiatives and lodge a civil or criminal case at the police station if any of his trademark, patent or copyright is infringed. In fact, there is no specialized IP enforcement Court in Bangladesh, but tribunal

is formulated consisting of the higher officials of the DPDT and mainly these IP violation cases are tried by them. When these cases go to the regular Courts, regular judges deal with them. There is no specific distinction between judges dealing with the IP cases and those dealing with the competition cases. Both the tribunal and the regular Courts dealing with civil or criminal cases hear cases related to the challenging decisions made by the national IP office.

This reflects a brief summary of the structure of enforcing agencies. The IP right-holders can take necessary assistance from these agencies.

### **X. Enforcement Of Iprs In Bangladesh: Major Stumbling Blocks/Challenges**

The emergence of the 21<sup>st</sup> century and the speedy growth of innovative technologies and economic globalization makes our laws incompatible with today's requirement and offers both the challenges and advantages. The challenges arising out of accession to the TRIPS Agreement compel us to bring different amendments in our existing IP laws.[83] While in many countries today, there is a certain degree of IPR awareness at the graduate level, some lawyers and economists still ignore the existence and the importance of IPRs in other countries.[84] The degree of IPR awareness is very low in developing countries. Generally speaking, IPRs are violated every day, as the majority of the populations are not aware of the phenomenon, or they do not understand the policies behind IPRs.[85] However, the common apprehension stands in the way of enforcement and implementation before Bangladesh can be described through the following points:

1. Most of the procedural IP laws in Bangladesh are quite premature in nature and very few in numbers which were enacted during the colonial period by the British rulers and were hardly updated afterwards. Consequently these laws are not appropriate to protect the IPRs and to address much nuanced problems on IP in Bangladesh.
2. Bangladesh does not have strong infrastructure, manpower and adequate resources to ensure fruitful and effective enforcement of the IPRs. The technology in Bangladesh is negligible, that signifies a strong background in the strong IPRs enforcement.
3. Bangladesh lacks adequate legislations on geographical indications, layout designs of integrated circuits and plant variety protection which are three important sectors on IPRs.
4. The enforcement machineries do not appear to stand in a satisfactory level leaving the IPRs a poor protection.
5. The lengthy, complex and expensive adjudication procedure discourage the aggrieved people to come for effective remedy in Bangladesh.
6. The main challenge in the way of enforcement and implementation of the IPRs in Bangladesh is the lack of awareness among the people regarding the IPRs. For instance, the copyright stakeholders (e.g., writers, publishers, artists and authors), political representatives, civil servants, common people, law enforcing agency, lawyers, judges who are actively involved with the policy making and implementation are not aware of the idea of copyright and related rights.[86]
7. There is also lack of powerful and efficient national body to coordinate the activities of the police, customs, and IP officials in Bangladesh.

It is widely accepted that the enforcement of IPRs is a multi dimensional concept. It is not possible to fully enforce the IPRs by the law enforcing agencies, customs officers, and IP courts. The policy-priority, appropriate legal and institutional framework, consistent and IP-friendly judicial activism is required to ensure effective IPRs enforcement in this country.[87]

### **XI. Findings And Recommendations For Bangladesh**

We have want of specific legislations on trade-secrets, unfair competition, and Geographical Indication (GI) and lay out design of integrated circuits still today. The administrative capacity of DPDT and copyright office is very much vulnerable due to manual system, shortage of number of officers, staffs, and expert on IP. Moreover, the copyright piracy is very frequent in this country and its rate is the highest amongst the whole world. In the light of the above circumstances, following recommendations can be proposed:

1. The separate legislations should be enacted by the Bangladesh Government to protect the industrial designs, utility models, Geographical Indications (GI), Plant Varieties Protection (PVP), cross-cutting IPRs, trade-secrets, preventing undue rivalry and integrating IP offices, and some amendments should also be brought to the existing laws to develop a harmonious system of IPRs protection in Bangladesh.
2. A practical and permanent policy on IP should be introduced and the copyright offices should be fully computerized to provide better services within the shortest possible time. Efforts should also be made to introduce IT in the management of copyright administration in Bangladesh.

3. Mass awareness building initiatives regarding IPRs, e.g., seminar, symposium, and workshop should be arranged regularly and the academic and training institutions should include copyright and other IPRs in their curricula. The DPDT and copyright offices should work in close collaboration with the highest trade organizations to build a Public-Private Partnership (PPP) in this area. A Public-Private Partnership Council should be set up to increase awareness among the people about the enforcement and importance of IPRs.
4. The government should take effective measures to increase the negotiating power of the DPDT. The DPDT and the Copyright office should be merged into a single institution and that can be renamed as "IP Office of Bangladesh". The organization should be headed by a Director General (DG) with a rank and status of an Additional Secretary of the Government and be placed under a single Ministry.
5. The organizational skill of the concern administrative branches should be promoted both qualitatively and quantitatively so that they can act efficiently. Mechanisms must be developed to ensure speedy and cheap resolution of disputes and litigation on IPRs.
6. The copyright law should provide the foundation for the protection of software as the absence of copyright protection of software is liable for poor flow of foreign clients and low rate of software export. Rules annexed to each particular Act on IP should be amended periodically to reflect the amendments that have been brought since the enactment of any Act.
7. For the sake of fair justice, satisfactory and prompt resolution of IP disputes, it is essential that Bangladesh should immediately launch the IP and commercial law courts throughout Bangladesh, especially in consideration of the increased number of IP.
8. Bangladesh has thriving resources of IP deriving from the indigenous knowledge. It would be wise for the Government to recognize their skill, knowledge, practices, innovations, and rights and bring them under the protection of IP law regime.
9. Bangladesh Government should establish a National Task Force or Committee on IP comprising of the representatives from the IP experts, police, judicial department, business community, media, and customs officers whose primary obligation shall be to take care of innovations in the field of science, technology and IP issues, and to prevent the IPRs violations in Bangladesh.

It can also be observed that, while taking the aforesaid actions, the Bangladesh Government can take the legal and technical aids necessary from the WIPO and WTO. It would be better if Bangladesh can develop its own skills in the field of IP law and indigenous knowledge protection system as well. It is feasible to reduce the risk of IPRs infringements through regular supervision and investigation of the markets in different fields and parts of the country.[88] Furthermore, through using the Brazilian, Indian, and South African experiences, several legislative options should be considered by the Bangladesh Government in order to introduce TRIPS-compliant patent law to help conserve Bangladesh's local pharmaceutical industry and to promote innovation and access to medicine.[89]

## **XII. Concluding Remarks**

Being a developing state surrounded by severe socio-economic problems i.e., corruption, extreme poverty, population, illiteracy, unemployment, issues like IP or copyright are often ignored in Bangladesh though the situation has been changing gradually.[90] Countries must have the freedom to base their individual strength of IP protection on national factors.[91] Where few people think IPR protection as a solution for the developing countries, views on the significance of IPR protection tend to be polarized. On one side, it is thought that stronger IPR protection can encourage innovation, technology diffusion and development. On the other it is believed that it leads to monopoly power for patent holders, decreases the motivation to innovate and limits the transmission of knowledge.[92]

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