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WAIVER OF MORAL RIGHTS IN COPYRIGHT LAW: WHAT BANGLADESH CAN LEARN FROM THE UK APPROACH?

The provisions pertaining to moral rights were included in the copyright law of the United Kingdom (UK) as a consequence of the enactment of the Copyright, Designs and Patents Act 1988 (CDPA). The UK has included a comprehensive waiver of the moral rights clause in CDPA, although the Berne Convention provides no definitive guidance on this issue. In contrast, the Copyright Act of Bangladesh, enacted in 2000, has a provision for moral rights compliant with the Berne Convention. While Bangladesh has maintained full compliance with the Berne Convention in regard to moral rights, the Copyright Act, 2000 contains no specific provision regarding the waiver of moral rights. There is no doubt, however, that the explicit clause addressing the waiver of moral rights in the UK's copyright legislation offers authors and publishers significant benefits. Because retaining ambiguity or grey areas in the law, such as Bangladesh's copyright statute, might generate unnecessary confusion and impediments to the author's freedom of choice. From this perspective, this article will attempt to analyse the UK's approach to waiving moral rights, given that both countries share exact origins in copyright legislation. This article will also discuss whether the possible insertion of a waiver provision to the copyright statute of Bangladesh will be advantageous and beneficial to authors and publishers.

Keywords: copyright law, Bangladesh, the UK, moral rights, waiver.

1. INTRODUCTION

According to copyright law, it is crucial to recognise that the author and copyright owner have distinct legal positions, as the author of a copyrighted work does not always retain the copyright. Even the licensed user of a copyrighted work also has some rights and obligations. In copyright law, an author with copyright ownership gets two types of rights: economic rights and moral rights (World Intellectual Property Organization,

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2016). Usually, an author could straightforwardly transfer or assign the economic rights of the work to anyone under copyright law (Rosati, 2021). With economic rights, a person could be the economic beneficiary of the work and be referred to as the copyright owner, whereas the moral rights remain with the author.

Moral rights permit authors to be in charge of how their creation is treated and presented by any licensed or unlicensed user (Rosati, 2021). Due to ownership or licence, an author may not have the right to enjoy the economic benefits of his or her work, but he or she has the right to intervene if he or she discovers a violation of the moral rights of that work. Most countries in the world enacted their copyright law so that the author or copyright owner could effortlessly transfer or assign their work to another person. Besides the author, the publishers and other copyright holders enjoy economic rights with limitations since the moral rights are in the author's hands.

The legal system of copyright has provided fundamental protection to the authors through the doctrine of moral rights. Nevertheless, this protection sometimes creates issues for copyright owners and publishers. In some circumstances, the publisher/copyright owner could demand to modify the author's writing, but they cannot do it since the authors could use their power of moral rights to impede them from doing such a thing. Waiving moral rights could be a solution to this issue as this step will ensure that the author and publishers are in a balanced position in the aspects of bargaining. However, the Berne Convention is silent on the issue of waiving moral rights (Harding & Sweetland, 2012).

Waiving moral rights from copyright work could make it more valuable to the publishers as they would get freedom. Countries that follow the civil law system do not permit the author to waive their moral rights; however, most common law countries are interested in giving the authors the power to waive their moral rights (Almawla, 2012). In Bangladesh, the legal system's structure follows the common law system, and the legislation on copyright law is Copyright Act, 2000. Copyright Act, 2000 acknowledges the author's moral rights in section 78, but unfortunately, there is no clarification on whether the author can waive the moral rights (Siddique, 2021).

The global situation, on the other hand, is not ambiguous. The United Kingdom explicitly permits the waiver of moral rights in their copyright legislation, and authors have the advantage of this provision. A relative study would help Bangladesh to determine how they should deal with this provision and whether to insert it into Bangladesh copyright law. Keeping a grey area in the legislation is not helpful for the system; it creates superfluous uncertainty. The authors of Bangladesh also require the freedom of choice, and this silence impedes their liberty. Undoubtedly, some lawyers may argue that authors are not well-versed in their copyright rights, and this grey area could protect those authors.

This paper will primarily analyse the history and approach of the UK regarding the concept of moral rights as well as waiving moral rights. Also included is a discussion on the moral rights provision of Bangladesh's copyright law. Since both countries share exact origins in copyright legislation, this article will also discuss whether the possible insertion of a waiver provision to the copyright statute of Bangladesh will be advantageous and beneficial to authors and publishers. In addition, this paper will discuss what Bangladesh can learn from the UK response to this issue.

Considering the aforementioned issues, the second chapter of this paper will examine the historical development of moral rights. The second chapter will begin the discussion of the main aspects of this paper and will show the relationship between the notion of moral rights and the author's waiver of moral rights. The third chapter will include perspectives from the United Kingdom and Bangladesh on the waiver of moral rights, as well as how these two countries' legislation incorporated this concept. The fourth chapter will provide a general conclusion based on the arguments presented in the preceding chapters. The fourth chapter will also conduct a reasonable analysis of the waiver of moral rights provisions between UK and Bangladesh copyright law.

2. HISTORICAL DEVELOPMENT OF MORAL RIGHTS

In simplified terms, moral right is a concept that asserts there is a bond between the author and his work. When an author creates any work, a special bond develops and remains permanently (Zemer, 2012). There is currently a well-established position in the copyright law regime for the protection of moral rights (Takenaka, 2013). At this time, the scope of this concept is frequently the subject of scholarly discussion. Prior to the past 200 to 300 years, proponents of this concept battled greatly to establish it in the eyes of the law (Takenaka, 2013).

2.1. Concept of Moral Rights

The author's own interests are central to the concept of moral rights. The concept of moral rights recognises the unique rights that arise for a work's author or creator as a result of its authorship or creation (Lee, 2001). Typically, such rights are devoid of economic interests and remain with the author/creator even after the transfer of copyright ownership (Lee, 2001). Nowadays, authors/creators also use their moral rights to obtain economic gains. There are two categories of moral rights that continental European nations commonly acknowledge:

Right of Attribution: Also known as a right of paternity. This could also be considered the author's right to be recognised in connection with his or her creations, with the expectation that they will be recognised for their unique aesthetic qualities (Marvin, 1971).

Right of Integrity: An author has this right when he or she objects to or denounces any interference with the work they created. For instance, if the publisher or editor decides to make any changes to the author's original version (Dworkin, 1994).

2.2. Origin of the Concept of Moral Rights

Although the exact origin of moral rights remains a matter of scholarly controversy, it is generally agreed that they originated in nineteenth-century continental Europe (Rajan, 2011). The development of this doctrine has two different schools, French and German (Rajan, 2011). The French school was more grounded in practice and less so in theory, whereas the German school was more theoretically robust but unsupported

by statutes and court decisions (Strömholm, 1983). However, it is somewhat less well-known that moral rights were discussed in UK court during the middle of the eighteenth century and the concept was proposed by English attorneys in two separate cases, but the court rejected it due to political and practical considerations (Rajan, 2011).

The idea of moral rights became popular throughout Europe in the nineteenth century. In 1828, a statute in Russia established the author as a separate legal entity, and in 1911, a historical modification of the country's copyright law acknowledged authors' moral rights (Rajan, 2006). Some scholars, such as Elena Muravina, identified moral rights as a fundamental principle in the copyright laws of Russia (Rajan, 2011). Nonetheless, it cannot be denied that continental Europe, and in particular France and Germany, hold a distinctive place in the history of moral rights. These two countries allowed the idea of moral rights to thrive and spread because of their progressive policies. However, it is also true that there were disparities among the schools of thought, and these divisions are rooted in the legal system (Rajan, 2011).

Because, in France, they separated the moral rights from the economic rights of the author and governed these two rights separately (Rajan, 2011). However, traditional German law viewed moral and economic rights as inseparable, hence governing them together as though they were two sides of the same coin (Rajan, 2011). The ideas of two distinct schools cannot be disregarded because they have contributed significantly to the evolution of the idea of moral rights in the present day. "Droit moral", which literally translates to "moral rights", was the French term for this concept (DaSilva, 1980). The French judiciary had a crucial role in the development of the concept, despite France being a civil law jurisdiction (where legal standards are typically affirmed by the civil code rather than judge-imposed precedents) (Marryman, 1976). Furthermore, several academics have argued firmly that the concept of moral rights was established in its entirety by the French judiciary (Marryman, 1976). Though it may term as "doctrine" but this concept was enhanced in France as a right of author instead a rule of law (Katz, 1951).

2.3. Early Position of the United Kingdom

Instead of giving ideological appreciation for the author, the foundation of copyright law in the United Kingdom grew out of responsiveness to the monetary value of an author's creation (Harding & Sweetland, 2012). Before adopting the moral rights concept, courts in the United Kingdom largely depended exclusively on legal concepts such as defamation, the right of privacy, and the law of contracts (Rigamonti, 2006). As mentioned earlier that, at the very premature stage UK court rejected the concept of moral rights (Patterson, 1968). In the year of 1769, UK court recognised the concept of moral rights in a case (*Millar v Taylor*, 1769). However, in 1775, the recognition got rejected in a subsequent ruling by UK court in another case (*Donaldson v Beckett*, 1774). When the rest of Europe embraced the new concept of moral rights then, what might have prompted the UK to take such an unusual stance? In the case that this question arises, it could be intriguing to examine UK's early stance on this concept.

According to Mira T. Sundara Rajan, two significant reasons exist behind this position (Rajan, 2011). The first is that the UK did not recognise moral rights in their copyright laws until 1988. The UK usually follows their copyright laws when it comes to copyright issues, and the fact that this idea is not in the laws could be a reason to avoid it (Rajan, 2011). The second one is that the UK was not ready to adopt an alien legal concept; since the concept of moral rights was an idea of French law, the UK was not ready to adopt it in a straight way (Rajan, 2011). However, it is not only a matter of translating legal provisions into English; it also involves adopting the cultural and legal perspectives of the country in question. Significantly, the legal and social culture of the United Kingdom was not very writer-friendly (Rajan, 2011).

To hold this argument of Mira T. Sundara Rajan, English writer W. Somerset Maugham states, “I knew that with his perfect sense of social relations he had realised that in English society as an author I was not of much account, but that in France, where an author just because he is an author has prestige, I was” (Maugham, 2003). Apart from the comments of the authors, in terms of the willingness, France shows a better interest and willingness to protect the moral rights of an author, on the other hand, the UK was not enough interested in establishing the moral rights till the year of 1988. Because, in that year, the UK produced a new legislation for copyright and included the concept of moral rights.

2.4. Development of International Law

The idea that thrived as moral rights in France was universally recognised in international documents in 1928 at the Berne Convention for the Protection of Literary and Artistic Works (Ong, 2003). Article 6bis of the Berne Convention encompasses the idea of the concept without using the term “moral rights”. Article 6bis of the Convention requires signatory states to provide a minimum degree of legal protection compatible with all of its provisions.¹ Professor Ricketson asserts that Article 6bis of the Berne Convention empowers a creator/author to object to any additions, deletions, or modifications to his/her work (McCartney, 1990). In the Paris text², the first part of Article 6bis identifies and protects

¹ Berne Convention for the Protection of Literary and Artistic Works, Article 6bis:

- (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
- (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
- (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

² Berne Convention for the Protection of Literary and Artistic Works 1886 got Revised at Paris on the 24th July 1971.

most essential two types of moral rights: right of attribution and right of integrity (Harding & Sweetland, 2012). The second part of the article expressly standardise the duration of these rights (Fernández-Molina & Peis, 2001). Moreover, the third or last part of this article regulates the application of those rights (Fernández-Molina & Peis, 2001).

Article 6bis of Berne Convention (Paris text), that talks about how long moral rights last has been one of the most controversial points (Fernández-Molina & Peis, 2001). Please keep in mind that the term of protection for moral rights was not addressed in the original 1928 text. In this light, at the Brussels Conference (in 1948)³, many suggestions were put in place to ensure better protection of authors' moral rights (Fernández-Molina & Peis, 2001). Please note, however, that all of them were rejected on the grounds that they did not pertain to private law but rather public law (Fernández-Molina & Peis, 2001). At a final point, in the year of 1971, in the round of Paris Revision, all reached a consensus regarding this issue, recognising the possibility of upholding the author's attribution right and integrity right after death and at least until the other significant right, namely economic rights, expired (Fernández-Molina & Peis, 2001).

However, this Berne Convention was not the first Convention that recognised moral rights. The Convention between the United States and Other Powers on Literary and Artistic Copyright 1910 first enshrined moral rights in their articles, but the Berne Convention rapidly became the most significant source of the concept of moral rights. Apart from this huge development, there are two other international instruments where moral rights have been enshrined: 1948 Universal Declaration of Human Rights (UDHR)⁴ and the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁵ acknowledged moral rights which are a tiny improvement in front of the development happened in the year of 1928 through Berne Convention in terms of the international protection and recognition (Rigamonti, 2006). However, it is an intriguing fact that one of the most important agreements, Trade-Related Aspects of Intellectual Property Rights (TRIPS), (which is much more persuasive instrument than Berne Convention) makes no mention of the moral rights concept. Such exclusion illustrates that inclusion of moral rights concept is not recommended by TRIPS (Kilian, 2003).

2.5. Waiver at the Early Stage

At the early stage, when the concept of moral rights was developing in France, the legal system was strict about the waiver of moral rights. In that era, authors were not permitted to waive their moral rights because it was believed that such rights are perpetual, inalienable and imprescriptible (Rajan, 2011). As this approach was chosen from the start by the French administration in regards to this concept, the sector is now prepared to operate with moral right as a significant fact. In contrast, the UK has included moral rights in its copyright law, but has also included a waiver mechanism. Although many

³ Berne Convention for the Protection of Literary and Artistic Works 1886 got Revised at Brussels on the 26th June 1948.

⁴ Universal Declaration of Human Rights 1948, Article 27(2).

⁵ International Covenant on Economic, Social, and Cultural Rights 1966, Article 15 (1)(c).

scholars are opposed to the waiver approach because they believe it could be used as a weapon of occurrence by creating inequality in the negotiation process (Vaver, 1999).

As stated previously, France demonstrates a greater concern and desire to safeguard the moral rights of an author at this early period of development; hence, France avoids implementing the waiver of moral rights because it could lead to undesirable consequences. From the outset of the ideology, it was possible that the purchaser or publisher would be the more powerful party in a contract involving copyrighted material. As a result, the author's bargaining position was typically weak, and the purchaser could pressure the author into agreeing to a waiver clause (Rajan, 2011). In this age, however, a different viewpoint emerged, namely that an author can make his or her work possibly more valuable and worthwhile to a publisher by agreeing to a waiver clause. Several countries have embraced this stance because they view the copyright issue in a more economical approach, arguing that it offers both sides to an author–publisher contract equal bargaining power (Rajan, 2011).

3. APPROACH OF THE UNITED KINGDOM & BANGLADESH

As already mentioned, the concept of moral rights has been recognised in a number of European countries from the very beginning, although the United Kingdom initially forbade its establishment on its territory. The United Kingdom's position has shifted since it signed the Berne Convention, which gradually persuaded it to include a section protecting moral rights in its Copyright Act. According to the theory behind the present UK copyright law, when a writer releases his book to the public, it becomes a commodity that can be bought and sold (Kilian, 2003). Which is validated by the initial part of the UK Copyright, Designs, and Patents Act (CDPA).

Section 1 of the CDPA states “copyright is a property right”, making it apparent that, from the UK's perspective, copyright is primarily an economic right tied to the property (Kilian, 2003). Waiver of moral rights is thus more in line with the stance of UK copyright law. However, the term “property right” is not used in the definition of copyright in the Copyright Act, of 2000 (Bangladesh law on copyright). Meaning that the UK's approach to determining copyright may not be adopted by Bangladesh. Thus, it appears that protecting the works of art is given greater consideration under Bangladesh's copyright legislation than the economic benefits.

3.1. *The Inclusion of Moral Rights in UK Copyright Law*

An out-of-the-ordinary custom developed as a result of the French Revolution – “The most sacred and legitimate, the most unchallengeable and personal of all the properties is the oeuvre; the fruits of a writer's thought”⁶ (Holderness, 1998). The end result is a legislative framework in which “the author, a real person, has intellectual rights [in the work] and in consequence is sovereign in deciding its expression, disposition and

⁶ Original text by Isaac René Guy le Chapelier (1791): “la plus sacrée et la plus légitime, la plus inattaquable et la plus personnelle de toutes les propriétés est l'ouvrage, fruit de la pensée d'un écrivain”.

distribution. Authors further have ‘moral rights’, to protect their good name, their reputation and their works; the fact that these things are integral to the act of creation justifies these rights being perpetual and inalienable”⁷ (Holderness, 1998). In contrast, the United Kingdom first dealt with the legal protection of moral rights in 1928, when it accepted Article 6bis of the Berne Convention (Kilian, 2003).

Despite being a part of the Berne Convention (at Rome in 1928), moral rights were not incorporated into UK copyright law. There were others who felt that the UK at the time did not do enough to safeguard the author's creative thought, instead only protecting the commercial value of the author's name and reputation (Marvin, 1971). The United Kingdom finally changed its intellectual property law i.e., copyright law with a new Copyright, Designs and Patents Act 1988 (CDPA). Copyright legislation in the United Kingdom finally includes precise words recognising the moral rights of authors and writers. The CDPA produced two latest rights for the UK, rights of attribution and integrity (Section 77 & 80).

3.2. Moral Rights Provision in UK Copyright Law

The CDPA offer authors the right of identification through section 77. Section 78 states that, the right of identification is applicable exclusively where it has been declared in written form in the artistic work or in an assignment or license covering the work. In accordance with section 79, the CDPA removes the right of identification from several works. In section 80, the right of integrity is expressed as the author's right to object to derogatory treatment of work. In section 81, CDPA described the exceptions of the right of integrity. According to section 84, the author has some additional rights regarding false attribution of work. Section 87 has provided the provision regarding consent and waiver of moral rights.

3.3. Waivability of Moral Rights in the UK

As was previously said, although the UK acknowledged the provisions on moral rights protection in 1928 at the Rome revision of the Berne Convention, the UK did not solely incorporate any form of moral rights provision in their domestic law until the year of 1988. The entire statute is written with a great deal of precision and attention to technological detail (Dworkin, 1994). Moreover, Chapter IV of the same Act on the moral rights is no exception. The intellectual property scholars have found many limitations on the component of the UK in the matter of moral rights. Davies & Garnett states that the entire chapter on moral rights is formatted as if this provision has been submitted or disseminated to the entire legal community with the statement “the unhealthy child of the Berne Convention” (Davies & Garnett, 2010).

⁷ Original text by Becourt Daniel (1990): “L'auteur, personne physique, jouit de prérogatives d'ordre intellectuel et, à ce titre, décide en maître souverain de la réalisation et de l'achèvement de son oeuvre ainsi que de sa divulgation. Il dispose, en outre, de prérogatives d'ordre moral, destinées à protéger son nom, sa qualité et son oeuvre, tous éléments inhérents à la création, justifiant que ce droit soit édicté comme ‘perpétuel’ et ‘inaliénable.’”

Pay particular attention, and bear in mind the common law doctrine of implied waiver and contractual waiver, to the following discussion and considerations. Even though section 87(2) says that the waiver must be in writing and signed instrument, section 87(4) makes it clear that nothing in Chapter IV can stop a “contract or estoppel” from working in the case of an informal waiver. From this, it is clear that an author could waive his or her moral rights by using traditional process of contract or estoppel, even if the contract does not meet the formality requirements of section 87 (Brown-Pedersen, 2018). Consequently, there is a significant deficiency in this CDPA’s protection of authors’ moral rights because explicit guidance is inadequate about the applicability of informal waiver in copyright situation. In spite of the fact that the section 87 waiver does not necessary always violate the Berne Convention, it makes such violations easier to commit and offers only a minimal degree of protection to moral rights. It has been regarded in the debates that have taken place in the Parliament as being “totally against the spirit of the Berne Convention” (Hansard HL Deb., 25 February 1988; Hansard HC Deb., 28 April 1988).

3.4. Concept of Moral Rights in Bangladesh

The concept of Moral Rights is in the Copyright Act of Bangladesh. As British ruled this country till 1947, the legal approach of Bangladesh is quite comparable with United Kingdom. Formerly a part of the Indian subcontinent, Bangladesh came under British dominion after the East India Company, with whom it had been trading, seized administrative control of the region in 1757. Copyright laws was first enacted in India in 1847, with the passage of the Copyright Act, 1847, in reaction to similar legislation in England in 1842 (Dureja, 2015). The Indian Independence Act of 1947 established India and Pakistan as sovereign states, and East Pakistan was the name Pakistan gave to the land that is now Bangladesh. The Imperial Copyright Act, of 1911, and the Copyright Act, of 1914, as the existing legislation, continued as the law of each of the new dominions in accordance with section 18 of the Indian Independence Act, 1947.

The Copyright Ordinance, of 1962 replaced the earlier Copyright Act of 1914 and this statute was applicable in the whole country including East Pakistan (Bangladesh). After attaining independence in 1971, Bangladesh adopted Pakistan's Copyright Ordinance, 1962. Section 62 of the Copyright Ordinance, 1962 included a section titled “Author’s Special Rights”, which represents the author’s moral rights. Through 1999, the Copyright Ordinance, of 1962 was in effect. A new copyright legislation, the Copyright Act, of 2000, was later approved by parliament in 2000 with provisions linked with international standards and which also gives nearly the same protection for moral rights as the Copyright Ordinance, of 1962. Even though the provision is not stated in detail, the Copyright Act kept the concept of moral rights in section 78. To indicate the moral rights, section 78 of the Copyright Act, of 2000 uses the same term “Author’s Special Rights”.

Furthermore, it should be noted that the moral right has been granted to authors/writers regardless of whether or not they own the copyright to the work. Authors/writers in Bangladesh are thus further afforded the protection of moral rights in two categories:

the rights of attribution and integrity. Section 78 of the Act made it possible for the author to retain authorship of his/her work, allowing the author to select how his/her name should be associated to the work. According to this section, the author has the absolute right to be credited as the original creator of his work. In addition, this section permits the author to seek redress if his or her identity as the creator of a creative work is misappropriated.

3.5. Waivability of Moral Rights in Bangladesh

It is absolutely factual that the Act of Bangladesh linked to copyright, the Copyright Act, 2000 appears like does not purposefully declare or clarify any particular terms on the waiver of moral rights. Consequently, there is currently no clear legal precedent in Bangladesh on this essential issue. Therefore, it is unclear if moral rights may be waived, according to the legislative body's position. In addition, it is necessary to keep in mind that nations that follow the common law system have the option of either the theory of implied waiver or waiver by contract. In some common law jurisdictions, such as the United Kingdom and New Zealand, formal and informal waivers of moral rights are expressly permitted.

Alternatively, the Chinese copyright law does not expressly or specifically recognise the waiver of moral rights, but finds this idea permissible since it is not contrary to public policy.⁸ Regarding the waiver, the situation in India, the neighbouring country, is nearly identical. However, the higher judiciary of India has some remarks regarding the position on moral rights waiver. The Delhi High Court in a case ruled that a deliberate waiver was not against public policy and voluntariness had to be ascertained based on the evidence available on record (*Sartaj Singh Pannu v Gurbani Media Pvt. Ltd. & Another*, 2015). Despite the fact that this ruling is not directly applicable to Bangladesh, the High Court of India's remark may be useful in evaluating the acceptable position regarding the waiver of moral rights in the absence of specific regulations.

3.6. Recent Case on Moral Rights Waiver in Bangladesh

A recent case involving copyright issues has gained notoriety in Bangladesh. The lawsuit involves the well-known "Masud Rana" novel series, which was published by Sheba Prokashoni and written by Kazi Anwar Hossain (Cultural Correspondent, 2020). However, Sheikh Abdul Hakim served as the ghostwriter for this series. This book was written by Mr. Hakim on behalf of Kazi Anwar Hossain, and this series was published under his name (Kazi Anwar Hossain). According to Kazi Anwar Hossain, Mr. Hakim was compensated for his job by Mr. Anwar. In addition, Mr. Hakim had no objections to Mr. Anwar publishing it under his own name. Sheikh Abdul Hakim, however, filed a lawsuit with the Bangladesh Copyright Office against Mr. Anwar, asserting that he should be credited as the author of the "Masud Rana" book series (Staff Correspondent, 2020).

Abdul Hakim said that he had authored 260 books from the "Masud Rana" novel series, and the case became intriguing as it relates to the correct transfer of economic

⁸ Copyright Law of the People's Republic of China, 1990

rights of copyrighted content and the waiver of moral rights (Staff Correspondent, 2020). As in this case, Mr. Anwar would be entitled to remedy if he had entered into an agreement with Mr. Hakim on the waiver of his moral right to this copyrighted material. After a year of inquiry, the copyright office of Bangladesh found in favour of Mr. Hakim. Therefore, according to the copyright office, Mr. Hakim will get the compensation as the legitimate author of 260 novels in the “Masud Rana” series that he authored (Sun Online Desk, 2020).

4. CONCLUSION

Without any doubt, there are philosophical, practical, and political hurdles to overcome when attempting to incorporate international obligations or customs into domestic legislation. The inclusion of Article 6bis of the Berne Convention in the CDPA by the United Kingdom gives credibility to this argument since it has had a profound effect on the restrictive interpretation given on the waiver of moral rights. However, it is important to note that the UK has a significant international commitment to offering robust moral rights protection to UK citizens as a Berne Convention member state. The preceding study shows that the UK is not currently meeting these commitments to the best of its capacity. In the words of McCartney, the rights provided for are “[...] well below the Berne Convention standard” (McCartney, 1990).

In the meantime, there is a lack of action in Bangladesh regarding moral rights despite international commitment. It is possible to occur because of how the Copyright Act, of 2000 addresses the moral rights concept, which might give the impression to those involved with the copyright problem in Bangladesh that an author's only rights are economic ones. For instance, The Copyright Act, of 2000 does not use the phrase “moral rights” but instead refers to them as “special rights”, consequently, this renders the moral rights less apparent to the general public. The CDPA contains a lengthy chapter on moral rights, titled “moral rights”, which makes the provision more accessible to the public. In addition, such a complete provision improves comprehension of such a complex issue.

The Copyright Act, of 2000 says nothing about any kind of waiver of moral rights, but the author could use the general contract law provision to waive his/her moral rights, which may not be a well-protected process for authors/creators because the author/creator usually holds less power in a business transaction with the publisher. A straightforward example is inexperienced creative artists or writers who want to get their work published by a major publisher, and in such a case, the involved publisher may put more pressure on the unknown/inexperienced author to give up all rights (Brown-Pedersen, 2018). In such instances, a well-protected framework might shield the new artist/author/creator from exploitation, which is not evident in Bangladesh's copyright legislation.

There are indeed apparent issues with the United Kingdom's moral rights protection. Nevertheless, there is unquestionably a provision for this under CDPA if one considers the waiver of moral rights. At the very least, a well-defined (though not well-protected) rule might help to provide a shield for the protection of authors/creators, which is completely absent from Bangladesh's copyright legislation. Consequently, Bangladesh

needs a clearly defined and safeguarded framework for moral rights in the copyright law, one that also contains clear guidelines of waiver for the authors. While drafting these clauses, Bangladesh should keep in mind that the guideline must address every aspect of moral rights waiver (even informal one).

There is an argument to be made here that says that because the Berne Convention and TRIPS served as guidelines for Bangladesh in enforcing the Copyright Act, of 2000, and because neither the Berne Convention nor TRIPS contains any direct wordings regarding the waiver of moral rights, Bangladesh has chosen to maintain wording that is consistent with the Berne Convention. The response would be pretty straightforward: the primary purpose of the Berne Convention is to safeguard the rights of writers and creators against exploitation of any kind. Therefore, the inclusion of a comprehensive provision for the waiver of moral rights to safeguard the author or creator is fully compliant with the Berne Convention. Like many other states that ratified the Berne Convention, the UK included a waiver clause in their copyright Act to ensure compliance with the Convention.

What would be the best approach to waive the moral rights at this period since there is no waiver provision in the copyright law of Bangladesh? This inquiry must be an intriguing one, and Indian case law may be able to shed light on this conundrum (due to the deficiency of legal precedent in Bangladesh), considering India's moral rights provisions are analogous to Bangladesh's, and neither country recognises the waiver of moral rights. In a case, the Supreme Court of India determined whether a person might waive rights granted by the legislation by stating that: "the general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy" (*Shri Lachoo Mal v Shri Radhey Shyam*, 1971).

As discussed earlier, this ruling is not directly applicable to Bangladesh, but the Apex Court of India's remark may be useful in evaluating the acceptable position regarding the approach to waiving moral rights. The preceding discussion suggests three guidelines for authors and creators to adhere to while giving up their moral rights: Any waiver must be in writing, be based on reasonable conditions, and not against any public policy.

LIST OF REFERENCES

- Almawla, H.M. 2012. *Moral Rights in the Conflict-of-laws: Alternatives to the Copyright Qualifications*. Doctoral these. London: Queen Mary University of London.
- Brown-Pedersen, J. 2018. The Inadequacy of UK Moral Rights Protection: A Comparative Study on the Waivability of Rights and Recontextualisation of Works in Copyright and Droit d'Auteurs Systems. *LSE Law Review*, 3(1), pp. 115-128.
- DaSilva, R. J. 1980. Droit Moral and the Amoral Copyright: A Comparison of Artists' Rights in France and the United States. *Bulletin of the Copyright Society of the USA.*, 28(1), pp. 1-58.
- Davies, G. & Garnett, K. 2010. *Moral Rights*. 2nd ed. London: Sweet & Maxwell.

- Dureja, C. 2015. Historical Development of Copyright Law in India. *International Journal of Advanced Research in Management and Social Sciences*, 4(1), pp. 50-59.
- Dworkin, G. 1994. The Moral Right of the Author: Moral Rights and the Common Law Countries. *Columbia-VLA Journal of Law & the Arts*, 19(3-4), pp. 229-268.
- Fernández-Molina, J.C. & Peis, E. 2001. The Moral Rights of Authors in the Age of Digital Information. *Journal of the American Society for Information Science and Technology*, 52(2), pp. 109-117. [https://doi.org/10.1002/1097-4571\(2000\)9999:9999::AID-ASI1060>3.0.CO;2-B](https://doi.org/10.1002/1097-4571(2000)9999:9999::AID-ASI1060>3.0.CO;2-B)
- Harding, I. & Sweetland, E. 2012. Moral Rights in the Modern World: Is It Time for a Change? *Journal of Intellectual Property Law & Practice*, 7(8), pp. 565-572. <https://doi.org/10.1093/jiplp/jps077>
- Holderness, M. 1998. Moral Rights and Authors' Rights: The Keys to the Information Age. *Journal of Information, Law and Technology*, 1(1). Available at: https://warwick.ac.uk/fac/soc/law/elj/jilt/1998_1/holderness (29. 9. 2023).
- Katz, A.S. 1951. The Doctrine of Moral Right and American Copyright Law - A Proposal. *Southern California Law Review*, 24(4), pp. 375-427.
- Kilian, M. 2002. A Hollow Victory for the Common Law - TRIPS and the Moral Rights Exclusion. *John Marshall Review of Intellectual Property Law*, 2(2), pp. 321-336.
- Lee, I. 2001. Toward an American Moral Rights in Copyright. *Washington and Lee Law Review*, 58(3), pp. 795-854.
- Marvin, C.A. 1971. The author's Status in the United Kingdom and France: Common Law and the Moral Right Doctrine. *International & Comparative Law Quarterly*, 20(4), pp. 675-705. <https://doi.org/10.1093/iclqaj/20.4.675>
- Maugham, W.S. 2003. *The Razor's Edge*. Turtleback Books.
- McCartney, S.J. 1990. Moral Rights Under the United Kingdom's Copyright, Designs and Patents Act of 1988. *Columbia-VLA Journal of Law & the Arts*, 15(2), pp. 205-246.
- Merryman, J.H. 1975. The Refrigerator of Bernard Buffet. *Hastings Law Journal*, 27(5), pp. 1023-1050. <https://doi.org/10.2307/1228342>
- Ong, B. 2002. Why Moral Rights Matter: Recognising the Intrinsic Value of Integrity Rights. *Columbia Journal of Law & the Arts*, 26, pp. 297-312.
- Patterson, L.R. 1968. *Copyright in Historical Perspective*. Nashville: Vanderbilt University Press.
- Rajan, M. T. S. 2006. *Copyright and Creative Freedom: A Study of Post-Socialist Law Reform*. London: Routledge. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1611277 (29. 9. 2023).
- Rajan, M. T. S. 2011. *Moral Rights: Principles, Practice and New Technology*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:osobl/9780195390315.001.0001>
- Rigamonti, C.P. 2006. Deconstructing Moral Rights. *Harvard International Law Journal*, 47(2), pp. 353-412.
- Rosati, E., ed. 2021. *The Routledge Handbook of EU Copyright*. 1st ed. London: Routledge. <https://doi.org/10.4324/9781003156277>
- Strömholm, S. 1983. Droit Moral: The International and Comparative Scene from a Scandinavian Viewpoint. *International Review of Industrial Property and Copyright Law*, 14, pp. 217-253.

- Takenaka, T. (ed.). 2013. *Intellectual Property in Common Law and Civil Law*. Cheltenham: Edward Elgar Publishing. <https://doi.org/10.4337/9780857934376>
- Vaver, D. 1999. Moral Rights Yesterday, Today and Tomorrow. *International Journal of Law and Information Technology*, 7(3), pp. 270-278. <https://doi.org/10.1093/ijlit/7.3.270>
- World Intellectual Property Organization. 2016. *Understanding Copyrights and Related Rights*. Geneva: WIPO.
- Zemer, L. 2011. The Dual Message of Moral Rights. *Texas Law Review*. 90, pp. 125-143.

Internet Sources

- Cultural Correspondent 2020. Sheba Prokashoni asked to stop publishing “Masud Rana”. *New Age*. 15 June. Available at: <https://www.newagebd.net/article/108486/sheba-prokashoni-asked-to-stop-publishing-masud-rana> (11. 6. 2023).
- Siddique, F. B. 2020. *In a grey area of copyright legislation*. Available at: <https://www.dhaka-tribune.com/opinion/op-ed/2020/09/05/op-ed-in-a-grey-area-of-copyright-legislation> (23. 6. 2023).
- Staff Correspondent 2020. *Ghostwriter gets copyright of Masud Rana books*. Available at: <https://www.thedailystar.net/backpage/news/ghostwriter-gets-copyright-masud-rana-books-1915153> (11. 6. 2023).
- Staff Correspondent 2020. Kazi remains creator of “Masud Rana”, Hakim credited as author of 260 books. Available at: <https://en.prothomalo.com/bangladesh/kazi-remains-creator-of-masud-rana-hakim-credited-as-author-of-260-books> (11. 6. 2023).
- Sun Online Desk 2020. Sheikh Abdul Hakim beats Qazi Anwar Hussain in copyright battle of 'Masud Rana'. Available at: <https://www.daily-sun.com/post/487587/Sheikh-Abdul-Hakim-beats-Qazi-Anwar-Hussain-in-copyright-battle-of-Masud-Rana> (11. 6. 2023).

Legal Sources and Case-law

- Donaldson v Beckett* (1774) 1 Eng Rep 837.
- Hansard HC Deb. vol. 132 cols. 569-570, 28 April 1988.
- Hansard HL Deb. vol. 493, col. 1337, 25 February 1988.
- Millar v Taylor* (1769) 90 Eng Rep 201.
- Sartaj Singh Pannu v Gurbari Media Pvt. Ltd. & Anr* (2015) 220 DLT 527.
- Shri Lachoo Mal v Shri Radhey Shyam* (1971) AIR 2213 SC.