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**The Music Copyright regime in Multiversal Bangladesh: A gainful
succession or a system seeking evolution?**

Siddiqua, Anon

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The Music Copyright regime in Multiversal Bangladesh: A gainful succession or a system seeking evolution?

By Aanon H Siddiqua

School of Law

University of Westminster

MPhil PhD Law FT [RSLAW01F]

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lightening and motivating me to conceive, develop and complete my thesis.

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Abstract

This thesis investigates the following: *The Music Copyright regime in Multiversal Bangladesh: A gainful succession or a system seeking evolution?* Research to date discusses the provisions of the existing copyright law in general, identifying inefficacies in implementation and enforcement without explaining how they developed and why they exist. This research focuses on accessing and explaining rationales behind the inefficacies and informs our theoretical and empirical understanding of the phenomenon.

My lived experience as a musician and a legal researcher, guided me to consider accessing copyright law in relation to commercial music contracts from a rights-based perspective of songwriters and performers. I obtained doctrinal data and employed thematic document analysis and utilised the theoretical lens of legal transplant and functionalism. Further, I conducted ‘semi-structured qualitative interviews’ with stakeholders of the Bangladeshi music industry. The combined application of IPA (Interpretative phenomenological analysis) and the Buddhist theory of “Emptiness” enabled me to interpret and analyse the qualitative data and to build upon the traditional doctrinal reading.

A key research finding is that the core inefficacies of the music copyright regime stems from laws and policies being constructed without taking the cultural, socio-economic and contextual history of this region into account. The widespread culture of unawareness within which this regime developed, created a complex landscape that is unmanageable. I conclude that musicians are skipping this complex era and bypassing the record labels and publishing houses to produce music by themselves, that they can publish through the Internet. Only proper amendments and implementations of law and policies can provide the support that this sector need to bring about this much needed evolution. I suggest that this can be achieved by considering contextual background and determining what constitutes the music copyright regime. I identify the components and explain how changes in them can influence the machinery of the copyright regime. This study will inform law and policy

makers, academics and future researchers involved in this field.

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Volume 1

Integrated Literature Review : Songs of words Unsung

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Ownership of IP and the Rights of Music Artists in Developing countries

Rise of Piracy in The Indian Sub-continent

Industry Structure: Royalty and Collecting society

Enforcement, Implementation and Infringement

Legal and Non-legal responses to Inefficacies in Copyright Protection

Conclusion

Introduction

This research is composed of 8 volumes each playing individual notes that begin to intertwine, creating a unique melody when read as woven. This was possible owing to my lived experience as a musician which allowed me to witness the inefficacies of the copyright regime in Bangladesh and propelled me to address the research question of this thesis as a lawyer. My experience as a musician and my background as a legal academic situated me socially, contextually and particularly in a position that is unlikely for a legal scholar or researcher to find themselves in. This equipped me with a coherent and unabridged understanding of the commercial practices within the music industry and the economic contexts of the artists, as well as legal rules and norms that have shaped music production and consumption in post-colonial¹ and globalised Bangladesh. The shared experience of the music community offered me with an insight that triggered two responses in course of my research, which I believe are my original contributions in answering my research question: The Music Copyright regime in Multiversal Bangladesh: A gainful succession or a system seeking evolution? First, a set of qualitative data via detailed semi-structured interviews of stakeholder in a music industry, to be able to create a perspective that presented the participants version of the issues at hand. Second, the use of Buddha's² Theory of Emptiness, in the context of this research, which also allows for a change in vantage points, so one can see what cannot be seen through the typical lens of socio-legal theories. My dual role as researcher and musician raised concerns from the onset as to the validity and unbiasedness of the research, therefore I had integrated tools of triangulation explained in volume 3: 'Methodology', to keep my bias in check throughout the process of my re-

¹ [Willem Van Schendel](#), *A History of Bangladesh* (Cambridge University Press 2009)

² Richard Sherburne, S.J., *The Complete works of Atisa Stri Dipamkara Jnana* (Aditya Prakashan 2000); Atiśa Dīpaṃkara Śrījñāna, *Bodhipathapradīpa* (Tibetan Buddhist Encyclopaedia); Rayhan Rhyne, বাংলাৰ দৰ্শন (2nd edition Prothoma Prokashon 2019) 175;

Thich Naht Hanh, *The Miracle of Mindfulness* (Ebury Publishing 2008)

search, fieldwork and analyses. This is explained further in the methodology volume.

In order to answer the research question, I have divided my thesis into 8 volumes focusing on, literature review, methodology, theoretical framework, historical and contextual background, Bangladeshi copyright law, commercial music contracts and analysis and interpretation of qualitative data.

The research focuses only on music copyright laws in Bangladesh and its application in the music industry as opposed to other IP's like patent, trademarks etc .

Multiversal Bangladesh

My research question uses the term multiversal Bangladesh to allude to a particular state of existence that Bangladesh has arrived to at present. I argue that, a multiversal Bangladesh thrives within the singular Bangladesh that is known to the world. According to Stephen Hawking the multiverse is a collection of parallel universes that comprise all of reality in some quantum mechanical and cosmological theories³. In alignment to philosophical interpretations, a multiverse can be defined as a condition of existence where a collection of different universes can exist at the same time parallel to each other. In that light, a closer inspection of the socio-cultural and socio-economic aspects of Bangladesh reveals the existence of many Bangladeshs within the one Bangladesh we see. Each Bangladesh divided by class, sex, race, religion and time, co-existing in a container like oil and water. Across all areas of civic life, each Bangladesh is governed by different rules of existence and defined by the strength each of these sections possess in the current socio-cultural and economic environment⁴. For instance, most of the country's population still lives in a timer with no internet, cable TV, access to world news and therefore their values, philosophies, priorities and the entire

³Stephen W Hawking, Thomas Hertog, "A smooth exit from eternal inflation?" (2018) <[https://doi.org/10.1007/JHEP04\(2018\)147](https://doi.org/10.1007/JHEP04(2018)147)> accessed 15th Dec 2021

⁴ Nurul Kabir, *Birth of Bangladesh: The Politics of History and the History of Politics* (Samhati Prokashan. 2022)

perspective of life is vastly different from those living in the few big cities like Dhaka and Chittagong. Meanwhile lives in these cities are competing with the global standard of fast pace living, discourse, demands and perspectives, as if they live in the future while the former dwell in the past, separated by not time per se but economic disparity, political strategies, religious and racial bias. It seems that, the state in which colonisation left Bengal had deep rooted economic and psychological impact on the people⁵. In an attempt to recover from the consequences, the steps that were taken led to a fragmented Bangladesh.

Construction of any laws or rules to regulate or protect the rights of the intended population encounters these obstacles. For example the Copyright Act 2000 bans piracy and provides musicians the right to be paid royalty from the sale of their music. However, a 31.5%⁶ of the population has access to internet and only 3% internet users in Bangladesh are internet banking customers⁷ which makes it obvious that not enough of the population has the means to purchase tracks or CDs online legally instead of downloading the content illegally⁸. To create a law that would equally impact, protect, regulate and serve all citizens alike may appear ideal in theory but have historically been proven to be much harder to manifest in reality. My research sets out an insight into the changing historical context of the region and the population which could provide the ability to understand

⁵Madhusree Mukerjee, *Churchill's Secret War: The British Empire and the Ravaging of India during World War II* (Basic Books 2011)

⁶Simon Kemp, *Digital 2022: Bangladesh* (2022) <[⁷Farad Hossain, 'Only 3% Internet users are Internet banking customers' *The Business standard* \(Dhaka, 9th May 2021\) <<https://www.tbsnews.net/economy/banking/only-3-internet-users-are-internet-banking-customers-244042>> accessed 31 Jan 2023](https://datareportal.com/reports/digital-2022-bangladesh#:~:text=Internet%20use%20in%20Bangladesh%20in%202022&text=Bangladesh's%20internet%20penetration%20rate%20stood,at%20the%20start%20of%202022.></p>
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⁸Bipasha Sarker, Pray Powder, 'Progression of Internet Banking System in Bangladesh and its Challenges' (2020) <https://www.researchgate.net/publication/338632080_Progression_of_Internet_Banking_System_in_Bangladesh_and_its_Challenges>

how laws associated with protection of music copyright, affects the many versions of Bangladesh that co-exists and how that in turn impacts the efficacy of the copyright instrument and subsequently the stakeholders in the music industry in a Region like this. The music copyright regime includes not the only the statutory instrument but all commercial, contractual and policy making aspects affecting the music industry, as well as all relevant stakeholders

Research Focus

The primary focus of this research aims to identify the gaps and examine the scope and extent of the laws available, in safeguarding the legal and commercial rights associated with music, performed and created in Bangladesh .⁹ It shall explore the ambit of protection, both in terms of rights within the realm of Intellectual Property law and the laws of commercial music contracts. My research concerns the music copyrights laws, copyright policies on implementation and enforcement and its impact and efficiency on the Bangladeshi music industry and all related stakeholders. Interactions between the various provisions of the Acts, the culture within the music industry's commercial and revenue sharing practices, including the perception of the nature of ownership within the business in general, lead to complexities in the sharing, management and distribution of music IP right, that are central to my study. Until now, research on music copyright law in the context of this research only involved the aspect of copyright in general if at all. Only few like Rifat Islam¹⁰, Gregory Booth¹¹,

⁹Simon Frith, Lee Marshall, *Music and Copyright* (Edinburgh University Press 2004)

¹⁰Rifat M Islam , 'A Study on Intellectual Property Rights Practice - from the Perspective of Music Industry in Bangladesh' [2013] p 1102-1111

¹¹Gregory Booth, 'Copyright Law and the Changing Economic Value of Popular Music in India' [2015]

Alam¹² and Azad¹³, include discussions on copyright laws in the context of the music industry of Bangladesh, often paraphrasing the sections of the Copyright Act 2000, like in the case of Hosen¹⁴. My study involves extensive empirical qualitative investigation in the form interviews with artists, labels and publishers in the aim of finding narratives and perspectives on their copyright and commercial interests. For the purpose of this research musicians includes singers, composers, and lyricists, labels refer to music record labels who provide the finance and/or arrange for the recording of the song and publishers refer to organisations who manages, promotes and administers the use of the song amongst other multiple services. A more comprehensive description of their roles and aims will be explored later in the thesis and in individual volumes dealing with their relationships. The methodology adopted by most researchers in the academic community involved doctrinal, archival and observational approach like Chowdhury¹⁵ and Islam¹⁶ barring a few quantitative surveys for the purpose of WIPO assessments and some interview based studies surrounding copyright protections in developing countries. According to the report of the International Property Rights Index, Bangladesh is 128th out of 129th in terms of intellectual property protection with a piracy rate

¹²Siraj S, Allam M, “The Problem of Copyright Compliance in the Music Industry of Bangladesh : An analysis”, (2015) <<http://uap-bd.edu/lhr/wp-content/uploads/2017/05/4.pdf>> accessed 2 May 2020

¹³Azad A K, ‘Rock ‘n Roll in Bangladesh: Protecting Intellectual Property Rights in Music’ (2019) <https://www.wto.org/English/res_e/booksp_e/casestudies_e/case3_e.htm>

¹⁴Muhammad farad Hosen, ‘An Overview of the Copyright Protection Laws in Bangladesh—A Critical Analysis of the Copyright Act, 2000 with Its Loopholes and Recommendations’ (2017) <<https://doi.org/10.4236/blr.2017.82011>> 2017

¹⁵Chowdhury M, “*Enforcement of Intellectual Property Rights in Bangladesh: To What Extent Is It TRIPS-Responsive?*”, International Islamic University of Chittagong, BLR Vol.9 No.3, September (2018)

¹⁶Islam M R, “*A Study on Intellectual Property Rights Practice - from the Perspective of Music Industry in Bangladesh*”, (The Experiment International Journal of Science and Technology, Vol. 16(1), pg 1102-1111.) 2013

of 96%¹⁷. What academics in the previous literature seem to avoid asking, however, is why infringement appears to be so rampant and why, despite having provisions for both civil and criminal remedies in the Copyright Act 2000, the protection of copyright proves to be so difficult.

Chowdhury and Islam's investigations acknowledges the existence of these issues discussed above but they do not go further and explore the relationships between copyright, commercial contracts, infringement, enforcement, piracy etc and how they affect the stakeholders. Previous studies do not analyse how entering into the Berne convention impacted commercial contracts within the music industry, how cultural norms can impact implementation of laws or how despite having a very old lineage of Intellectual property law in the region the country has failed to effectively establish the functioning of IP laws for musician. The answers to these questions would explain how the IP of the musicians and their commercial interests vested in the contracts, are related in providing them with the professional income revenue that they need and how protecting one without the other is futile. This is the gap my research intends to fill. According to my study, the two broad factors that affect the copyright and commercial interests of the Bangladeshi musicians are:

1. Ineffective application and functioning of Copyright laws
2. Normative commercial and legal practices within the music industry

¹⁷ Siraj S, Allam M, “*The Problem of Copyright Compliance in the Music Industry of Bangladesh : An analysis*”, <<http://uap-bd.edu/lhr/wp-content/uploads/2017/05/4.pdf>> accessed 2.5.2020

Integrated Literature Review

According to Berne which Bangladesh is a signatory to, copyright is a property right that confers valuable economic rights. Berne in turn was influenced by the French, “right of the author” (*droit d’auteur*), which contrasts with the Anglo- Saxon concept of “copyright” which only dealt with economic concerns¹⁸. However, the benefits of the copyright system can be realised only if the rights are suitably managed and protected. Therefore, literature within the academic community, adhering to investigations of these components, would provide the academic context for my study. It would also demonstrate why it is the importance and necessary to contribute in filling these gaps. Although this research focuses on independent Bangladesh, it provides a detailed historical context in volume 4 of the thesis, that traces back centuries and pinnacles of the colonial regime. The research contextualises this history by tracing the changing economic value of Bangladeshi music and the rights of the creators of these music and relate those changes to the Bangladeshi understanding of music as intellectual property. During this process, the research further unveils, how a steadily changing set of structural conditions in technological formats of music production and consumption, the nature of the Bangladeshi music market and Bangladesh’s relations with the world economy (for artists to adapt to globalisation in general and with specific regard to music) affected a series of changes in music’s economic value and the legal and commercial interests of music artists. Following are reviews¹⁹ of literature on various important aspects relevant to the research, categorised under sub headings.

General discussion : Copyright Laws of Bangladesh

¹⁸ Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton University Press 2016) 15

¹⁹Lisa Webley, [The Oxford Handbook of Empirical Legal Research](#) (2010)

The prevailing legislation on music copyright in Bangladesh is the Copyright Act 2000²⁰. My research does not focus on trade related IPs in sectors like agriculture, medicine, geographical indicator, trademark and patent or design aspect of intellectual property laws of the act . The focus of literature in the context of IP in Bangladesh, has generally centred around discussions on TRIPS, WIPO and the Conventions, involving their impact, constraints, opportunities, implications and challenges not including any narrative on copyright laws and its impact on the music industry and its stakeholder. They provide a ground work and perspective that my research can build on, that shows the existing knowledge of the academic community on the topic of IP in Bangladesh and its state of effectiveness .

Although Ahmed follows the same pattern of exploration as Hossain above, in his chapter on enforcement, Ahmed lays out precisely the initiatives taken by the Bangladesh Govt. to protect the IPRs of its citizens as well as to comply with its treaty obligations under the TRIPS Agreement. Ahmed indicates that almost all these measures are being taken up by the Bangladesh Government to make its IP regime TRIPS-complaint.²¹ The author highlights lack of strong infrastructure, an educated workforce, proper enforcement and implementation of laws, amongst other challenges which are common concerns stated by most scholars. Hawladar²², the then Press Secretary to the Honourable President of Bangladesh, discusses how the signing of the TRIPS agreement propelled the countries legal system to consider structural changes in IP. He briefly lists the various problems regarding procedures in copyright registration which mostly relates to deficit in the infrastructure

²⁰Copyright Act 2000

²¹ Arif Ahmed , Enforcement of Intellectual Property Rights (Iprs) in Bangladesh: An Appraisal, Department of Law and Justice, (2016) PP 37-46, <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue4/Version-3/D0214033740.pdf>> accessed 8 Dec 2019

²² Hawlader A, “ *Enforcement of Copyright Law in Bangladesh* “<https://www.academia.edu/35235180/Topic_4-1_Enforcement_of_Copyright_Law_in_Bangladesh>

One of the largest group of music practitioners and consumers in the country focus on traditional folk music and baul music, neither of which are covered by the legal ambit of copyright laws. The process of creating music in these genres and the intention with which they have been created traditionally, are vastly different from that of music made under copyright laws. The following section delves into the state of such traditional knowledge in Bangladesh and literature associated with its legal protection.

Traditional Knowledge (TK) or Traditional Cultural Expression (TCE)

The Copyright Act 2000 was largely propelled by the need for compliance with the Berne convention²⁴ requirements after Bangladesh became a signatory in 1999²⁵. The legislation however does not protect musicians of folk tradition or baul sect²⁶ since they reside outside the scope of the concept of modern copyright laws. Referring to the majority of population who practice and listen to traditional folk or baul music, the legislators have repeatedly raised the issue and stated that mu-

²³ibid

²⁴Berne Convention for the Protection of Literary and Artistic Works (adopted September 1886) UNTS Volume Number: 828 (p.221) (Intellectual Property Convention) ; The Berne Convention for the Protection of Literary and Artistic Works sets out ground rules for protection of copyright at national level; it has since been amended several times. Many nations are signatories to the Convention, including the UK and, more recently, the United States.

²⁵B Khondker & S Nowshin , ‘AN ASSESSMENT OF NATIONAL INTELLECTUAL PROPERTY SYSTEM : DEVELOPING NATIONAL INTELLECTUAL PROPERTY POLICY FOR BANGLADESH’ (2013) ((https://dpdt.portal.gov.bd/sites/default/files/files/dpdt.portal.gov.bd/notices/5c4a8a90_d825_46f9_8c-c8_3505e47e0053/IP%20Policy.KS.pdf) <accessed 11.01.2020>

²⁶* Traditional Folk music and baul music did not adhere to the concept of ownership of music or considering music a property. Often the source of original compositions and lyrics cannot be traced back since the process of creating such music include generational input and changes, unlike music made in recent times. This is detailed in volume 4 of the thesis.

sical folk expressions would be considered in their upcoming amendments.²⁷ WIPO (World intellectual property Organisation) being one of the largest global authority on intellectual property, defined TCE (Traditional Cultural Expressions also called expressions of folklore), as expressions that may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions²⁸. This creates a wider definition which can include various indigenous and traditional community and their folk expressions, like in Bangladesh²⁹. The organisation is however yet to provide a well-structured and detailed guideline as to how protection of such expressions can be provided with effectiveness. The WIPO website states that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is, in accordance with its mandate, undertaking text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s), which will ensure the effective protection of [traditional knowledge](#) (TK), [traditional cultural expressions](#) (TCEs) and [genetic resources](#) (GRs).³⁰

The only existing piece of legislation pertaining to traditional knowledge in Bangladesh is the Biodiversity Act 2017. Ahmed's section in the UN convention³¹ paper, focuses on one of the proposed drafts, "Biodiversity and Community Knowledge Protection Act drafted in 1998", on protection of

²⁷Jatanta Saha, 'Copyright Office finalises new Draft' [bdnews24.com](https://bdnews24.com/bangladesh/2017/08/26/copyright-office-finalises-new-draft-of-law) (Dhaka 26 Aug 2017) <<https://bdnews24.com/bangladesh/2017/08/26/copyright-office-finalises-new-draft-of-law>> accessed 22 March 2019

²⁸WIPO Handbook, 'INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS/ FOLKLORE' <https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf>

²⁹* This is explained in detail in Volume 4 of the thesis which sets the historical, cultural and contextual background of Bangladesh and Bangladeshi music.

³⁰WIPO Mandate on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore <<https://www.wipo.int/tk/en/igc/>> accessed 17 Dec 2019

³¹Sophia Twarog and Promila Kapoor , 'Protecting and Promoting Traditional Knowledge: Systems, National Experiences and International Dimensions' (2004) < https://unctad.org/system/files/official-document/ditcted10_en.pdf> accessed 17th April 2021, see Farid Uddin Ahmed's section, ' The Protection of Traditional Knowledge in Bangladesh'.

TK or TCE in agricultural and other areas concerning biodiversity, which was enacted³² in 2017 as the Biodiversity Act 2017. The main objective of the Act is to protect the sovereign rights of communities that have knowledge of biodiversity and have managed, maintained, conserved, reproduced and enhanced biodiversity, genetic resources and TK, culture and various forms of practice related to these resources. An already existing piece of proposed legislation on Traditional knowledge indicates that the legal instrument has the scope to expand on aspects of TCE including possible protection of traditional folk music and baul music with further development of the IP regime. Twarog and Kapoor³³ presents three chief umbrellas under which reasons for the protection of TK can be categorised, moral, legal and utilitarian. The moral rationale is required to fulfil moral obligations towards indigenous/local communities. The legal rationale can accommodate compliance with international treaties and emerging norms (e.g. the CBD, the Universal Declaration of Human Rights, the International Undertaking on Plant Genetic Resources). The utilitarian rationale can be for local and national economic, welfare (health and food security) and subsistence benefits. In general the authors lists a number of factors that render TCE and its protection imperative including improvement in the livelihoods of TK holders and communities and prevention biopiracy. This typically refers either to the unauthorised extraction of biological resources and/or associated TK from developing countries, or to the patenting, without compensation, of inauthentic “inventions” based on such knowledge or resources or to preserve the culture of a particular community of nation.

Bangladesh's report³⁴ for UNESCO's 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions explores policies on culture and measures. It also discusses how tra-

³²Mohammad Golam Sarwar, 'The legal framework on biodiversity conservation' (2020) <<https://www.thedailystar.net/law-our-rights/news/the-legal-framework-biodiversity-conservation-1911401>> accessed 20 April 2021

³³ibid.

³⁴Bangladesh Report, 'Quadrennial Periodic Report on Measures to Protect And Promote the Diversity of Cultural Expressions' (2005) p205 <https://en.unesco.org/creativity/sites/creativity/files/periodic_reports/old/bangladesh_report_ownformat_en_2013_0.pdf> accessed 5th April 2021

ditional cultural expressions like folk dance, baul songs can be preserved and details policies of archiving contents and training new artists so the knowledge isn't lost. It however does not provide a plan as to how such knowledges can be legally protected so as to protect their identity and provide revenue to the artists who practice traditional knowledge or cultural expressions such as folk music. Islam's³⁵ paper also briefly explores Traditional knowledge (TK) and folklore and asserts that The Ministry of Cultural Affairs³⁶ and its affiliated organisations have limited operations to preserve and promote TK and folklore. According to Azad, Bangladesh is yet to have any legal framework or administrative mechanism for the protection of TK and folklore and to obtain benefit from their commercialisation.³⁷My research inquires into whether commercialisation of TK (for instance in if a certain skill is obtained from a certain community, they should be credited and financially compensated every time that skill is being applied. It could be a process of irrigation, a certain type of art or even local herbal remedies. If a certain person cannot be identified, a community may sometimes be credited from traditional knowledges like traditional songs, agricultural methods, etc) and folklore would be beneficial to the art and the artists of the genre or community and if so how that can be achieved.

A new draft of bill aims to redefine “folklore” and “folk culture” which aids in acknowledging one of the widest demographics of musical art and artists in Bangladesh and therefore make room for legal interference in the hope of better protection. However the draft does not appear to have matured into any legislative amendment or new laws yet. Protecting folk music has always been prob-

³⁵Rifayat Islam, 'Intellectual Property Rights and Developing or Least Developed Countries: Strategies for Policy Makers', [2008] Part-F, Vol. 19, No. 1, pg 115,

³⁶The Ministry of Cultural Affairs of Bangladesh is the ministry in charge of national museums and monuments; promoting and protecting the arts (visual, plastic, theatrical, musical, dance, architectural, literary, televisual and cinematographic) in Bangladesh and managing the national archives. The Ministry of Cultural Affairs is also charged with maintaining the Bengali identity.

³⁷Azad A K, 'Rock 'n Roll in Bangladesh: Protecting Intellectual Property Rights in Music' (2019) <https://www.wto.org/English/res_e/booksp_e/casestudies_e/case3_e.htm> accessed 15 June 2019

lematic because of its unique identity, the nature of creation and the process of being passed down.

Sometimes creators of such music are individuals but sometimes it's a particular community as a whole that is deemed as the source of this kind of traditional cultural expressions (TCE)³⁸ which as it appears, ought to be protected by separate laws.³⁹ Traditional folk is the genre of music practiced by largest group of musicians in the country, with a broad spectrum of performing folk artists who are not entitled to songwriting rights when Berne's Copyright concept is followed. Its crucial that ownership of their performing rights (which is the smallest percentage of rights that remains after songwriting and mechanical rights are deducted) are examined more seriously with intention to create a system which creates room for just ownership and practice guidelines for practitioners of TCE. The draft for amendment of the current act has been in discussion and includes harsher sanctions and increased penalties for violations. For instance, 'a first offence in violating or supporting the violation of copyrights will still be punishable by six months to four years in prison and a Tk 50,000 to Tk 200,000 fine, but further offences will be punishable by a prison term of one to five years and a Tk 100,000 to Tk 300,000 fine. The current copyright law punishes repeat violations with a six-month prison sentence'.⁴⁰

³⁸Traditional cultural expressions (TCIEs). also called "expressions of folklore", and includes music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives. or many other artistic or cultural expression

³⁹TCE cannot be protected by existing copyright law for a number of reasons inter alia: a prerequisite for copyright is that a work must be original. Yet the tradition of folk music is that an artist covers songs passed down to them and with time they add or improvise and make it their own many a times. However for the Copyright Act to be able to operate there must be an identifiable author. Yet because of the nature of cultural expressions, such a person is not easily identified and, therefore cannot be protected. These requirements of authorship and ownership under the copyright system are thus incompatible with group or collective ownership. To obtain copyright protection, the work must be recorded or written in a permanent or tangible form. Since folklore exists practically in collective and individual memories, it does not have any material form. Copyright protects the form and not the substance, so traditional themes and artistic styles and techniques may not get protection. Moreover, duration of protection under the copyright system is grossly inadequate. For TCE, See Kamal Puri, 'Protection of Traditional Culture and Folklore', Smithsonian Center for Folklife and Cultural Heritage, accessed 29 October 2016. <<https://unesdoc.unesco.org/ark:/48223/pf0000220168>>

⁴⁰Jayanta Saha, 'Copyright office finalises new draft of law' *The Daily Star (Dhaka, 26th August 2017)*

Copyright Protection in Developing Countries

My research partially builds on comparative studies to analyse and assess the state of protection and implementation of music copyright in Bangladesh. This approach can, not only clarify the gap in academic investigation in regard to the research question but also situate the research within the existing scholarship and established knowledge pertaining developing nations with similar colonial and cultural histories and experiences. In this effort this section will include review of publications and the landscape of these developing countries, in which music copyright protection must operate . It will be reviewing literature associated with music copyright protection in developing countries with similar socio-political backgrounds like India and Pakistan and other developing nations with similar issues of implementation and commercial practices like Srilanka, Zimbabwe and Nigeria. Birgitte and Richard⁴¹ notes that the pattern of trade is not altogether surprising. According to their research developing countries do not have the large firms and financial structures necessary to invest significant capital into a sophisticated marketing and distribution machinery with a global reach which is why they observe that this is unlikely to change very quickly.

Developing Countries With Similar Socio-economic and Geo-political Context

Bangladesh, India and Pakistan shared a geo-political history until the end of the colonial period and the individual independence of the respective countries. Post independence, the countries

⁴¹ Birgitte Andersen Zelijka Kozul-Wright and Richard Kozul-Wright, Copyrights, Competition And Development: The Case of the Music Industry (2000) <https://unctad.org/system/files/official-document/dp_145.en.pdf> March 2021

evolved in different ways largely based on religious, social and political influences and their laws subsequently evolved following different motivations. While this research engages in comparative studies, it acknowledges these historical similarities and dissimilarities in analysing the legal, socio-political and commercial motivations behind the prevalent legal rules, policies and implementation-al issues. Therefore this section review literature on the state of copyright protection in music in de-veloping countries where geo-political, socio-economic and cultural context plays a major role in its current copyright laws, its implementation and its music industry.

Despite sharing significant contextual perspective the countries also share major differences which dictated the development and implementations of IP law in each countries. Booth⁴² establishes that prior to independence of India, the music economy and the music market of India were part of the colonially constructed and controlled global music economy. Kinnear⁴³, Shope⁴⁴, Parthasarathi⁴⁵ and Hughes⁴⁶ have all described aspects of the production and consumption of local and global mu-sics in colonial India which Bangladesh was a part of, then widely known as east Bengal. These processes were ultimately controlled by companies such as Odeon, Columbia Record Company, or the Gramophone Company (“of India” or not) and then subsequently by the giant, Electric and Mu-sical Industries (EMI) that engulfed many of the smaller companies. Collectively, the music-in-

⁴²Gregory Booth, “Copyright Law and the Changing Economic Value of Popular Music in India” [2015]

⁴³Michael S. Kinnear, *The Gramophone Company’s first Indian recordings, 1899–1908* (Mumbai: Popular Prakashan 1994)

⁴⁴Bradley Shope, ‘They Treat Us White Folks Fine’: African American Musicians and the Popular Music terrain in Late Colonial India.’ [2007] PL 97–116

⁴⁵Parthasarathi Vibodh, “Construing a ‘New Media’ Market: Merchandising the Talking Machine, c1900–1913,” in B. Bel, J. Brouwer, B. Das, V. Parthasarathi, G. Poitevin (eds), *Communication Processes Vol. 1: Media and Mediation* (New Delhi: Sage 2005)

Parthasarathi Vibodh, “The Gramophone Company in India, 1898–1912: The Evolution of an Early Media En-terprise,” in Ravi Sundaram (eds), *No Limits: Media Studies from India* (Delhi: Oxford University Press 2013)

⁴⁶Stephen Hughes, ‘Music in the Age of Mechanical Reproduction’ [2007] ,

Stephen Hughes, “Play It Again, Saraswathi: Gramophone, Religion, and Devotional Music in Co-lonial South India,” in Gregory D. Booth and Bradley Shope (eds), *More Than Bollywood: Studies in Indian Popular Music* (New York: Oxford University Press 2013)

dustry of the colonial era was prototypically transnational as Dowd⁴⁷ has noted.

Booth provides a contextual background on the, then, East Bengal (now Bangladesh) during colonial India, describing it as an agricultural region where radio was the only medium that brought music to the mass and distinguishing its quiet rural environments while describing Kolkata as a city with vibrant nature with a diverse music market⁴⁸. Pakistan on the other hand, being a pre-dominantly muslim country saw a decline in their cultural endeavours owing to their long standing right-winged political governance. By the 1990's Bangladesh and Pakistan was still reeling from its post war chaos and India's music industry was prospering rapidly, dictated by its gigantic film industry. These brought about socio-structural changes that the other two countries would not be ready for in decades. Booth points out how these changes have acted as a primary motivating factor behind the growing attention to the laws governing song and film as intellectual property. Much of this contextualisation⁴⁹ describes the evolution of music and the changing socio-political, economic and cultural landscape it occurred under, for it to have reached the present functioning stage. My research

⁴⁷Timothy J. Dowd, "Structural Power and the Construction of Markets: The Case of Rhythm and Blues." [2003.]

⁴⁸Gregory Booth, "Copyright Law and the Changing Economic Value of Popular Music in India" [2015]

⁴⁹Richard David Williams, 'Hindustani music between Awadh and Bengal, c.1758-190'(2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_thesis.pdf> accessed on 20th June 2020

Capwell, Charles (2010). 'Representing "Hindu" Music to the Colonial and Native Elite of Calcutta', in Bor, *Hindustani*, p. 286.

Katherine Butler, 'The Social Liminality of Musicians: Case Studies from Mughal India and Beyond' (Cambridge University Press 2007) pp. 13-49 <<https://www.cambridge.org/core/journals/twentieth-century-music/article/social-liminality-of-musicians-case-studies-from-mughal-india-and-beyond/2B2CE65E434E7764F04C383DEED3EC39>> accessed 17th June 2020;

Rosalind O'Hanlon, 'Manliness and Imperial Service in Mughal North India', (1999)pp. 47-93

Also see, Amanda J. Weidman, *Singing the Classical, Voicing the Modern: The Postcolonial Politics of Music in South India*, (Duke University Press 2006)

is situated in the present stage and it uses these historical contexts to analyse and explain how their existence impacts infringement and enforcement efficacies in the protection of copyright for musicians in contemporary Bangladesh.

The local music industry in most developing countries have been suffering from weak institutional and political support, low levels of entrepreneurial capability, low value-added, over-dependence on foreign manufacturing and distribution, and substantial copyright infringement for decades. Hence they predict that the earnings are far below the potential standard which would have increased significantly had the music industry, legal policies and the legislation itself been more effectively organised.⁵⁰

A publication⁵¹ by ‘The United Nations conference on trade and development’, highlighted the need for national copyright offices to operate effectively to create subsequent impact on various issues that may follow. It states that, ‘National IPR Offices’ are responsible for developing and carrying out policy on all aspects of intellectual property, including copyrights. The Directorates of these Offices are also normally responsible for formulating and implementing new legislation, which includes any changes necessary to meet obligations under international directives and international treaties. Furthermore, the Offices and Directorates play an active part in international negotiations.”

IP is administered in Bangladesh via two major departments which fall under separate ministries. Bangladesh Copyright office is a national level quasi-judicial organisation, responsible for copyright management and falls under the ministry of Culture. Whereas, the Department of Patents, Designs and Trademarks, concerned with trade-related intellectual properties, is located under the management of the Ministry of Industry. Interestingly enough, the vast disparity between the reven-

⁵⁰Birgitte Andersen Zeljka Kozul-Wright and Richard Kozul-Wright, COPYRIGHTS, COMPETITION AND DEVELOPMENT: The Case of the Music Industry (2000) <https://unctad.org/system/files/official-document/dp_145.en.pdf> March 2021

⁵¹ibid.

ues earned and facilities enjoyed by the copyright regime and the Trademark/Patent regime under IP, could arguably be directly affected by the strategic placement of their departments under assigned ministries.

The UN⁵² publication compares Government departments and units under which copyrights are administered to identify how situating national copyright offices under certain ministries could have an impact on the effectiveness of its administration and implementation. For instance it states that, administering music copyrights under the Library of Congress in the United States and under the Ministry of Information in Saudi Arabia suggests an overall rationale on balancing the conflicts surrounding information spillovers. It also strongly implies that the economic organisation of the copyright is left in private hands. Much of the same rationale lies behind locating copyright administration under the Ministry or Secretariat of Public Education or the Ministry of Human Resource Development, as is the case in India, Japan and Mexico. However, this also suggests the need for a public role in organising creativity, with emphasis on strengthening human capital. In Jamaica, South Africa and the United Kingdom, copyright administration are located under Departments of Trade and Industry which suggests a more strategic approach to copyrights in creating a dynamic environment. Finally, it mentions countries where music copyrights are administered by the Department of Culture or associated bodies and observes that it reflects a strong historical and moral rationale for the protection of intellectual creativity, arguable above narrow economic interests. Such a moral rationale of copyrights is especially based on human rights, where the law ought to provide remedies against those who appropriate the ideas of others.⁵³

⁵² Birgitte Andersen Zeljka Kozul-Wright and Richard Kozul-Wright, COPYRIGHTS, COMPETITION AND DEVELOPMENT: The Case of the Music Industry (2000) <https://unctad.org/system/files/official-document/dp_145.en.pdf> March 2021

⁵³B Anderson and J. Howells "Innovation dynamics in services: Intellectual property rights as indicators and shaping systems in innovation" [1998]

Ownership of IP and the Rights of Music Artists in Developing countries

Unlike Bangladesh and Pakistan, India's long standing music industry running adjacent to its film industry acted as a strong motivating factor for the government and the law to take notice and engage in establishing ways of monitoring, regulating and investing in the sector. In regard to India, Booth⁵⁴ claims that, a) popular music has almost exclusively meant popular songs produced for commercial films and b) the mass production of popular song in sheet music format never played a significant role in shaping industrial structures or local understandings of intellectual property. This is because songs recorded for films are work based on commission which means that the music entirely belongs to the producer and the songwriters and performers contribution is considered as commissioned work with one off payments and no rights. This indicates that the largest section of revenue from this industry is earned by labels not songwriters.

Bangladesh has a similar history where the importance of sheet music (composition and lyrics) in revenue earning has played a much smaller role for music artists or songwriters except Bangladesh does not share the perks of having a flourishing film industry that can support a music industry which generates work and revenue both for the performers, songwriters and producers. Therefore, the music industry of Bangladesh was not considered by the government to be an important industry in terms of economic aspects.

The history encompassing why the music industry, musical artists and music as a profitable profession has been perceived this way, is important in understanding why the development of IP laws in Bangladesh took place as it did and how it is contributing to ineffectiveness of the IP regime. No reliable academic publication could be found that focuses on this aspect, from Bangladesh's vantage point. However there are a few on India and Pakistan that the research draws from in trying to cre-

⁵⁴ Gregory Booth, "Copyright Law and the Changing Economic Value of Popular Music in India" [2015]

ate analogies and comparisons that might help understand the state of IP in Bangladesh better. In India, recent changes to those laws are now re-defining the rights of musical ownership and use but they are refocusing attention in IP matters onto the control of and access to recorded music (owner by producers and music labels) , rather than the sale of music recordings per se (originally owned by songwriters and performers). This portrays the attitude of the lawmakers in India and indicates that they are more favourable towards big companies and film production houses rather than individual performers and songwriter creating the music. Rifayat Islam⁵⁵ wrote the only journal article that focused on the Bangladesh music industry, lightly touching upon issues regarding how the current Bangladeshi legislation reflects a similar attitude. My research explores these issues in detail explaining the importance of legislative provisions leading to equal and just revenue sharing between songwriters and producers and how certain existing provisions can have direct impact on creating the disproportionate share of rights and subsequently revenues between songwriters and producer. This connection between law and commerce is a crucial link that academics in this field left unexplored, barring Islam⁵⁶.

Historically, the practices and commercial realities of Indian film song production had meant that there had only ever been one vocal recording of any song. Literally all the experiences of all listeners were based on the same recording, whether on disc, radio, or screen. In every instance, the “original recording” automatically included an “original singer.” In effect, songs were published as recordings; their identities (and it seemed to some, their legal identities) included their singers.

Booth⁵⁷ refers to the Indian journalist Ravi Shankar on his comments about recordings of different

⁵⁵Rifayat Islam, 'Intellectual Property Rights and Developing or Least Developed Countries: Strategies for Policy Makers', [2008] Part-F, Vol. 19, No. 1, pg 115,

⁵⁶ *ibid*

⁵⁷Gregory Booth, “Copyright Law and the Changing Economic Value of Popular Music in India” [2015]

versions of a famous original film song.⁵⁸ When versions of old hits were remixed and re-recorded for contemporary films, they were known as remixes or version songs. When version songs appeared, and became a significant economic force, the singers realised that this could have proved to be a continuing source of income for them had a system of royalty been in place. But these were all commissioned work so they were only paid one off. The reasonable assumptions for cultures where the song and the singer are deemed as one, would be that singer or vocalists would have better protection in terms of their copyright and commercial interests, but that, as explained later and in course of the research is not the reality. Bangladesh has similar issues but have not yet been addressed by academics in this field.

Version songs or remixes received resounding approval from the audience in the form of revenues. These gave rise to disputes over the control of musical rights included not only new film songs, but also the back-catalogue of older film-song hits which they were making remixes of. Typically the owner of the copyright would have the authority to control how their original content was being reproduced, which in this case were the music companies or the film producer. Such disputes in a highly profitable industry, made the legal authorities and the music industry take notice of the need for better management of rights. Version songs or remixes, as they were called in India, forced the Indian music industry, the legislators and the country's high court judges, to consider notions of creativity and authorship, the nature of popular song as intellectual property, and the elements that constituted a film song's identity.

My research points out how, such economic motivations were not present in the Bangladeshi music industry which was only in its infancy in the 90's. The Bangladeshi music industry evolved in a different landscape and was not reliant on its film industry unlike India which had its advantages and

⁵⁸Ravi Shankar on *The Sunday Observer* (1985) in Gregory Booth, "Copyright Law and the Changing Economic Value of Popular Music in India" [2015]

disadvantages. However this volume reviews Booth's⁵⁹ work on issues India faced on this front, considering that these are issues that Bangladesh is potentially going to face in time, as it evolves into an advanced music industry and therefore they need to be examined so that they act as a cautionary tale for the growing Bangladeshi music industry and copyright regime. The country is currently undergoing this very process of developing the infra-structure of the industry, where rights management is only being re-evaluated recently as it's first ever collecting society was inaugurated last year⁶⁰. As the research would go on to show, the Bangladeshi copyright legislation is yet to also re-evaluate the notions of creativity and the subsequent nature of authorship or ownership in the creative content, like the Indian legislators. A deeper analysis of the rights management and ownership aspect of copyright in India can help identify legal provisions, industry practices and legal norms that are problematic and do not contribute in the effective functioning of copyright laws in India protecting the interests of music artists and music businesses proportionately. This would help create a roadmap that can guide or help the Bangladeshi music industry and music artists avoid similar roadblocks.

Among other things, statutory licensing laws were intended to give copyright owners, especially authors and publishers, some control over whether their songs could be recorded at all; many statutory licensing laws also protected authors from unwanted alterations of their compositions to some extent. Among the non-infringing acts specified by Section 52 of the Indian Copyright Act⁶¹, was “the making of sound recordings in respect of any musical work” as long as two basic provisions were met: 1) sound recordings of work made by or with the consent of the owner of copyright or

⁵⁹Gregory Booth, 'Copyright Law and the Changing Economic Value of Popular Music in India' [2015]

⁶⁰Art and entertainment Desk, 'BLCPS starts registration to protect artistes' intellectual property rights' *The Daily Star* (Dhaka 02 September 2020) <<https://www.thedailystar.net/arts-entertainment/news/blcps-starts-registration-protect-artistes-intellectual-property-rights-1949561>>

⁶¹The Copyright Act (India) s52

by obtaining license to use the copyrighted work and 2) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels and has paid to the owner of rights, royalties at the rate fixed by the Copyright Board⁶².

While such provisions exist in both the Indian, Bangladeshi and Pakistani statutes, it does not translate into actual control over their content by authors since the ownership is transferred in totality, very early on in most artist-label relationship through commercial contracts as discussed in the context of India by Booth and the United Nations conference paper⁶³. Discussions on analyses of the legislation alone would not suffice; how the given laws are being applied by administrators and drafters of commercial contracts is the more pertinent question. These issues are explored in detail in the volumes of the research that focuses on copyright law and commercial contracts. The legislations of the subcontinent including India and Bangladesh have undergone multiple amendments in the last decades but the changes had relatively little impact in terms of providing sustainable and effective protection to composers, songwriters and performers in regard to their legal and commercial interests.

Rise of Piracy in The Indian Sub-continent

⁶²The Copyright Act 1957 (India) s44

⁶³Birgitte Andersen Zeljka Kozul-Wright and Richard Kozul-Wright, COPYRIGHTS, COMPETITION AND DEVELOPMENT: The Case of the Music Industry (2000) <https://unctad.org/system/files/official-document/dp_145.en.pdf> accessed on March 2021

Islam⁶⁴, Naznin⁶⁵, Chowdhury⁶⁶, Hassan⁶⁷ and many other scholars and authors in this field noted that piracy is one of the biggest obstacles to a thriving music industry without having delved into the history of piracy. Piracy has been recurring theme discussed in the academic community surrounding copyright. From mid-1970s onward, the arrival of audio cassette tapes enabled a host of musical, cultural, and industrial changes⁶⁸. Before the invention of audio cassettes, despite a clear demand for recorded music, pricing and production capability limited consumption, thus keeping total sales low. The arrival of Cassettes made music “copyable” and motivated music companies to meet the demand for recorded music that became available in the Indian subcontinent throughout twentieth century. As a result, the economic value of music increased at a rapid rate. Bangladesh being a newly liberated country in the 70’s was still battling economic depression, focusing on post war rebuilding where basic social needs were a priority.

Accounts of government response to piracy and the growing awareness of copyright in India can be found in Booth’s⁶⁹ empirical work. His investigation mentions an entrepreneur, named Satpal, in Delhi’s famous electronics and music hub, Lajpat Rai Market, who moved into the production of blank cassettes in 1983 with his two brothers. He mentions witnessing the police arresting the neighbouring music store owners on ground of producing pirates audio cassettes. This had deterred

⁶⁴Rifayat Islam, “Intellectual Property Rights and Developing or Least Developed Countries: Strategies for Policy Makers”, [2008]

⁶⁵Naznin, S.M.A., ‘Protecting Intellectual Property Rights in Bangladesh: An Overview’, (2011)

⁶⁶Chowdhury M, ‘Enforcement of Intellectual Property Rights in Bangladesh: To What Extent Is It TRIPS-Responsive?’(2018)

⁶⁷ S. S. Hassan, F. Nihar, M. Rahman, M. W. Razu, R. Amin Tuhin and A. K. Das, ‘A Behavioural Model of Music Piracy in Bangladesh: Factors Influencing Music Piracy,’ (2019) pp. 197-202

⁶⁸Peter Manuel , *Cassette Culture: Popular Music Technology in North India* (Chicago: University of Chicago Press, 1993) ; Jayson Beaster-Jones, *Music in Contemporary Indian Film: Memory, Voice, Identity* (Routledge 2016)

⁶⁹Gregory Booth, ‘Copyright Law and the Changing Economic Value of Popular Music in India’ [2015]

them from continuing with their business of producing pirates merchandise. Police responses such as those were a regular affair in the Kolkata region according to the article but such enforcement policies in a densely populated country and under staffed administrations were not sustainable or feasible over prolonged periods of time. No records of such police responses in Bangladesh in regard to infringement could be found. The socio-political and economic state of the country was such that the law and police attention on other criminal activity rendered comprehensive or automatic response to music piracy almost impossible.

Authors of the sub-continent unanimously reiterated that piracy had reached an alarming level as they observed a steady rise through the 90's and during the rise of the Digital Era. Despite the development of an industrial and legal infra-structure to regulate and manage copyright, the laws, practices, and (perhaps) attention necessary to combat cassette piracy seemed lacking at the governmental level in India, as Booth⁷⁰ notes. His paper cites the prolific Indian film makers Yash Chopra in reference to the issue of re-emergence piracy in the 90's, where Mr. Chopra highlights that it was not only the reappearance of music piracy (in the new mp3 format), but also the evolution of new media platforms that collectively had a negative impact on the economic value of India's primary popular music. The same hold true for Bangladesh and Pakistan but given their respective geo-political and subsequent economic context, as discussed above they lacked both industry and legal infrastructure to combat piracy generated from new technology including audio cassettes and subsequently the internet.

Mr Islam agrees and cites Mr. Abdul Awal Hawlader, Press Secretary to the Honorable President of Bangladesh whose study details pertinent problems of the Copyright office in Bangladesh. This includes piracy of musical and visual contents, screenplays, softwares, illegally reproduced copies of books, art etc. The authors in their 2019 study "*A Behavioural Model of Music Piracy in Bangla-*

⁷⁰ibid

desh: Factors Influencing Music Piracy," signify one major finding as the reason behind why the population act the way they do in copying or appropriating intellectual property.⁷¹ Their findings echo that of Islam's⁷², Naznin's⁷³, Chowdhury's⁷⁴ and many other academics in this field, all of whom concur that a severe lack of awareness amongst the population about the concept, importance and implications of copyright in general, is the chief factor contributing to music piracy but the question remains as to why and how. My research delves into this aspect in analysing how long standing social customs, government practices and publishing industry practices could be a crucial contributing factors. The long heritage of traditional folk music in Bangladesh operates outside the scope of the concept of copyright as discussed before, therefore it created culture where audiences and aspiring musicians interpreted appropriation of music as something that is not outside of the law. Implementation and enforcement of laws in regard to infringement were not prevalent therefore creating a certain tradition or idea of how copyright should be treated.

In this regard, a review of the literature of authors who covers the state of Pakistan reveal a very similar picture, especially post its independence. Mahmood and Ilyas⁷⁵ studied the level of unawareness about the concept of copyright in the publishing industry in Pakistan in an attempt to determine the causes of book piracy and identify its major beneficiaries. Their empirical work found that the most common reason for book piracy was the 'High price of original edition thus low sale in the local market.' The next significant reason was a 'High rate of profit' at which pirates make

⁷¹S. S. Hassan, F. Nihar, M. Rahman, M. W. Razu, R. Amin Tuhin and A. K. Das, 'A Behavioural Model of Music Piracy in Bangladesh: Factors Influencing Music Piracy,' (2019) pp. 197-202.

⁷²Rifayat Islam, "Intellectual Property Rights and Developing or Least Developed Countries: Strategies for Policy Makers", [2008] Part-F, Vol. 19, No. 1, pg 115,

⁷³Naznin, S.M.A., 'Protecting Intellectual Property Rights in Bangladesh: An Overview', (2011) pp 12-21

⁷⁴Chowdhury M, 'Enforcement of Intellectual Property Rights in Bangladesh: To What Extent Is It TRIPS-Responsive?'(2018)

⁷⁵'Khalid Mahmood , Muhammad Ilyas, 'Copyright and book piracy in Pakistan' (2005) <https://www.academia.edu/1190603/Copyright_and_book_piracy_in_Pakistan> accessed 29th March 2021

from illegitimate publishing (33%). The author observes how the availability of low priced pirated editions enables readers with the affordability to buy versions of the high-priced imported original publications. On the other hand, publishers and booksellers earning considerable profits from book piracy, translates to more jobs and income revenue for local businesses. A Table in the research, lists 11 core causes of book piracy in Pakistan which, interestingly enough, echoes that of Bangladesh's in many ways including its government policies, law enforcement, regulating and monitoring the implementation of laws as well as in terms of the socio-economic aspects. For instance, high Price of Original Editions of publication thus low sale, inclusion of foreign books in syllabus, easy and affordable reproduction technology, and an absence of a supervisory mechanism to enforce copy-right law.

Although copyright of literary publication is not the subject of this research, the above account provides a context as to the state of implementation, enforcement and understanding of copyright laws in general, in these countries and the government policies and practices surrounding it. It shows how, instead of subsidising the educational publication industry the government in Bangladesh allowed the continuation of book piracy so they would not have to focus on this sector. This portrays the environment in which copyright laws developed in Bangladesh and provides a context as to why the general mass finds it hard to comprehend piracy or infringement at present times, which is a crucial recurring factor that this research bases its arguments on.

Industry Structure: Royalty and Collecting society

My archival and doctrinal research found R. Islam⁷⁶ to be the only author who has inspected the

⁷⁶Md. Rifayat Islam, 'A Study on Intellectual Property Rights Practice - from the Perspective of Music Industry in Bangladesh' (2013). [pdf attached in additional document section, since the online link has become inactive]

state of commercial music contracts associated with copyrights in the music industry and noted how the agreements signed between artists and labels do not specify the scope of commercialisation of the work that is being sold.⁷⁷ He however, does not extend the investigation to explore the terms and scope of the contracts, how they are signed, how they affect both the artists and the labels and how publishing rights and sound recording rights should not be transacted under one contract but under separate contracts. His paper reflects his experiences and portrays the hurdles faced by organisations in the chain of business in the Music industry.

Islam provides insight into the business organisations' perspective as to their difficulty in sourcing songs directly from copyright owners who hold the IP rights to those songs, leading to reduced payment of royalties which as most authors agree, is a practice rarely seen in the industry. He mentions that a lot of Telecom companies who fail to find the actual copyright holders, proceed to obtain the songs regardless, which are downloaded by their subscribers, creating a vicious chain of piracy that is being carried out on every stage. According to him this is another form of piracy that is prevalent in the country apart from illegal downloads, copying of CDs, and DVDs. He highlights that, "The Bangladesh music market generates an annual revenue upwards of Tk. 200 crores or roughly US\$34 million. Unofficially the figures may be more than double if not triple. The 'industry' provides employment to well over 1 million citizens of the country, from artists to musicians, producers, distributors, retailers, wholesalers, cassettes and CD manufacturers."⁷⁸

Like others, Islam's list include absence of copyright society, lack of awareness among IPR owners, unwillingness of the value chain to come into a consensus are the behind reasons for IPR infringement as the major factors acting as deterrents. My research demonstrates how all these factors are directly or indirectly related. Islam mentions that, according to law music copyright owner should

⁷⁷The author Mr Islam is a product manager at a Grameen phone Bangladesh, Telenor, one of the largest telecom, VAS & Digital Services in the world.

⁷⁸ibid

be lyricists and composers,⁷⁹ but he does not clarify that, the ‘music’ the legislation is referring to, is sheet music and not sound recording.

India made amendment in its laws to empower its lyricists, composers⁸⁰ and performers⁸¹ of copy-rightable work and one of the most important steps towards this was the recognition of Copyright Societies by the Central Government. The Intepat⁸² article mentions that inclusion of Section 38A in the Indian Copyrights Act brought with it the Right of performers to receive royalty for the commercial use of their musical work. It was conferred upon the performers of musical works notwithstanding the fact that their work had been incorporated in a cinematographic work by virtue of an agreement. The Indian Singers Rights Association was formed with the advent of provision recognising Copyright Societies. The Association obtained registration under the Act as a Copyright Society with its members being the most renowned singers of Indian Film Industry. According to the Intepat research team, since its inception in 2012, the Association has consistently fought for the rights of Indian Singers and also successfully litigated against the commercial users of its members' musical work. It has also laid down the tariff schemes regarding licensing of the members' musical work. For example, one of the tariff categories regulates Restaurants, Lounges, Bars and other similar businesses. As per the tariff scheme, these commercial users of the musical work shall pay the price of "the least priced drink on their respective menu cards" per day to each singer whose song is played.

The article discusses two leading cases pertaining to performer's royalty rights in India that created

⁷⁹ibid

⁸⁰Judgement : the ownership of all underlying works in a movie was vested with the film producer unless a contract provided otherwise. See Desk report, ‘Amendment Will Protect Writer, Composers: Javed Akhtar’ (2010) <<https://timesofindia.indiatimes.com/india/Amendment-will-protect-writers-composers-Javed-Akhtar/articleshow/7090479.cms>> accessed 15 Nov 2019

⁸¹Intepat Team, ‘Capitalising music in India’ (2018) <<https://www.mondaq.com/india/copyright/724666/capitalising-music-in-india-performers39-royalty-rights-video>> accessed 15 March 2021

⁸²ibid

landmark precedents which demonstrates that actual legal actions for protecting artists' rights were being taken in India where the courts have supported the association and created legal precedent indicating legal consequences for infringement in this area (unlike that of Bangladesh where infringement were not traditionally sanctioned as discussed above with the example of Book piracy, creating a culture of appropriation). The discussion also explains how the cases generated questions as to the actual ownership of copyrights which needed to be clarified in order to know for certain, who the royalty should be paid to. The two cases are as follows :

1. ISRA v. Chapter 25 Bar & Restaurant (2016)
2. ISRA v. Night Fever Club & Lounge (2016)

In both the cases, the court ruled in favour of the Association and instructed that money earned from the commercial use of the musical work shall be paid to the plaintiff which, in these cases was the Singers' Association (ISRA). Hence, it is now, a pre-requisite by law, for restaurants, bars, lounges and other commercial establishments to obtain a clearance certificate from ISRA by paying the necessary amount of royalty so as to protect themselves from any future litigation arising out of the commercial use of a musical works⁸³. To understand the implication of the new law, it is essential to be informed about Saregama's suit in the above discussed cases.⁸⁴

It identifies two major factors leading to inefficacies in implementation. The first difficulty pertains to the determination of the actual amount of earning that commercial users might have made by exploiting the musical works. As already discussed, the court categorically held in both the cases that

⁸³ibid

⁸⁴ Saregama is a renowned music company of India and it filed for impleadment application in both the above discussed cases. It was claimed that Saregama company had exclusive rights over the musical work in question and hence it shall receive royalty against the commercial use of such works. The court recognised the rights claimed by the music company and went on to state that the agreement entered into between (ISRA) and the restaurant/pub owners is a collusive one. However, the paper states that no remedy was provided by the court for the reasons of "procedural impossibilities".

the commercial users shall pay to ISRA, the money earned by the commercial use of the performers work. However, the court failed to clarify on what parameters the said amount of money can be ascertained? In fact, the relevant question to be asked here was—did the defendants really derive any profit from the musical work of the performers per se. Or whether the usage of such music was incidental to the actual service provided by the restaurant and pub owners? The second challenge was posed by the interpersonal conflict amongst the stakeholders of a musical work. The restaurants or pubs may be liable to pay royalty but according to the article, the court left the matter unsettled. Questions remains as to why the court could not determine who the lawful owner of the rights and royalties were and whether the contracts based on which the copyrights were transacted were valid. Therefore, although the precedent of royalty payment by commercial users like pubs and cafe's was established, it was not explained which parties should the royalties be made out to. In the absence of an organised infra structure and industry practices which follows the intent of the legislations in administering commercial music contracts are commercial establishments expected to obtain such legal licences from multiple right holders i.e., the performer, lyricist, composer and the producer, on an individual basis or are they simply expected to pay the party who can produce the agreement of ownership of copyright? Contracts are the means through which copyrights of artists are managed. Discussions surrounding agreement of ownership or commercial music contracts for transacting copyrights are crucial in the context of Bangladesh considering that it shares this very problem detailed above.

Talaga⁸⁵ establishes that copyright laws in Srilanka predominantly face ineffectiveness owing to enforcement and implementational problems much like the other countries in the subcontinent. It present this notion on the grounds that the common attitude of the people is that, the prevailing in-

⁸⁵Chamila S. Talagala, 'Enforcement of Intellectual Property Right in Sri Lanka: Dome issues' <https://www.academia.edu/1881051/Enforcement_of_Intellectual_Property_Rights_in_Sri_Lanka_-_Some_Issues> accessed 22March 2021

tellectual property rights regime in Sri Lanka is predominantly a Western concept and the perception of it as a system is that it has been forced in to the country as a matter of external influence.

However a literature review of these papers do not reveal the reasons behind the collective perception and attitude of the mass toward the copyright regime. Bangladesh is in a similar position in terms of the perception and understanding of the people towards the concept of copyright. My thesis details implementational issues as one of the significant factors to inefficacies however delving into why the perception of the mass acts as an obstacle to implementation and enforcement of copyright laws.

Gowri's paper attempts to highlight the perils of introducing a royalty collection scheme in an industry which does not have an organised infra-structure. Gowri⁸⁶ also attempts to demonstrate how a music royalty scheme would fall short of its promise if not implemented with appropriate sensitivities to the relevant domestic conditions and with realistic expectations. The Sri Lankan Performing Rights Society (hereinafter referred to as SLPRS) was initially formed with the financial support of the Government of Sri Lanka and the British Performing Rights Society. According to its founding chairman, its initial task was mostly to collect royalties for foreign works rather than for local works. Gowri's academic investigation on royalty schemes addresses an interesting factors in light of royalty collection from Sri Lanka by foreign right holders. There is a gap in the literature in this aspect in the context of Bangladesh which my paper attempt to cover. It triggers questions such as, why did international music companies or collecting societies like the PRS or foreign film productions not pursue for royalty collections for usage of their copyrighted music or other IP in creative mediums in Bangladesh? No evidence of any such attempts for collection was found throughout the 80's,90's and 2000's in Bangladesh.

⁸⁶Gowri Nanayakkara, 'Promise and Perils of Sri Lankan Performers' Rights: The Royalty Collection in Music' (2017) <<http://webjcli.org/index.php/webjcli/article/view/532/710>> accessed 12th April 2021

Enforcement, Implementation and Infringement

Mirroring Hossain⁸⁷, Rahel's explains the various rights offered under IP, i.e. trademark, Patent, Copyright but along with it he mentions that the implementational issues remain pivotal when it comes to copyright law.⁸⁸ Mahmud lists hindrances in effective enforcement. His list include, lack of public awareness about the law, inadequate administrative supports, lack of modern technological tools, slow process of copyright registration, back dated search facilities and tools, lack of digital data and networks etc.⁸⁹ My research builds on the existing material and attends to the social, cultural and political factors that affects enforcement and implementation of IP laws.

The correlation between economy and culture is evident in how the culture of a society can determine the extent and areas of peoples' expenditures whereas the state of a countries economy is dependant on how much is invested in preserving and nurturing the cultural aspects of a country.⁹⁰

Many developed countries are testament to this experience and to how growing economy can act as catalysts for cultural boom. India (Yoga, Films, music) and Thailand (Meditation, massage, food) are prime examples of reverberating creative and cultural hubs that took flight owing to their developing economy. However, monetising music and having it as a source of income for livelihood that eventually contributes to a larger industry like that of the music industry is a totally different matter.

In his law review Chowdhury⁹¹, states that, " The act does not provide any strong safeguard mech-

⁸⁷Milan Hossain , 'Intellectual Properties: Bangladesh Approach', [2012]

⁸⁸Rahel M, '*Implementation and Impact of Intellectual Property Rights in Perspective of Bangladesh*' (International Journal of Business and Technopreneurship Volume 7, No. 1, [39-50] 2017)

⁸⁹Mahmud T,' *Legal Mechanisms for Copyright Protection & Its Efficacy in Economical uplift of Bangladesh*' (IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue 7, Ver. VII , PP 37-42 e-ISSN: 2279-0837, p-ISSN: 2279-0845, (2016).< www.iosrjournals.org>

⁹⁰ibid

⁹¹Chowdhury M, "*Enforcement of Intellectual Property Rights in Bangladesh: To What Extent Is It TRIPS-Responsive?*", International Islamic University of Chittagong, BLR Vol.9 No.3, September (2018)

anism against online copyrights piracy, meta-tagging or p-2-p broadcast of copyrights substances, copyrights in database and restrictions in deep linking.⁹² He further mentions that, “ The new copy-right law is silent about equitable royalty of the stakeholders in the music industry.”

In Bangladesh Intellectual Property law is administered by two separate ministries⁹³. The literature establishes that the IP enforcement agencies present are the DPDT (The Department of Patents, Designs and Trade Marks), the Copyright Office, Mobile Courts (When a magistrate moves to the place of the offence committed and tries the case outside the courtroom, the procedures that follow is considered to be governed by a mobile court in Bangladesh. Mobile court connotes a special arrangement of the court which moves from place to place, as opposed to, the court in the enclosed place, to adjudicate laws), Rapid Action Battalion (RAB) and the local Police.⁹⁴ At first glance, these may appear to be an adequate mechanism to provide a check and balance in the implementation and protection of IP rights but only assuming that infringement is monitored/reported, the bodies are working with effectiveness, corruption isn't palpable and most importantly that the IP rights have properly been registered by the artists. According to the interviews of musicians I have conducted in early 2020, most artists are forced to sell their IP and not for a limited period of time. Assessing the extent to which these factors contribute to the ineffectiveness of enforcement of IP laws would involve a much deeper socio-cultural and economic analysis that influence legal policies and implementation. The effectiveness of these enforcement bodies would depend on many such political, economic and social variables which has not been analysed and will be examined by my em-

⁹²ibid

⁹³ The two offices responsible for IP matters in these two ministries are :

1. The Department of Patents, Designs and Trade Marks (DPDT) under the Ministry of Industries (MOI). Industrial Property matters are administered by this department. The DPDT is affiliated to the World Intellectual Property Organization (WIPO).
2. The Copyright Office under the Ministry of Cultural Affairs (MOCA). Matters related to Copyrights and related rights are administered by this office.

⁹⁴Milan Hossain , “Intellectual Properties: Bangladesh Approach”, International Journal of Humanities and Social Sciences (2012)

pirical research.

Azad⁹⁵ summarises the criminal and civil remedies offered by the statute. However his examination does not address that seizure, fine or imprisonment does not take place unless a charge of piracy is brought forward. According to my investigation during my fieldwork, there is no regulating or monitoring body actively investigating, or working on finding these outlets and shutting them down but there seem to be no allocation of resources for that.⁹⁶In contrast, in UK has the IPO or Intellectual Property Office, which is a government body responsible for IP policies, educating businesses and consumers about IP rights and responsibilities, supporting IP enforcement etc. The [Intellectual Property Office](#) in collaboration with the [Department for Culture, Media and Sport](#) in the UK have also effectively been working with Google and Bing, on decreasing illegal downloading by blocking illegal downloading and streaming sites.⁹⁷ My empirical research enquires into how the community's collective behavioural approach towards litigation affect reporting infringement or unfair contracts, or breach but most artists in their interviews (during my fieldwork) reiterates that bringing litigation as a singular defendant is an expensive affair and initiating a litigation as a group is increasingly difficult since unity amongst musicians is harder to form although the opposite is true for labels, radios, broasting stations and venues. These kind of suits fall under class action litigation suits in countries like the USA, Canada and a few civil law jurisdictions in Europe but surprisingly the English legal system had removed the impetus for most types of group litigation by 1850. The constitution of Bangladesh does create room for the evolution of various types of litigation but it has not introduced class action litigation to the legal system yet, therefore the community of musi-

⁹⁵Azad A K, 'Rock 'n Roll in Bangladesh: Protecting Intellectual Property Rights in Music' (2019) <https://www.wto.org/English/res_e/booksp_e/casestudies_e/case3_e.htm> accessed 15 June 2019

⁹⁶Participant 16 (Dhaka 18th Feb 2020)

⁹⁷ Press Association, "Google and Bing to deprecate piracy websites", The Guardian(London 20th Feb 2017) <<https://www.theguardian.com/technology/2017/feb/20/google-and-bing-to-demote-piracy-websites>> accessed 1st July 2020

cians do not have access to this legal tool. Azad⁹⁸ also elaborates on the legal recourse and legal skills available in the country to cater to IP disputes. He also identifies small forums and lawyers associations like the Bangladesh IP Forum⁹⁹ and Intellectual Property Law Alliances which indicates some growth and awareness in this field.

Legal and Non-legal responses to Inefficacies in Copyright Protection

One of the key focus of this research pertains to identifying, constructing and suggesting non traditional legal responses and non legal responses to the issues raised. As the literature suggests traditional legal responses appear to lag far behind industrial and technological development and under circumstances where long standing social norms make it difficult for the law to be effectively implemented. Hossain¹⁰⁰, Azad and Rahman¹⁰¹ establishes that the IP enforcement agencies operating in Bangladesh, under the 2000 Act are, the DPDT, the Copyright Office, Mobile Courts¹⁰², Rapid Action Battalion (RAB) and the local Police, all of which offer traditional legal responses to issues regarding copyright infringement or appropriation legal responses, as discussed in the above subsection on Infringement. A rare instance of IP suit being initiated in Bangladesh, was the case of *Miles V Malik*. Bangladeshi pop band “Miles” and an Indian music director Anu Malik and a film

⁹⁸Azad A K, ‘Rock ‘n Roll in Bangladesh: Protecting Intellectual Property Rights in Music’ (2019) <https://www.wto.org/English/res_e/booksp_e/casestudies_e/case3_e.htm>

⁹⁹Bangladesh Intellectual Property Forum <<http://bcipf.org/>> accessed 2nd July 2020

¹⁰⁰ Milan Hossain, “Intellectual Properties: Bangladesh Approach”, International Journal of Humanities and Social Sciences (2012)

¹⁰¹Mahmudur Rahman Saidy, An assignment on Public Interest Litigation in Bangladesh <https://www.academia.edu/20041384/An_assignment_on_Public_Interest_Litigation_in_Bangladesh> accessed 12th May 2020

¹⁰²When a magistrate moves to the place of the offence committed and tries the case outside the courtroom, the procedures that follow is considered to be governed by a mobile court in Bangladesh. Mobile court connotes a special arrangement of the court which moves from place to place, as opposed to, the court in the enclosed place, to adjudicate laws.

production house. In 2004, during the release of the film, both countries were signatories of WTO which meant that their domestic legislation were amended to be TRIPS compliant. The amendment to Chapter IX of the Act, titled ‘International Copyright: power to extend copyright to foreign works’, was inserted a new section after section 40 which made it possible for Miles to make this claim.

Combating piracy with constant regulation and monitoring of illegal infringement or appropriating activities online, is another form of non-legal response that the research suggest would prove to be useful. Bangladesh Telecommunication Regulatory Commission (BTRC)¹⁰³ which was formed on 31st January of 2002 to facilitate a quick and stable socio-economic development and to provide a dependable telecommunication services. In its website, the enforcement and inspection directorate section, lists “identifying unauthorised telecommunication service providers installation and terminating their activities” as one of its objectives which involves taking down illegal sites offering pirated songs and regulating infringement activities. A more vigilant and organised approach by BRTC would translate to less piracy and more authentic digital transaction which would go into the growth of the music industry and relevant stakeholders.

However this also means having easy access to online banking for mass to enable the buying of music online, considering the fact that physical sale of music in the form of CDs is almost obsolete in Bangladesh. Talha, Alam and the other co-authors¹⁰⁴ discuss the lack of access to online banking in Bangladesh and its impact and prospects in their research. However their discussion does not cover impact on the music industry and its artists. My research suggests that this would be another area which could contribute to protect the commercial interest musicians who are self published and do

¹⁰³Bangladesh Telecommunication Regulatory Commission (BTRC) <<http://www.btrc.gov.bd/en-forcement-inspection>>

¹⁰⁴Syed Shah Alam, Ali Khatibi, [Solucis Santhapparaj, A.](#) and Mohammad Talha, ‘Development and prospects of internet banking in Bangladesh’ (2007) <<https://doi.org/10.1108/10595420710816614>> accessed 7 th May 2020

not share revenues with a record label or a publisher. The major portion of their income is generated from revenues through sale of songs and ringtones online. The internet allows them to publish and self distribute in the absence of a record label or publisher.

In light of exploring a non traditional legal response to protecting the commercial and copyright interests of music artists Huq's¹⁰⁵perspective on the emancipatory human rights oriented response¹⁰⁶ could be a great example to be inspired by and draw from in establishing potential solutions. Tea workers in Bangladesh, a workforce created by the indentured labor system under British colonialism and whose exploitation is maintained by existing laws, have been mobilising against the threatened seizure of the land that they cultivate for sustenance by the Bangladesh Government, in order to create a special economic zone to attract foreign investors¹⁰⁷. Using the tea worker movement as a case study, this article explores the possibilities of legal responses from the ground up that articulate new human and labor rights for workers. It can be argued that the most important takeaway from the article would be that of how effectively the movement raised awareness amongst the tea workers about their rights. A movement for musicians' rights based on the solidarity approach mentioned in the tea garden movement, that looked at collective rights of all musicians, could offer solution to one of the most crucial problems surround copyright implementation: unawareness. "The tea workers' movement evidences the utility of demanding rights that are not presently articulated by the law. By insisting on their inalienable right to dignity and to livelihood, the tea workers created conditions for those rights to become reality. The mobilisation led to a broad

¹⁰⁵Chaumtoli Huq, ' CHARTING GLOBAL ECONOMIC INEQUALITIES AND EMANCIPATORY HUMAN RIGHTS RESPONSES FROM THE GROUND UP: THE TEA WORKERS' MOVEMENT OF BANGLADESH' (2020) <<http://hrlr.law.columbia.edu/hrlr/charting-global-economic-inequalities-and-emancipatory-human-rights-responses-from-the-ground-up-the-tea-workers-movement-of-bangladesh/>> accessed 13th April 2021

¹⁰⁶Chaumtoli Huq, 'Charting Global Economic Inequalities and Emancipatory Human Rights Responses From the Ground Up: The Tea Workers' Movement of Bangladesh' [2020]

¹⁰⁷ibid.

base of solidarity among members of the Tea Workers Union and workers in surrounding tea plantations"¹⁰⁸. It was only after mass awareness set in, that the workers could demand what they believed they deserved. This case study also provides possibilities for mobilisation around an alternative vision of how our laws and economies should be organised, taking societal needs into account in constructing laws that will consequently offer solutions and protections that in fact meet the needs of the affected communities and relevant stakeholders.

Booth's¹⁰⁹ research reveals that favourable economic reform policies can be an important ally in building a strong IP regime and protecting artists' interest. In his research, he refers to Corbridge and Harriss who argued that, "There is a strong case for believing that the economy of India was reshaped, if not entirely reinvented, by the programme of economic reforms that was put into place by Narasimha Rao and by his Finance Minister Manmohan Singh". Nevertheless, Singh had also acted as Finance Minister under prime ministership of Rajiv Gandhi (1984–91), whose early efforts at economic liberalisation, specifically the relaxation of the electronic import policy in 1984 and an abolition (beginning in 1986) of the excise tax that had crippled the major music companies, began to have an impact on the music industry. As a result, by the end of the 1980s, audio cassettes came to completely dominate the market. In 1989, according to O. P. Malik, "Indians spent 400 crore on recorded music" (The Times of India, 5 December, 1990), a 700 percent increase in music sales between 1982–89. Such an increase in economic revenue would invariably draw attention of the national legislators and policy makers to invest in regulating and facilitating the industry which is what happened in India. It motivated subsequent amendments for commissioned songwriters.

¹⁰⁸ibid

¹⁰⁹Gregory Booth, 'Copyright Law and the Changing Economic Value of Popular Music in India' [2015]

Conclusion

A review of relevant literature indicates that the gap in knowledge vastly includes any empirical or qualitative studies on the research subject and a perspective constituting social, cultural, historical and economical context that explains the principle issues . The above discussions suggest that the issue of commercial and legal protection of music artists lack a more nuanced and detailed in depth examination which is crucial in dictating the best theories and methods that can procure such data. The following volume discusses the choices and combination of theories that form the theoretical framework of this research study. It explains the research approach in choosing the theories that best create the lenses through which the research investigation should be viewed. The methodology detailed in volume 3, has been constructed in support of the framework produced by the combined theories.

Volume 2

Theoretical Framework : Songs That explain the Unknown

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Copyright and Normative Theories

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Introduction

Theories are assumptions that create a rationale explanation for relationships between ideas or phenomenon, which in this case would be the Berne's concept of copyright law and its effectiveness in Bangladesh, putting it simply. Berne in turn was influenced by the French, "right of the author" (*droit d'auteur*), which contrasts with the Anglo- Saxon concept of "copyright" which only dealt with economic concerns¹¹⁰. Theories are analytical tools that help us, researchers, to explain an object, a subject or an idea, in a considered rationale, and predictable fashion. The importance of the use of theories in my research lies in the need to be able to establish the position and perspective I hold as a researcher in relation to this thesis investigation. The vantage point of certain theories allowed me to identify and isolate problems and develop strategies to manage and construct solutions.

This research applies combined theoretical approaches. It makes use of theories that generate both descriptive and speculative explanations as to what is happening in relation to the problems raised and why. The first two theories used in this volume, explains why, where and how the imported copyright law in Bangladesh arrived. The theories simultaneously also hints towards gaps between law in theory and law in practice, which appears to have made the legal transplant unsuccessful. For instance, the theory of legal transplant not only explains why the foreign law was transplanted and how, but the theory also points towards why the subsequent gap between law in practice and law in theory emerged. The theoretical framework also incorporates the use of a third theory, derived from the Buddhist philosophy of the concept of Emptiness, that can be called the theory of emptiness. I

¹¹⁰ Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton University Press 2016) 15

have drawn from various interpretation of the philosophy including that of Nagarjuna, Atisa and

Thich nah Hahn to establish a theory of Emptiness that would help explain the qualitative data collected, so as to create a new way to perceive problems associated with effectiveness of copyright and commercial laws related to music. Finally, the theories used in my research also justify the methodology chosen and limitations in existing knowledge.

On the surface it appears that copyright protection exists in Bangladesh and is based on global standards set by Berne¹¹¹. Yet research revealed that the artists do not experience the law as it is articulated. The Bangladeshi landscape on which this thesis focuses, is a complex hybrid, where a foreign IP law ¹¹²has been transplanted to a domestic jurisdiction (Bangladesh) possessing contrary historical and cultural contexts and then married to international conventions like the Berne and TRIPS. When long standing cultural practices are added to this unlikely mix, it is not hard to fathom why the copyright law in Bangladesh does not work the way it is expected to.

Copyright and Normative Theories

The wisdom of protecting creative works through granting of exclusive rights have been an ongoing topic of debate, since the inception of the concept of contemporary copyright laws. Over time the nature of an author's right has been an important part of this discussion amongst publishers, au-

¹¹¹Berne Convention for the Protection of Literary and Artistic Work <<https://www.wipo.int/treaties/en/ip/berne/>>

¹¹²Bangladesh's law on intellectual property, The Copyright law 2000 was heavily borrowed from the UK [Copyright, Designs and Patents Act 1988](#)

thors, philosophers, economists, politicians and jurists.¹¹³ They supported their beliefs with sound normative theories, which now represent the backbone of every copyright system, influence their provisions, and have a fundamental impact on their implementation.¹¹⁴ What inspire the rationale of a national or regional copyright model cannot be comprehended by studying the model on its own but by better understanding the region's internal mechanism, socio-cultural and geo-political history, changing state of the economy etc.

Researchers and academics in the field of IP, generally identify two main normative theories: the natural law (or Lockean) argument, usually associated with the *droit d'auteur* continental model, and the utilitarian argument, underlying the Anglo-Saxon copyright system.¹¹⁵ The Lockean theory is often intertwined with the personalist subtleties of Kantian and Hegelian arguments.¹¹⁶ Natural law gives an ethical justification to authors' rights, for it requires legislators to recognise, as a matter of justice, a property right over creative works, automatically derived from the author's labour. The Lockean or labour theory, seeks to apply the seminal rationale of John Locke regarding property rights. Locke asserted that "a person enjoys a natural right in the fruits of his labour in transforming raw materials (viewed as including, eg facts and concepts) that are "held in common" into a finished product of enhanced value, and the state has a duty to enforce the natural right that de-

¹¹³ [Caterina Sganga, Propertizing European Copyright](#) History, Challenges and Opportunities (Edward Elgar Publishing 2018) <https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006> accessed 21st June 2020

¹¹⁴ *ibid*

¹¹⁵ Justin Hughes, *The Philosophy of Intellectual Property*, 77 GEO. L.J. 287, 288–89, 303 (1988) (distinguishing as the two grand theories labor theory — refined by welfarist arguments — and personality theory).

¹¹⁶ Radin, Margaret Jane. "Property and Personhood." (Stanford Law Review, vol. 34, no. 5, 1982, pp. 957–1015) < www.jstor.org/stable/1228541 > Accessed 2 Aug. 2020.

rives from the labour”.¹¹⁷ On the contrary, Utilitarianism advocates legislative allowance of exclusive rights to authors, as a mean of motivating the production of intellectual works, which is perceived as a social welfare goal.¹¹⁸ In other words, it states that intellectual property systems exist because it has effect on the economic betterment of the society. Therefore the economic success of a country shall determine efficiency and correctness of the IP system.

Both theories converge towards the propertization of authors’ rights, yet with very different implications. The crucial problem in the application of the labour theory is that it does not explain why labour added to a resource “held in common” should entitle one to a property right in such resource; if it does, then what is meant by “intellectual labour” and “held in common”; and how far should one’s rights go in the fruits of his labour (as Robert Nozick observed, “if I pour my can of tomato juice into the ocean, do I own the ocean?”¹¹⁹). The property right described by the utilitarian theory, instead, is granted in pursuance of social goals, thus it is subject to limitations every time it is required by the public interest, which represents its ultimate source of legitimation¹²⁰. Justifying the creation of property rights for intellectual products as a necessary evil to solve market failures, is a mean that cannot hold the interests of creativity and evolution of intellectual ideas at its core, which ought to be the driving force behind any intellectual creation to thrive.

¹¹⁷William W. Fisher III, Theories of Intellectual Property, in NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY (Stephen R. Munzer ed., 2001) 168, 169–72(providing an overview and suggesting a fourth theory which maps the social planning of a “good life” upon a utilitarian theory “so as to help foster the achievement of a just and attractive culture”);

¹¹⁸[Caterina Sganga, Propertizing European Copyright](https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006) History, Challenges and Opportunities (Edward Elgar Publishing 2018) <https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006> accessed 21st June 2020

¹¹⁹Alejandra Mancilla, ‘A Can of Tomato Juice in the Ocean’ (2015) <https://philosophynow.org/issues/107/A_Can_of_Tomato_Juice_in_the_Sea> accessed 2nd March 2019

¹²⁰ibid (n30).

Because its development took place outside the traditional categories of modern private law, copyright became the object of a range of different classifications. But while patents and trademarks presented less classificatory challenges due to their almost purely economic and industrial nature, “Authors’ rights carried the additional difficulty of being linked with the spirit and dignity of the creator, and thus having nuances typical of personality rights”¹²¹. This sheds light on why development of copyright laws on domestic and international levels have been complicated and debate inducing. Berne convention adheres to the philosophy of ‘author’s right to own’ which is a departure from the century old practice in the east, of patronage by kings, emperors and beneficiaries of the arts, where artists were simply commissioned practitioners as opposed to owners of their creations. The Berne Convention refrains from clearly defining "copyright" in terms, notwithstanding that its worldwide protection is the Convention's main aim. It does state that, “Copyright consists of a number of rights enjoyed by the author and the protection of copyright means that, with some qualifications and limitations, the use of the work is not allowed except with the consent of the author or his successor in title”¹²². The WIPO guide explains that, “The very concept of copyright from a philosophical, theoretical and pragmatic point of view differs country by country, since each has its own legal framework influenced by social and economic factors. To define it in a manner binding on all member countries would be difficult if not impossible.”¹²³ In this case, how may the aims of the Berne be accommodated with values local to particular cultures when being applied as an instrument for transplanting copyright. Does this law operate consistently with local cultural creation? The Convention speaks of "the rights of authors in their works" but it does not specifically define

¹²¹ [Caterina Sganga, *Propertizing European Copyright*](https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006) History, Challenges and Opportunities (Edward Elgar Publishing 2018) <https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006> accessed 21st June 2020

¹²²Guide to Berne Convention for the Protection of Literary and Artistic Works (WIPO Publication GENEVA 1978) <https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf> accessed 27th May 2020

¹²³ibid.

the word "author" because on this point too, national laws diverge widely, some recognising only natural persons as authors, while others treat certain legal entities as copyright owners, some imposing conditions for the recognition of authorship which others do not accept.¹²⁴ This reflects the broad and flexible approach of the convention which recognises the need for national laws to take into account the impact and effectiveness of transplanting or adopting foreign laws and concepts. However certain questions that developing countries still grapple with, still remain unanswered.

Theoretical Justification and Implication

This section focuses on the reasoning behind why these particular theories chosen for the purpose of this study . In doing so, it accounts for why certain theories appeared more suitable than others and why the conventional Intellectual Property (IP) theories might not prove to be useful. While the Lockean and Utilitarian theories provide two different lenses through which one can perceive the operation, scope and significance of intellectual property laws in general, my research question calls for a way of perceiving protection of copyright laws beyond those lenses and in the light of the laws functional relation to society exploring the gaps between law in theory and in practice. This demands a deeper understanding of how the copyright laws in Bangladesh was introduced, implemented and received. In this regard, my theses is that, ineffective establishment of copyright law in the region (Region includes, the Indian subcontinent that was colonised during the British Regime)

¹²⁴ibid (n27).

since its existence from 1856¹²⁵ demands an examination of why the legal transplant by the British authorities did not effectively integrate and assimilate into subsequent national laws, like other laws did in the Indian subcontinent(ex, the laws of contract, tax etc.). A review of literature reveals that, typically researchers are inclined to opt for the theory of legal transplant¹²⁶ in cases relating to problems of transplantation of a foreign law. However most of those cases involve countries or territories with no previous history of such laws and where introduction of such laws would mean introducing a new concept to a population who may be oblivious to such knowledge.¹²⁷ The development of authors' rights is relatively recent. As with other IPRs, they arose centuries after the formation of the main private law institutions, possibly owing to evolving socio-economic structures and technological developments. Their normative justifications have been the most varied and overlapping, with the result that the same proprietary definition of copyright has not necessarily had similar implications.¹²⁸ This can be seen in how 'author' has a proprietary definition¹²⁹ in the Bangladeshi copyright legislation but with the eventual implication that they do not remain the proprietor of their own creation. Bangladeshi music industry practices according to my empirical research that unofficially follow that, most authors of music, i.e. composers or lyricists, have to sign away all their rights to labels and producers in exchange of a one time lump sum payment(This is explored in detail in the volume on copyright And commercial contract). The way such concepts penetrated the

¹²⁵Office of the Controller General of Patents, Design &Trademarks Department for Protection of Industry and Internal Trade, *History of Indian Patent* <<http://www.ipindia.nic.in/history-of-indian-patent-system.htm>> accessed 3rd August 2020

'The first legislation in India relating to patents was the Act VI of 1856'

¹²⁶* discussed in detail in the subsection below.

¹²⁷Talagala, Chamila, Enforcement of Intellectual Property Rights in Sri Lanka: Some Issues (August 23, 2012) < <https://ssrn.com/abstract=2136251> > accessed 16th March 2020

- Copyright law is governed by the Intellectual Property Act, No. 36 of 2003, in Sri Lanka.

¹²⁸ [Caterina Sganga, Propertizing European Copyright](#) History, Challenges and Opportunities (Edward Elgar Publishing 2018) <https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006> accessed 21st June 2020

¹²⁹Copyright Act 2000 s2 (24), s78.

legal system and were translated into law, caused different responses from legal formants when interpreting and implementing copyright laws and regulations. The national legislations developed earlier in time served as model laws, as in the case of British copyright laws during the colonial period, that circulated across boundaries and sometimes merged into second-generation mixed statutes decades post colonisation. In other times they got transplanted through colonisation (e.g. the British regime in India). Consequently when read through the lenses of another legal system, these legal concepts produced different results.¹³⁰

Two technical ways to implement IP protection in the colonies can be distinguished. Either the internal imperial legislation was amended to cover these territories. Or states declared that their accession to international copyright conventions also applied to their colonies.¹³¹ At the end of reign of the British empire, oral literature and creativity as practiced in many colonies appeared in international copyright discourse under the heading of 'folklore', but no agreed regulations could yet be reached on traditional cultural expressions (TCE)¹³². The colonial legacy of the international copyright system provides an explanation for its virtually universal reach even before TRIPS was estab-

¹³⁰ibid.

¹³¹Alexander Peukert, 'The Colonial Legacy of the International Copyright System' (2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2057796> accessed 7th June 2020

¹³²*TCE cannot be protected by existing copyright law for a number of reasons inter alia: a prerequisite for copyright is that a work must be original. Yet the tradition of folk music is that an artist covers songs passed down to them and with time they add or improvise and make it their own many a times. However for the Copyright Act to be able to operate there must be an identifiable author. Yet because of the nature of cultural expressions, such a person is not easily identified and, therefore cannot be protected. These requirements of authorship and ownership under the copyright system are thus incompatible with group or collective ownership. To obtain copyright protection, the work must be recorded or written in a permanent or tangible form. Since folklore exists practically in collective and individual memories, it does not have any material form. Copyright protects the form and not the substance, so traditional themes and artistic styles and techniques may not get protection. Moreover, duration of protection under the copyright system is grossly inadequate. For TCE, see WIPO <<https://www.wipo.int/tk/en/folklore/>> ; See Kamal Puri, 'Protection of Traditional Culture and Folklore', Smithsonian Center for Folklife and Cultural Heritage, accessed 29 October 2016. <http://www.folklife.si.edu/resources/unesco/puri.htm>

lished¹³³. To this end, it can be argued that , TRIPS ‘may not have been possible but for the framework of existing national laws on the books in most developing countries’¹³⁴ According to Peukert¹³⁵ the longer colonial domination and exclusion lasted, the stronger was the neo-colonial IP grip (cf. Sub- Sahara Africa on the one hand and Canada on the other). However as discussed in the earlier chapter, this does not appear to be the case in terms of the Indian subcontinent post British colonisation since the region legal system had already been transplanted with the English copyright laws as part of colonisation, during that period. The region, which includes Bangladesh is still grappling with achieving successful and effective establishment and implementation of a legal IP regime, especially in terms of copyright of music.

The assumption that law as a social construct cannot remain the same, once it is dislocated, is applied by the theory of legal transplant in suggesting the need for assimilation and integration. It reflects that, the "transplant" cannot survive the change of context. Developing countries like Bangladesh that underwent legal transplant or amendment of their domestic laws through foreign rule, have had a change of context post colonisation and its subsequent independence. This means that for the transplant to be received and integrated, a degree of cultural adaptation would be necessary whether it concerns the law, or other social or cultural or normative factors like access to online banking or having a collecting society for collecting royalties.¹³⁶ This is what appears to be absent in the integration process of copyright law in Bangladesh. The concept of copyright through author’s ownership of IP directly contradicts the age old traditions and culture of non-ownership of IP

¹³³ibid.

¹³⁴Ruth L. Okediji, 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System' (2003) p339-40 <<http://www.commonlii.org/sg/journals/SGJIntCompLaw/2003/14.pdf>> accessed on 7 August 2020

¹³⁵Peukert ibid (n36)

¹³⁶Michele Graziadei, 'Legal Transplants and the Frontiers of Legal Knowledge' (2009) <<https://www7.tau.ac.il/ojs/index.php/til/article/view/726>>

in the Bengal region. When scholars define legal transplants as a means by which legal change is produced, they are confronted with the reply that the only real choice here is between rejection and assimilation. This retort assumes that something foreign cannot really "fit in," unless it is completely assimilated. According to Ginzburg, "Until then, what is borrowed works as an irritant but once assimilation has been achieved, the foreign element is no longer apparent..."¹³⁷ My thesis is that the concept of copyright that has been transplanted in Bangladesh appears to be in this state, where it has not fully integrated into the system and the crucial factor that could contribute in assimilation is cultural adaptation. I argue that instead of 'complete assimilation' the integration process could use a combination process of assimilation and legal evolution. If assimilation of the foreign concept can be compounded with elements that account for socio-cultural and historical context of the jurisdiction in which the foreign law is being transplanted, then the product would be a new set of laws that reflect the transplanted law in the context of the landscape it is imported in that is designed to serve the particular needs of the region. My thesis follows that this appears to be a more effective approach to transplant than forced attempts of 'complete assimilation'.

Conventionally these legal rules flowing from developed countries and being transplanted into developing countries who naturally have poor abilities to adapt and generate implementational issues, leading to ineffective integration of legal rules. It is important for this research to make use of a theory that can help explain the extent to which assimilation and integration is required for copyright law to be effective and factors that were preventing or hindering this assimilation. The natural choice for this research therefore, was the theory of Legal transplant. However, in providing solutions the problem might have to be examined in relation to its significance and impact on current society. While legal transplant is instrumental in explaining the problems on a scale that deals with

¹³⁷Carlo Ginzburg, *Wooden Eyes* (Martin Ryle & Kate Soper trans. Columbia University Press 2001) p139

cultural and historical context and adaptation, it is also important to find out solutions beyond legal recourse for the more administrative, organisational and political facets of the problem that make copyright ineffective. The law in discussion, i.e. the copyright law 2000 has been transplanted from the UK copyright law. A lens that will allow a comparative study between the two jurisdictions can open new windows to find solutions from or identify reform processes. At its core, the functionalist approach focuses on identifying a shared social problem in each place under consideration and defining it without recourse to legal terms¹³⁸. By accessing the functionality of law in relation to Bangladeshi society one can, not only have access to a broader perspective but may also find remedial approaches that are not limited to changes in legislation and the judiciary but renders itself to its applicability and implementation in society. Functionalism would allow the research to define the problem without recourse to legal terms, find and describe the 'legal' and 'extralegal' solutions that arise in relation to the problem in each system, identify similarities and differences between the solutions.¹³⁹ My research question demands to be perceived through such a lens that embodies the characteristics and ethos of what functional approach represents. In support of the above analysis, the theoretical framework for this research is broadly applying the notional vantage of a combination of both the theory of legal transplant and the theory of functionalism in constructing the theoretical framework.

The Theory of Legal Transplant

It is crucial that the chosen theories tie into my research and the gaps it discovered. The two aspects

¹³⁸ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn Oxford University 1998)

¹³⁹Petra Mahy, 'The Functional Approach in Comparative Socio-Legal Research' (2016) < <http://eprints.soas.ac.uk/22232/>> accessed 4th Aug 2020

emerging from the gaps, that need to be considered are, where did this copyright law in question come from and why and how it was implemented. The answer indicates towards factors, international conventions and the British colonialism on the Indian subcontinent. The theory of legal transplant offers the lens to find explanations and answer to the above questions.

‘Legal transplanting’ involves one legal system incorporating a doctrine, legal rule, or institution, adopted from another legal system¹⁴⁰. Empirically, we may ask about the fate of transplanted law in passing from a source to a host body of law. This inquiry becomes problematic to the extent that linguistic, cultural, or historical perspectives change when moving from the source to the host body of law. Does the transplant nonetheless work much as it did in the source law, is it modified in form or substance in the different host law, or is it simply rejected by it? Normatively, to the extent the transplant takes place without significant change, we have to ask: is such slavish reception justified? And, if so, by reference to whose values? The current Bangladeshi copyright Act for instance, highly resembles that of the UK without any significant changes owing to the country's socio-political or economic context. Considering that this research engages with the purpose and function of copyright law in Bangladesh, it is important to address that the notion of copyright, as a property right, is a western (now global) concept which in this case, has been transplanted through colonisation, into a region which was relatively alien to the concept of author's right.

Legal transplanting may also concern the receiving of an entire legal system, which may occur in a centralist way¹⁴¹. To understand this phenomenon one must examine the historical reasons behind the introduction of foreign law in a particular case. This for instance, it could be the result of con-

¹⁴⁰Alan, Watson *Legal Transplants: An Approach to Comparative Law* (2 edn University of Georgia Press 1993)

¹⁴¹George Mousourakis. ‘Legal Transplants and Legal Development: A Jurisprudential and Comparative Law Approach’ (2013) <<https://www.semanticscholar.org/paper/Legal-transplants-and-legal-development%3A-A-and-law-Mousourakis/c0070a0429d0d531809606eda25b765ee9c05fcc>> accessed 21st June 2020

quest, colonial expansion or the political influence of the state whose law is adopted. For the purpose of this research the country in focus is Bangladesh and its colonial history as part of British India, thus rendering it to be a prime example of cases where the law of the conquering nation was introduced in part or in an indirect fashion.¹⁴² Mousourakis¹⁴³ argued that, during the British and French colonial expansion there was a tendency to introduce colonial elements of the legal systems into conquered territories much of which largely reflected the character of the metropolitan social structure. However, it is crucial to recognise that the process of legal transplanting might be interrupted, or precipitated, by fundamental change¹⁴⁴. In explaining such changes Mousourakis addresses it as revolutionary, defining it as a historical event with the potential to change the identity of a socio-political system by altering the ideological foundations of its legitimacy and consequently, its orientation.

A fundamental change in the social construct could be observed in the Southeast Asian region, with the rise of capitalism, when the countries gained independence and the notion of classic patronage for the arts transformed to corporate philanthropy and corporate business culture. The new role and significance of music required musicians to be perceived in a way that is different from their role as commissioned or employed artists by patrons or as bauls who claimed no ownership of IP rights.

¹⁴²Shiddique M N U, Dr. Hyder M N A, *The Impact of Academic Libraries and Copyright Issues: Bangladesh Perspective* (BiLD Law Journal- Vol. III, Issue I, 2018)—A chronological account of the evolution of IP laws— The first codified laws on IPR in India (Bangladesh was then part of India) was passed in 1856 called the Act VI of 1856 on Protection of Inventions which was based on the British Patent Laws of 1852. Over the years other legislations that addressed trademarks and designs were put in place including the Patent and Designs Act of 1911 and the Trademarks Act 1940 (Nour Mohammad, *Intellectual Property Law in Bangladesh* (Five Jewels Publication 2012). In 1962 a Copyright Ordinance amalgamating the different copyright laws which existed at the time, were promulgated. The Copyright Ordinance 1962 was administered until 1999 post which, a new law containing different provisions aligned with international standards was enacted. The period between 1962 and 1999 witnessed the divide of India and Pakistan and the Independence of Bangladesh in 1971 leading to fundamental change in the social structures of the region. The new IP act, Copyright Act 2000 as amended in 2005 which is currently prevalent, was enacted decades after the liberation of Bangladesh. The Act contains the subject matter of the TRIPS agreement in respect of copyright and all trade related rights, computer programmes, database, cinema, broadcasting, performer's rights, literary, musical and dramatic works (

¹⁴³ibid

¹⁴⁴ibid.

Therefore it is imperative to examine the role and function of copyright laws in the current socio-legal atmosphere of Bangladesh in regard to whether it caters to the evolved role of music and musical artists with the aim of protecting and promoting their art, culture and knowledge. The research seeks to find a balanced structural construct in IP protection where music created and performed in the contemporary method can be treated under the Copyright law act in alignment with the concept of western copyright laws. It also aims to find forms of protection for music created and performed under traditional cultural expressions like traditional folk music and baul music and the respective musicians who practice such music that would enable the preservation, promotion, practice and cultural integrity of such IP that operates outside the copyright law.

Although this is not entirely a comparative study, it presents sections where comparisons have been made given that the region of Bengal has not had any domestic legislation on IP but had operated under foreign laws which was transplanted during the British colonial regime and then adopted as domestic law subsequently through socio-political evolutions. Comparison between the statutory languages and approach, of the copyright laws of independent Bangladesh and that of the UK reveal that, the current Bangladeshi Copyright law is extensively based on the UK copyright law. Being signatories to Berne convention also means that both the legal system are in agreement of a common philosophy of copyright. The theoretical approach of legal transplant allowed the research to explore the various reasons behind why the Bangladeshi legal system fails to effectively implement and ensure legal protection to musicians, despite theoretically being in agreement with the rules and philosophy of copyright laws.

It is highlighted in Hyder and Shiddique's¹⁴⁵ law journal and Mohammad's¹⁴⁶ book that, Bangladesh does not fall within the general category of developing nations which have recently being in-

¹⁴⁵ Shiddique M N U, Dr. Hyder M N A, *The Impact of Academic Libraries and Copyright Issues: Bangladesh Perspective* (BiLD Law Journal- Vol. III, Issue I, 2018)

¹⁴⁶ Nour Mohammad, *Intellectual Property Law in Bangladesh* (Five Jewels Publication 2012)

troduced to copyright or IP laws as per the standards of Berne convention. It is a region where IP laws existed for over a century and half but displays increasingly mild effect of its benefits as intended, both in terms of protection and promotion of copyright and commercial interest of the art and the artists. When a certain legal rule, or doctrine exists in a region for such a prolonged period of time, it is expected to be integrated and assimilated to an extent. When that is not the case, it is important to identify the underlying factors of non-implementation and ineffectiveness associated with problems of legal transplantation.

In light of transplant, Geller¹⁴⁷ refers to 'Relativism, which involves the suspicion that our own linguistic, cultural, or historical perspectives distort our knowledge of other such perspectives. For example, when copyright laws were being adopted from British laws or being enacted post joining the Berne convention, it was not considered that a largest section of music practitioners in Bangladesh included traditional folk musicians and the baul sect who remain outside the scope of contemporary copyright laws. A further example includes how the Berne Convention refrains from illustrating the notion of a protected "work" or defining copyright, only providing an open-ended list of examples. To this end transplantation requires to take into account cultural bias, address social norms and contextualise perspective for successful integration and assimilation of the law which is often difficult to achieve, as seen in the Indian subcontinent. It can be argued that the very concept of law, not to mention culture, may vary from place to place and period to period. Therefore Geller suggests that in transplantation of copyright laws, intricate and subtle feed-back mechanisms between legal and other cultural processes, ought to be taken into account.

In taking culture context into account, it is being acknowledged that Bangladesh has been part of a region where for centuries, traditional folk culture perpetuated that traditional art or music and

¹⁴⁷Paul Edward Geller, 'Legal Transplants in International Copyright: Some Problems of Method' (1994) <<https://escholarship.org/uc/item/0b76s1xb> > accessed on 12th June 2020

knowledge belonged not to one but to the community, much like the Marxian¹⁴⁸ approach of collective community ownership. This was prevalent parallel to the practice of patronage of art and music which also perpetuated the tradition of artists providing a service to the kings and benefactors as opposed having ownership in their creation in the process. The rhetorical power of the proprietary label given to authorship is a notion that is yet to be effectively and systematically established in the region. Understanding the social, economic and historical context of copyright in this region, is paramount in attempting to analyse the feasibility, correctness and effects of its contemporary propertization.

While copyright essentially is an economic right it also has a purpose to promote culture and knowledge. There advantages and disadvantages of bringing all musical creations and creative rights under legal protection and ways in which that might affect promotion of the culture and knowledge in a region that exercised free flowing of IP for centuries and relied on traditional knowledge as a way of living and creation. Although there are guidelines in the Berne Convention on how rights under TCE can be managed, they are mere guidelines and has therefore not been incorporated in the Bangladeshi domestic legislation. The combined lens of legal transplant and functionalism enables the research to analyse these factors through doctrinal and empirical work and identify situations where implementing contemporary copyright laws can be helpful and where it can have adverse effects or cause hindrance, commonly seen in cases of TCE or TK (traditional cultural expression or traditional knowledge). The research argues that if the concept of copyright is considered to be a spectrum not limited to the specific set of rules governed by Berne but ranging across a continuum displaying the varying extent of protection afforded by copyright law, it can essentially help identify where Bangladesh stands on the spectrum.

The following section focuses on the second theory, “Functionalism”, which provides context and

¹⁴⁸Jared Wright, A Marxian View of Intellectual Property (2014) <https://www.academia.edu/7867256/A_Marxian_View_of_Intellectual_Property> accessed on 18th July 2020

perspective on the above issues in relation to their function to society and reasons behind the gap between law in theory and law in practice in a jurisdiction like Bangladesh.

The Theory of Functionalism

While the doctrinal and archival investigation enables examination of documents and factual events, functionalist approach combines its factual approach with the theory that these facts must be understood in the light of their functional relation to society. The ‘disfunction’ or ineffectiveness of the Bangladeshi copyright law can be largely found in the gaps between the copyright laws of Bangladesh in theory and the laws in practice, both culturally and commercially. This is further supported by the empirical aspect of the research’s methodology which assesses the current conditions in which the musicians and the music industry operate in Bangladesh, both in light of commercial and copyright interests. This theoretical approach delivers the means of understanding the socio-cultural and economic factors that can obstruct the evolution and smooth running of IP law, explaining the gap causing disfunction and explaining how and why the gap mentioned above exists. In short, firstly, why the rights created by law do they not translate into commerce in practice? Secondly how and why do commercial and cultural industry practices appear to ignore the law? According to my doctrinal and empirical research (both explored in detail in Methodology) Bangladesh’s Copyright law 2000 offers the standard IP rights to the stakeholders in law, however musicians are offered no royalties or rights in practice, no collecting societies operate in practice, neither are copyright infringements sanctioned, which reveals a gap between what the law offers and what is in fact happening in practice. Functionalism enabled me to explore and explain these gaps through comparative studies. It also demanded that legal institutions be understood not as doctrinal constructs but as societal responses to problems, not as isolated instances but in relation to the whole legal system

and to the whole of society.¹⁴⁹ My research follows this suggestion and looks beyond legal rules to explore the consequences of the application of legal rules in society which may offer non-legal solutions to mitigate the gap between law in theory and practice.

Zweigert and Kötz provides the following steps required in adopting the functional approach:

identify a shared social problem in each place under consideration and define it without recourse to legal terms, find and describe the ‘legal’ and ‘extralegal’ solutions that arise in relation to the problem in each system, identify similarities and differences between the solutions, build a conceptual language capable of discussing all the cases, find explanations for similarities and differences in the wider context, and finally, critically and normatively evaluate the findings¹⁵⁰. According to Zweigert¹⁵¹, the basic methodological principle of all comparative law is that of functionality. This research focuses on the branches of functionalism that relevantly fit the objective of the theoretical framework and focus of my research.

I followed the lead of Petra¹⁵² along with some other researchers (Husa 2003; Samuel 2014; Valcke 2014; Adams and Griffiths 2014) in viewing functionalism as a very useful beginning point in the comparative process¹⁵³. There are some common elements on which functionalist comparatists agree. Firstly, functional comparatives focus not on rules but on their effects, not doctrinal struc-

¹⁴⁹ Petra Mahy, ‘The Functional Approach in Comparative Socio-Legal Research’ (2016) < <http://eprints.soas.ac.uk/22232/>> accessed 4th Aug 2020

¹⁵⁰ibid.

¹⁵¹ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn Oxford University 1998)

¹⁵²Petra Mahy, ‘The Functional Approach in Comparative Socio-Legal Research’ (2016) < <http://eprints.soas.ac.uk/22232/>> accessed 4th Aug 2020

¹⁵³* My research carries out comparative studies in determining whether Bangladesh IP regime is effectively producing the consequences that was intended, compared to the UK (The IP laws of the UK had been inherited by Bangladesh during the colonisation of the subcontinent and the current IP law, the Copyright Act 2000 also appears to be heavily borrowed from the UK copyright legislation of copyright, patent, trademark and designs.) and other developing countries with similar laws complying with the Berne convention, like India, and Pakistan.

tures and arguments, but events. Secondly, the epistemological function of functionalism aims at explaining the effects of legal institutions as functions (a specific kind of relation), and it pledges to look at non-legal responses to societal requisites, too. The functional method requires one to understand legal institutions not as doctrinal constructs but as societal responses to problems, not as isolated instances but in relation to the whole legal system and to the whole of society.¹⁵⁴

According to Petra¹⁵⁵, functional approach can serve as a yardstick for comparison. Institutions, both legal and non-legal, even doctrinally different ones, are comparable if they are functionally equivalent, if they fulfil similar functions in different legal systems. My research draws comparison between the UK, India and Bangladesh in terms of the operation, efficacy and enforcement of their respective IP laws and regulation. This also includes selective institutional and functional comparison with the Indian IP law provisions and their music industry. Hence this approach can play a crucial role in viewing the similarities and dissimilarities between functionally alike institutions to access drawbacks and endeavour to find resolves that are apt and sustainable for Bangladeshi musicians, from all contexts: social, cultural and economic.

In light of this perspective, this research explores varied legal and non-legal responses that could collectively contribute in improving the current state of the copyright legal protection and commercial interests generating from the copyright. The contextual background of Bangladeshi music and musicians (as discussed in chapter 4) and its evolution through the complex socio-cultural creates a compelling ground to extend scopes beyond legal responses and onto socio-cultural, economic and geo-political elements which the notion of functional equivalence supports. Zweigert and Kötz¹⁵⁶, acknowledge that the solutions to particular problems may not necessarily be ‘legal’ but rather gen-

¹⁵⁴ Petra Mahy, ‘The Functional Approach in Comparative Socio-Legal Research’ (2016) <<http://eprints.soas.ac.uk/22232/>> accessed 4th Aug 2020

¹⁵⁵ Petra Mahy, ‘The Functional Approach in Comparative Socio-Legal Research’ (2016) <<http://eprints.soas.ac.uk/22232/>> accessed 4th Aug 2020

¹⁵⁶ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn Oxford University 1998)

erated from 'extralegal' norms and institutions. The definition of 'extralegal' included practices which supersede or bypass legislation and judge-made law as well as the unwritten rules of commercial and cultural practices. They explain that a social problem in one place may have legal solutions while in another it may be solved by a custom or social practice¹⁵⁷. However a more simplified application of such notion would have to be applied owing to a very specific and crucial limitation: a non-legal institution cannot impose legal sanction upon non-compliance or breach. Such institutions could regardless take alternate punitive actions or attach legal obligations upon breach. My research draws from this notion and goes to discover that the solution may lie in having the customs or social practices align with the legal solutions and vice versa.

Collecting societies and organisations such as the Musicians Union in the UK, could be interpreted as extra legal responses, fulfilling a function that is crucial in the machinery that protects the IP and commercial rights of music artists (This is discussed in detail in the volume on music copyright laws). Musicians Union or MU is a trade union that works towards protecting the rights of all musicians in the UK and campaigning for a fairer music industry working for favourable policies for musicians, assisting with music contracts, insurances, legal advice, workplace advice etc. It can be argued that solutions cannot always be attained through sanctions because various things beyond legal sanctions impact and motivate social behaviours, like access to online banking that can enable one to legally purchase individual tracks as opposed to whole albums online. Without access to online banking, there is no other way for the purchaser to consume the music other than downloading it illegally.

Perhaps the most simplified and apt form of functionalism that can be applied in support of this research is one offered by a common analogy, popularised by Herbert Spencer. This functionalist per-

¹⁵⁷ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn Oxford University 1998) p35

spective observes society as a complex system whose parts work together to promote solidarity and stability. The approach looks at society through a macro-level orientation, which is a broad focus on the social structures that shape society as a whole looking at both social structure and [social functions](#).¹⁵⁸ Functionalism addresses in terms of the function of its constituent elements, namely: [norms](#), customs, [traditions](#), and [institutions](#). Spencer presents these parts of society as organs that work toward the proper functioning of the body as a whole.¹⁵⁹ Spencer contends that society is similar to a human body. The efficiency with which each organ perform their assigned functions, determine how healthy the body is. Spencer draws an analogy between the human body and society where he argues a society's existence rely upon tasks performed by similar organ-type institutions for it to thrive akin to that of the human body with organs that function to meet a need: sustain life. In principle of sociology, Spencer¹⁶⁰ explains that, while the overall system relies upon each function, it is the interdependency and the ensuing interaction among structures, that determine the extent to which a system meets its state's need. This raises many social and economic queries that requires answers to understand the machinery of interdependency and how to make it effective. Some of the queries are as follows: on a scale of national budgetary priority, where would the interests of music artists working in a society in Bangladesh be situated and why, how this impacts the efficacy of the current legal and commercial protection of music artist, why the general mass might appear to be unaware of the concept of copyright and how that impacts piracy, and how might that in turn effect implementation, how a poor digital banking system can impact piracy or the commercial aspect of the music business and how economic and political motivations can influence development

¹⁵⁸Benton Johnson, *Functionalism in Modern Sociology: Understanding Talcott* (Parsons Morristown, N.J. : General Learning Press, 1975)

¹⁵⁹'The Functionalist Perspective Sociology' (2016) <<https://www.boundless.com/users/493555/text-books/sociology-cochise-college/gender-stratification-and-inequality-11/sociological-perspectives-on-gender-stratification-87/the-functionalist-perspective-503-4583/>> accessed 27 Feb. 2017

¹⁶⁰Herbert Spencer and Frederick H. Collins, *The Principles of Sociology* (D. Appleton and Company 1914)

and implementation of said law.

Spencer's feature of functionalism offer an important lens which enables the research to examine the individual and interdependent functional effectiveness of the relevant bodies or institutions that impact the protection of the IP and commercial rights of music artists in Bangladesh. This includes assessing the impact of the absence or lack of adequate functioning of one institution, on the other institutions in question and deliberating on what remedies can be constructed to mitigate that. In order to execute the legal rights and obligations offered by the legislatures in the statute, keeping in mind the true intentions and approach of the legislatures requires dependancy on various branches of legal executive and social bodies. This includes educational institutions, collecting societies, copyright registry office, government bodies who audit the operation and running of collecting societies and royalty payment, easy access to online banking for mass offering means to purchase music online considering the digital age and a musicians trade union that works for the interest of the music artists. The effective and successful functioning of each of these institutions, individually and collectively, is crucial in creating a connected machinery of the music industry and music copyright culture, that rewards the music artists proportionately and recognises their contribution culturally and commercially which is key in safeguarding their rights and giving true effect to the intentions of the copyright legislation. This theoretical lens will enable me to focus on specific social responses such as actions to increase awareness about the rights afforded through copyright laws, whether through educational institutions, music law workshops, access to online banking, governments enforcement and implementation of the law through due warnings and process for the mass to take notice etc .

Whether the legal instrument is functional or not, in light of this research, is determined by whether the intention of the legal instrument (copyright act 2000) reflects the needs of the intended demography (musicians and the music industry) and whether its application has taken into account the

socio-economic influences that affect implementation of the law in a society. The effective functioning of copyright laws may be deterred by various socio-economic factors such as lack of awareness amongst the mass about copyright laws, poor access to online banking in the absence of physical sale of CDs, long standing social norms backed by government policies that allowed citizens to engage in social practices like purchasing pirated books and publications without being sanctioned, etc. Musicians in Bangladesh are not a homogenous group with equal opportunities as individuals and with equal access to rights. The traditional folk musicians and the baul sects amongst others, often belong to a less privileged economic class and operate in villages and small towns. They do not enjoy the opportunities and rights that musicians in the cities creating original contemporary music do. Their understanding of intellectual property rights, access to copyright registration facilities or distribution, access to internet or online banking (Online banking and international credit cards are required to set up mechanisms to receive payments or even engage in platforms like YouTube as a commercial artist or receiving payments from youtube as revenues.) This factor also demands attention while considering effectiveness copyright laws. My research envisions an implied reciprocity amongst groups, institutions or departments and within the organisations in regard to performing their interrelated functions, seemingly. Limitations include the impossibility of drawing strong causal connections between law/norms and behaviour, and between the differences observed and wider social context, as well as the ultimate futility of a search for completely unbiased comparative concepts. Petra adds that, using both ‘inner’ and ‘outer’ perspectives to shed light on causal connections are crucial steps required to battle the limitation factor. In course of the investigation, I discovered that the inner and outer perspectives required to shed light on causal connections and a conceptual language capable of discussing all the cases, could be found through the lens of Atisa’s perspective lend by his Theory of Emptiness, which is discussed later in this Volume.

The Theory of Emptiness:

(The third and final theory used in this research, the theory of emptiness, has been discovered during the data collection and transcription period. The application of this theory will be further discussed according to chronology of discovery. The concept of the theory is being discussed here so that accounts of all the theories can be found under one volume. The theory of emptiness is discussed further in the volume on Data analysis which is the penultimate volume of this thesis.)

In course of my doctrinal and archival research, I identified that the general perception pertaining to the ineffectiveness of the music copyright regime, is that the issues only concern legal bodies and instruments. The perception interprets the copyright legislation and its enforcement bodies as the only remedy for ineffective operation of the music copyright regime. However the data I collected offered insights that broadened this narrative by far and I found that the theories of legal transplant and legal functionalism, were not sufficient in explaining the findings of the data. I wanted to employ a theory based on an eastern philosophy that enables the understanding of realities rooted in eastern cultural and behavioural perspectives influenced by spirituality, religion or socio-economic factors, to be able to construct a new theoretical lens that has not been applied on legal research until now. “The theory of Emptiness” provides a perception that reveals the problem in its entirety in a socio-cultural and political reality of Bangladesh. I have interpreted and derived my definition of the theory through analysis of Buddha philosophy, and the studies of Buddhist scholars Atisa and Buddhist Zen Master Thich Naht Hahn¹⁶¹ on ‘Emptiness’. *I interpret and define the theory of Emptiness as a theory that enable a way of perceiving realities or existence in its most authentic state.* Considering that this research engages with multiple realities of Bangladesh, this theory

¹⁶¹Thich Naht Hanh, *The Miracle of Mindfulness* (Ebury Publishing 2008)

would prove useful in explaining the various inequalities that create each realities and factors that distinguish them. The theory also helped me understand how offering protection for musicians' copyright and commercial interests under the music copyright regime, can be increasingly complicated given the multiversal existence of Bangladesh.

The 11th century Bengali Buddhist scholar and teacher, Atisa Dipankara, preached that the relevance of true Wisdom or 'Proggya' is to rid oneself of worldly fear and sufferings¹⁶². According to Atisa's philosophy, one can reach the state of Proggya by realising the true nature of reality. In order to be able to see the true nature of our reality, Atisa refers to his philosophy on "Emptiness" derived from Buddha's wisdom on 'Emptiness', which states that, the nature of existence is inherently empty and the realisation of that is true wisdom 'proggya'¹⁶³. Atisa suggests that the world we see is one created by alternative thoughts that are generated by comparative concepts. Thoughts for instance are understood through comparison: near-far, up-down, good-bad. The idea of our worldly reality also stems from comparative alternate thoughts which is just a perception and not a reflection of the true reality of things, according Atisa's text of "Bodhi-poth-prodeep" or *Bodhipathapradīpa*¹⁶⁴ (which is a Buddhist text composed in Sanskrit by Atisa and is widely considered his magnum opus). The aim of Madhyamaka (The Middle Way - A school of thought which constitutes one of the most important and extensive primary works amongst Atisa's writings)¹⁶⁵ thought is not simply to present an accurate account of the nature of the world, but to bring about a cognitive

¹⁶²Rayhan Rhyne, বাংলাৰ দৰ্শন (2nd edition Prothoma Prokashon 2019) 174

¹⁶³Rayhan Rhyne, বাংলাৰ দৰ্শন (2nd edition Prothoma Prokashon 2019) 175

¹⁶⁴Richard Sherburne, S.J., *The Complete works of Atisa Stri Dipamkara Jnana* (Aditya Prakashan 2000) ; Atiśa Dīpaṃkara Śrījñāna, *Bodhipathapradīpa* (Tibetan Buddhist Encyclopedia)

¹⁶⁵James B. Apple, *Jewels of the Middle Way, The Madhyamaka Legacy of Atisa and His Early Tibetan Followers* (2019) <https://www.academia.edu/38410734/Jewels_of_the_Middle_Way_The_Madhyamaka_Legacy_of_At%C5%9Ba_and_His_Early_Tibetan_Followers> accessed 20 August 2021

change, a change in the way in which the world appears to us. Atisa draws from the teachings of his Guru Nāgārjuna's¹⁶⁶ interpretation on the subject, in constructing his philosophy on emptiness. The central concept around which all of Nāgārjuna's philosophy is built is the notion of *śūnyatā*/emptiness (*śūnyatā*, which literally translates "emptiness" in Bangla).

The zen master and Buddhist scholar Thich Naht Hanh¹⁶⁷ provides further clarity in understanding emptiness. His interpretation follows that the emptiness Buddha, Nāgārjuna or Atisa is referring to, is the emptiness of self. Master Hahn explains that when Buddha proposes that the nature of existence is empty, he means that the nature of existence is empty of a separate self, a separate entity; that Buddha is made of non Buddha element like a flower is made of non-flower element. The elements that create an object, entirely consist of things that are not that object itself. For instance a book is made of non-book element, like paper, ink, glue, etc, all of which come together to create a book and none of which are books itself. If one of these elements are missing or does not function to serve its purpose (For instance, if the paper is too thin it would be prone to tear on writing, if there is no ink it will be empty of contents and if the ink is of the wrong consistency then the print will not be legible.) the object may still be called a book by appearance but it will not have served its purpose by definition. It is build on the concept of "inter-being", where everything is interconnected because the nature is empty of self and must depend on other elements that make it, to exist. When one is capable of observing that objects cannot not exist in isolation, one is able to see this need for "inter-being" and become capable of viewing reality in its entirety.¹⁶⁸

¹⁶⁶Jay Garfield, *The Fundamental Wisdom of the Middle Way*. Translation and Commentary of Nāgārjuna's *Mūlamadhyamakakārikā*, Oxford: Oxford University Press, 2005.

¹⁶⁷**Thich Naht Hanh**, *The Miracle of Mindfulness* (Ebury Publishing 2008)

¹⁶⁸ Richard Sherburne, S.J., *The Complete works of Atisa Stri Dipamkara Jnana* (Aditya Prakashan 2000) ; Atiśa Dīpaṃkara Śrījñāna, *Bodhipathapradīpa* (Tibetan Buddhist Encyclopedia); **Thich Naht Hanh**, *The Heart of the Buddha's Teaching: Transforming Suffering into Peace, Joy, and Liberation* (Parallax Press 1998)

The theory of emptiness, can explain how realities of the landscape of this research need to be perceived and therefore identify the non-legal element that had come together to create the existing music copyright regime. The non-legal elements have not been the focus of any academic or empirical work in this field according to the doctrinal and empirical research and therefore issues of ineffectiveness or problematic phenomena that are usually not accounted for in determining the ineffectiveness of the legal regime.

efficacies of protection of music copyright laws can be understood through the lens of this theory; issues that may be silently impacting or may have been acting as influencing factors, deterring the efficient protection of music artists' rights and the productive running of music industry. The theory is that these non-legal elements that create the music copyright regime rest in the socio-cultural and political, economic and historical context of the region in which music was and is being created, developed and practiced. These factors could constitute aspects of research which may not appear as problems relevant to music protection directly but a change of perception could reveal their connection. My research endeavours to discover the composition of the reality which makes the music copyright regime of Bangladesh and identify what it is "empty of". When perceived through the lens of Emptiness, the fundamental question that needs to be asked is: *what is the current concept of copyright regime empty of?*

Conclusion

Once the issues of integration of transplant and gaps between legal theory and practice is correctly explained and identified, reforms and recommendations can be appropriately tailored to combat the issue of protection of IP rights from new standpoints and varied directions. The reforms and recommendations offered would therefore not be isolated or only limited to law. The interdependency of the three theories is crucial here in order to produce such a result. The following volume discusses the research methods best used to operationalise the investigation, explaining the process of

collecting and analysing primary and secondary datas. It also introduces the study sites, outlines the selection criteria for methods, participants, describes limitations etc. The methodology has been constructed in support of the framework produced by the combined theories.

Volume 3

Methodology: Songs of Rules and Structures

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Introduction and Assumptions

This volume discusses the methodology and the hypothesis on which they are grounded. It explains the research approach in selecting methods, philosophical assumptions, research strategies and methodological techniques for collecting and analysing data in conducting a valid research. It further surveys the significance, advantages and limitations of my research topic so as to reach a comprehensive understanding of the research. The research was inspired by the observation that while some attention has been paid to the failure of IP laws to protect Bangladeshi musicians, there is far less understanding of the informal norms and cultural practices which, in the absence of, or in interaction with, the IP laws, influences both copyright and commercial interests of the musicians. This has also acted as one of the determinant factor in generating the methodology used for this thesis.

The main RQ this work addresses is: The Music Copyright regime in Multiversal Bangladesh: A gainful succession or a system in need of evolution? The methodology uses doctrinal and qualitative research to weighing out and deliberate whether the music copyright regime through transplanted law proved to be a beneficial inheritance or does it require sustainable change and if so, what kind of change does it require? The use of the word “multiverse” in the RQ indicates that one of the key issues that need to be taken into account that there exists many realities that run simultaneously, many Bangladesh’s existing within one. Each Bangladesh divided by class, sex, race, religion and time, co-existing in a container like oil and water. Each Bangladesh governed by different rules of existence defined by the strength each of these sections possess in the current socio-cultural and economic environment . My assumption is that our access to different realities are perceptually dictated by the resources we posses. I use multiple methods to address this multiversal divide and how the music industry fit into and operate the contemporary copyright law and contract law and how such protection can effectively be extended or made available to the intended demography

This is set against a longstanding cultural version of creation that, 'borrows' from previous work and has no tradition of ownership of IP. Folk music which is the predominant genre of music in Bangladesh has a very unique way of developing, which makes the functioning of the concept of copyright immensely problematic. These musics are traditionally created, developed and taught by word of mouth, passed down by generations, each adding their own essence to the song. Often the origin of the songs, in terms of their lyricists and composers remain unknown. Other genres however do very well fall within the guidelines of copyright laws but this phenomenon in Bengali history creates an interesting dichotomy to be explored between the desire for copyright protection and an inherent infringement in creation. This requires a study of the meaning of words as opposed to facts, the depth and richness of information as opposed to just hard reliable data. To this end, quantitative method would falls short in accessing the existence, nature and impact of such a social phenomenon.

The construction of views regarding social entities, by research scholars in social sciences, are formed on the basis of different philosophical assumptions, such as ontological assumption, epistemological assumption, axiological assumption, human nature and methodology.¹⁶⁹ The form and nature of reality in the social world can be viewed in different ways and ontological assumptions can act as a useful guide for researchers in choosing a lens. It is vital that the standing of legal issues raised by this research, is viewed in relation to the social reality it exists in, which includes the economic, cultural, social, historical and political context. In order to be able to tease out these as-

¹⁶⁹Gibson Burrell And Gareth Morgan Sociological Paradigms And Organisational Analysis.(Heinemann 1979); Mark Saunders, Philip Lewis And Adrian Thornhill *Research Methods For Business Students* (Pearson Education Limited 2016)

pects I draw upon the theories of Legal Transplant, Legal Functionalism and the Theory of Emptiness. The Theory of emptiness is discussed on a later volume, revealed in accordance with the chronology of discovery in course of the research investigation. What is deemed valid knowledge for the purpose of research can then be determined by epistemological assumptions.¹⁷⁰

To determine whether the music copyright regime is a “*gainful succession or a system in need of evolution*”, my research investigation engages in assessing the effectiveness of Bangladesh’s current copyright legislation from a right based perspective and how the cultural and legal practices of the music industry influences enforcement and implementation of such laws. I have adopted Interpretivism in support of analysing the subjective views of the musicians, labels/publishers and broadcasting entities involved as participants in the research process. The interpretivist vantage is also useful in studying independent research variables that cannot be manipulated, such as their creativity and approach to risk-taking in making commercial decisions. I have assumed the role of an interpretivist researcher with the view that to deny a researcher her own frame of reference, is to deny her the opportunity to uncover and to critique her own understanding, which is an important part of interpretivist research.¹⁷¹

In adopting Interpretivism I hold that all social entities are conceived by independent actions and the perspective of people in society, which they believe to be true. This results in multiple realities

¹⁷⁰ Alan Bryman. And Emma Bell, *Business Research Methods* (Oxford University Press 2003);

Mark Saunders, Philip Lewis And Adrian Thornhill *Research Methods For Business Students* (Pearson Education Limited 2016)

¹⁷¹Ibid

owing to the fact that perceptions can vary immensely depending on multiple factors.¹⁷² Interpretivism upholds that the social world requires a logic that reflects on the distinctiveness of human beings in society. I consider the subjective views of the musicians and labels/publishers as valuable knowledge for the research in building a more rounded perspective by taking into account the various realities. These factors have helped me ascertain what must be added to my initial hypothesis, in order for them to evolve into reliable, robust and valid knowledge.¹⁷³ Moreover I regard this method to be effective in understanding why the musicians and labels behave the way they do in exercising their rights over intellectual properties and how to explain this in the findings.

Broadly researchers have tended to divide into one of two research traditions which is positivism and interpretivism where interpretivism is generally (not necessarily) linked to qualitative research. Qualitative approaches are distinct from quantitative ones in that: ‘Technically, a “qualitative observation” identifies the presence or absence of something, in contrast to “quantitative observation,” which involves measuring the degree to which some feature is present...’.¹⁷⁴ In evaluating the complexities of developing an effective legal framework on IP and accessing how that system impacts and facilitates the intended demography (in this case they are authors, users, consumers, vendors and distributors of creative content) a quantitative approach would merely be able to attest to a degree of measurement to which some factors leading to ineffectiveness of law or implementation exist, or measure the percentage of creators who own copyright to their IP, for instance.

¹⁷² Chaminda Pathirage, Dilanthi Amaratunga, And Richard Haigh, 'The Role Of Philosophical Context In The Development Of Theory: Towards Methodological Pluralism. The Built And Human Environment Review', (2008) <https://www.researchgate.net/publication/46183960_The_role_of_philosophical_context_in_the_development_of_research_methodology_and_theory> accessed 1st July 2020

¹⁷³Ibid

¹⁷⁴J Kirk, & M. L Miller, *Reliability and Validity in Qualitative Research* (Beverly Hills: Sage Publications 1986)

Research Strategy : Design and Approach

The following section describes the research strategy developed to address the research question and subquestions and the reasons behind adopting the strategy.

My research is based on the thematic content and document analysis of data obtained from doctrinal, archival research and semi-structured interviews. In considering research methodology when approached from a rights based perspective I wanted to employ mixed methods since this appeared to be the most appropriate approach. It would involve deep exploration of existing archival and doctrinal material through the lens of legal transplant and functionalism backed empirical research to substantiate and further my initial hypothesis based on my experience as a musician. I chose semi-structured qualitative interviews to acquire empirical data, with the view that it enables a wider and rounded understanding of the music industry, its stakeholders and the landscape in which music is being created and performed. It allows for the analysis of discourse and power structures amongst the stakeholders, thereby making visible the contributions, challenges and complexities within the music industry and how copyright law must be designed to navigate through such landscape and behaviour.

Qualitative research is known to be particularly useful for examining whether or not a particular social phenomenon exists and if so, the nature of the phenomenon.¹⁷⁵ For example, a part of what the interview data analysis may reveal is whether ignoring copyright laws and royalty payment is a social phenomenon in Bangladesh and if so what is its nature and impact. This method can especially prove to be important in scrutinising behavioural sciences within social science where the aim

¹⁷⁵ Lisa Webley, [The Oxford Handbook of Empirical Legal Research](#) (2010)

is to discover the underlying motives of human behaviour. Through such research we can analyse the various factors which motivate people to behave in a particular manner. The qualitative interviews will not only reveal why royalty payment in Bangladesh is not a norm despite the existence of copyright law protecting artists' rights, but also give us insights into why artists are unable to successfully claim royalty which consists of a significant portion of their income revenue. The behaviour of the musicians community as a whole and as individuals and the contributing factors behind such behaviours can be instrumental in inferring or theorising as to why and how this process of unfair exploitation of rights is taking place. A clear understanding of this is also vital in formulating and suggesting sustainable reforms and effective remedies.

Alternatively, some argue that stripping away the context in an attempt to achieve objectivity may in fact undermine the research, the analysis and the findings.¹⁷⁶In practice it means that in order to really learn from others, one may need to interact with them rather than to remain entirely distanced. An interpretivist researcher would argue that her analysis will always reflect her own frame of reference, because no-one is capable of being objective, all meaning being socially constructed.¹⁷⁷ As a researcher I share this perspective considering that I share lived in experience as a musician, the prime group from which I have selected the majority of participants. In interviewing these musicians as a legal researcher who also shares the same profession as the musician participants, it would be inaccurate to assume complete neutrality and objectivity. Ethical considerations and constant awareness of bias have been a crucial factor present throughout the research and woven into my data collection and analysis process, ensuring that that the thesis produce balanced

¹⁷⁶Pierre Bourdieu, *Language and Symbolic Power*, (Cambridge:Polity Press 1992),
Erving Goffman, *Forms of Talk*, (University of Pennsylvania Press 1981)

¹⁷⁷ Lisa Webley, [The Oxford Handbook of Empirical Legal Research](#) (2010)

and reliable knowledge. In devising my strategy, ethical consideration, bias and triangulation have therefore been one of the key considerations.

Research Strategy: Document and Data Analysis

Qualitative Document Analysis

I chose Qualitative Document Analysis to analyse doctrinal data and the justification forms the content of the following section. Documentary analysis can provide a wealth of data, ranging from the official to the personal, the text-based and the image based.

“Documents, as the sedimentations of social practices, have the potential to inform and structure the decisions which people make on a daily and longer-term basis; they also constitute particular readings of social events.”¹⁷⁸

There are many approaches to document analysis. The mode of analysis (the way in which data are extracted from the documents) in part depend, on the nature of the document which for the purpose of the doctrinal portion of this research, include both formal instruments, (case reports, legislation, newspaper articles or policy documents, contracts) and informal communications (solicitor file notes, private letters and emails , etc.). The research considers the context within which these documents were written, their substance and their intended audience.¹⁷⁹ This was done with the view that, documents may reflect or report reality, describing an event, a perception, or an understanding

¹⁷⁸ Tim May, *Social Research: Issues, Methods and Practices* (2nd edn. Buckingham: Open University Press 2001) p157–8

¹⁷⁹ Lisa Webley, ‘Qualitative Approaches to Empirical Legal Research’ (2010) <https://www.researchgate.net/publication/259339842_Chapter_38_Qualitative_Approaches_to_Empirical_Legal_Research> accessed on 6th July 2020

¹⁸⁰. It has also been considered that the documents may not report social reality as such but are a source of meanings, ‘...we now utilise our own cultural understanding in order to “engage” with “meanings” which are embedded in the document itself.’¹⁸¹

Data Analysis: Interpretative Phenomenological Analysis (IPA)

My research strategy involved adopting Interpretative Phenomenological Analysis in analysing the empirical data collected and interpreting them through the theoretical lens of “Emptiness”. IPA is a ‘participant-oriented’ qualitative research approach that can interpret and amplify the ‘lived experience’ stories of research participants, in interpreting and analysing qualitative data.

IPA is also influenced by symbolic interactionism¹⁸² with its concern for how meanings are constructed by individuals within both their social and their personal world¹⁸³. It offers “voice”¹⁸⁴ to a phenomenon and then make sense of that initial description in relation to wider social, cultural and theoretical contexts¹⁸⁵. I made use of my lived experience as a Bangladeshi musician in addressing the phenomenon of an ineffective copyright regime and endeavoured to understand and explain the issues through my qualitative interviews. The data’s presented by the interviews, were seen through

¹⁸⁰ Tim May, *Social Research: Issues, Methods and Practices* (2nd edn. Buckingham: Open University Press 2001)

¹⁸¹ *ibid.*

¹⁸² Pnina Shinebourne, ‘The Theoretical Underpinnings of Interpretative Phenomenological Analysis (IPA)’ [2011]

¹⁸³ Jonathan Smith, Paul Flowers, Michael Larkin, *Interpretative phenomenological analysis: Theory, method and research* (1st edn, SAGE Publications Ltd 2009)

¹⁸⁴ Michael Larkin, ‘Giving voice and making sense in Interpretative Phenomenological Analysis’ [2006]

¹⁸⁵ Wagstaff, C., Jeong, H., Nolan, M., Wilson, T., Tweedlie, J., Phillips, E., ... Holland, F. (2014). The accor-dian and the deep bowl of spaghetti: Eight researchers’ experiences of using IPA as a methodology. *The Qualitative Report*, 19(47), 1-15. Retrieved from <http://www.nova.edu/ssss/QR/QR19/wagstaff47.pdf>

the lens of emptiness and analysed in relation to the wider social, cultural and historical context that was revealed through Emptiness. However, the method dictates that the interpreter (the researcher) must have a “true and deep understanding” of the participants “lived experience”, for their stories to make-sense interpretively.¹⁸⁶ My long standing connection to the Bangladeshi music community equipped me with this advantage so my interpretation and analysis come from a place where I, the interpreter, have a true and deep understanding of the participant and the legal and commercial landscape in which they operate. According to Thomas¹⁸⁷ phenomenology “Seeks to uncover the meaning that lives within experience and to convey felt understanding in words.” The method facilitated to procure in-depth descriptions and interpretations of the research participants’ ‘lived experiences’ vis-à-vis how the inefficacies in music copyright and industry practices, have impacted the lives of the research participants.

Application of Research Strategy

METHODS

I’ve employed a two phased mixed methodology: doctrinal and semi- structured qualitative research. The doctrinal and archival phase of the research revealed implementational disparity in copyright laws and the commercial practice within the music industry. The qualitative phase explored the lived experiences and accounts of stakeholders within the music industry to deliberate on whether the music copyright regime can be considered effective , if not why and what sustainable remedies can be prescribed.

¹⁸⁶Abayomi Alase, ‘ The Interpretative Phenomenological Analysis (IPA): A Guide to a Good Qualitative Research Approach ‘ [2017]

¹⁸⁷D. R. Thomas, ‘A general inductive approach for analyzing qualitative evaluation data’[2006] p241

DOCTRINAL APPROACH

The doctrinal approach¹⁸⁸ allowed me to explore, examine and assess the gaps and limitations in law itself and expose ambiguity in the statutory language. It revealed the gaps in the law and policies via examination and analysis of the statute, treaties, conventions and other source materials. The doctrinal approach helped provide clarity in finding relevant materials on the legal principles involving copyright laws and commercial music contracts and provide understanding on the legal and commercial operations and motivations on the subject from the context of Bangladesh.

Analysis of legal propositions through statutory definitions regarding ownership of copyright throughout the various stages of transactions and transfers form a crucial part of my doctrinal investigation. For example, in the definition section of the Bangladeshi Copyright law legislation, the composer of a song is regarded as the ‘author’ for that musical work but it does not mention or include written words or lyrics as part of a musical work or propose separate definition or joint ownership stands for lyricists, who almost always have equal contribution in creating sheet music, completing the musical work.¹⁸⁹

In order to understand the legislative intent, critical conceptual examination of the statute has been

¹⁸⁸Vijay M Gawas, ‘Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development’ (2017) <<http://www.lawjournals.org/archives/2017/vol3/issue5/3-5-130>> accessed 25th July 2020

¹⁸⁹Copyright Act 2000 (Bangladesh)

S2 (37) “*musical work*” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. S2 (31) “*composer*” regarding a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

carried out, along with doctrinal studies of judicial history of copyright laws in Bangladesh in regard to lack of music copyright cases on trial, the out of court settlements, analysis of cases initiated but withdrawn before trials.¹⁹⁰ Understanding the current position and potential plans of the legislative body, is pivotal in deliberating and discovering the gaps involved and in realising how to best propose remedies and recommendation of mitigation. It provided a reliable ground to proceed to the qualitative stage of the investigation which then revealed how the factors discovered in the doctrinal research has impacted the intended population, such as musicians, labels, publishers, telecommunication companies transacting ringtones based on musical works, etc.

As a next step, a conceptual and comparative analysis of the Bangladeshi and UK Copyright legislations was conducted which further revealed how the legislatures and policy makers deem the position of the ‘author’ or songwriter, when it comes to monetising the intellectual properties. This included a comparison of the legal concepts (for example, the concept of copyright and contract laws in UK and Bangladesh) and legal outcomes flowing from the rules and procedures (for example, remedies, sanctions). These were important factors considered under the investigation given that the domestic IP legislation of Bangladesh is heavily based on that of the UK. The strong connection of post-colonial history between the countries can be noticed in the mirroring of legislative words and policies. For instance, the UK legislators’ standings are reflected in how they perceive ownership, in the way they have decided to define ownership of ‘sound recording’. The impact of such wordings is indicated in the commercial contractual practices of labels who commonly claim 100% of the sound recording copyright (copyright over the recorded sound of a song, not rights of composition or lyrics) from a musician they are willing to sign.

¹⁹⁰Salim Ibrahim Ali, Dr. Zuryati Mohamed Yusoff, Dr. Zainal Amin Ayub, ‘Legal Research of Doctrinal and Non-Doctrinal’ (2017) <https://www.academia.edu/37373120/Legal_Research_of_Doctrinal_and_Non-Doctrinal>

This was the junction where the epistemological nature of the research traveled from that of internal enquiry into the meaning of the law to that of external enquiry into the law as a social entity. As in the case of this research it involves an evaluation of the effectiveness of a particular piece of legislation in achieving particular cultural and economic goals and an examination of the extent to which it is being complied with.¹⁹¹ For the lack of any empirical qualitative data in this field that could back up the doctrinal findings and explain questions raised thorough doctrinal research, I chose to resort to semi structured interviews to gather reliable and robust qualitative data.

QUALITATIVE APPROACH: SEMI STRUCTURED INTERVIEWS

Phase two of my methodology which involves the Qualitative approach, yielded data on the current state of knowledge and awareness amongst musicians, labels and publisher about their intellectual property rights and the way their rights are being exploited as opposed to the way it should legally be exploited, which overlaps with the gaps discussed in the the research. This method helped procure multiple narratives and perspectives surrounding this investigation, which proved to be crucial to the overall research. This approach, in combination with the document analysis and IPA, provided triangulation of methods to ensure findings are valid, more nuanced and have a well rounded perspective. One of the aims was to explore participants perspective and narrative on the operation and praxis of the music industry, their knowledge and use of copyright law, the impact of the IP regime on their commercial and IP interests, which is central to the sub question mentioned earlier.

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This is crucial in judging the effectiveness of the copyright laws in terms of its enforcement, implementation, regulation and protection of the rights of Bangladeshi Artists.

DATA COLLECTION

My association and professional links within the Bangladeshi music industry and musicians community has been instrumental in gaining access to participants. For this project, interview data was collected on the substance of, and interactions between, the formal laws, informal norms and cultural practices that regulate the copyright and commercial interests of musicians in a music industry. The data also includes the perspectives and narratives of the lived experiences of participants whose affected and regulated interests form an integral part of the research. The procedure followed the required guidelines of IPA's (Interpretative phenomenological analysis)data procurement protocols¹⁹² as it has been chosen as the method for analysing the data collected.

The interview participants involved were mostly based in Bangladesh, where I carried out my fieldwork. 32 out of 37 interviews conducted (which constitutes about 60% of my fieldwork) have been carried out face to face, in the field, one participant at a time , each spanning between 60- 90 minutes on an average. The rest has been conducted online via Zoom and Skype video calls. Interviews were permitted to be taped by all participants, following ethical guidelines, which included obtaining written consent and providing participation information etc. Considering that my profession as a musician may create bias which I have addressed in the outset, I had adopted the following

¹⁹²Abayomi Alase, ' The Interpretative Phenomenological Analysis (IPA): A Guide to a Good Qualitative Research Approach ' [2017] p15

steps at this stage, to counter bias. I have chosen the approach of having an independent professional translate 20 out of 37 of the interviews of labels/publishers, broadcasters, streaming companies and some of the interviews of musicians selected in random. Taped interviews were also very useful during content analysis of the full text specially since one can avoid issues such a loss of memory, selective recalls, and undocumented evidence.

The interview questions were loosely structured and carried out in Bangla which is the mother language in Bangladesh and which the participants were most comfortable communicating in. This also meant some interviews ran longer than others and that the answers of many questions overlapped making coding in the data analyses process more tedious. However this process also made it possible to observe the participants in their natural environment, including their body language, approach and attitude towards certain inquiries as opposed to others, their tendencies to deflect and the areas they refused to explore. This shall form part of the narrative analysis and will be reflected in the findings. My data collection from musicians hit saturation relatively quickly since most musicians' stories were rooted in similar conditions and complexities.'

RESEARCH SAMPLE

Participants were purposefully sampled from three groups. Musicians and record label/publishers and radio broadcasters. Sampling criteria for the musicians were that they must either be self recorded artists, or artists currently or previously under signed contract with a label/publisher. In Bangladesh record labels also act as publishers therefore it is difficult to find a separate publishing company in the industry. All the labels who have been interviewed for the purpose of this research exist both as a music record label and a publisher. Four radio station representatives who are involved in

sourcing music and managing projects were selected as participants for this group. All participants are of Bangladeshi nationality and descent.

CONDUCTING INTERVIEWS:

Interviews with music artists were conducted in my music practice studio in Dhaka (for musicians who did not suggest any other place) and inside studios and practice pads of participant musicians. Interviews with officials of music labels board members were conducted at their offices meeting space. A conversational interview guide was developed,¹⁹³ tailored to musicians, music labels/publishers and radio broadcasters as necessary. Each interview guide comprised four main sections. The first section contained introductory questions to establish rapport and obtain demographic information in a conversational manner. The second section formed the main body of the interview guide and included inquiries regarding, contractual negotiation and terms of the commercial music contracts, revenue streaming sources and collection, cultural appropriation and other practices. In support of the phenomenological approach, the interviews were crafted and conducted so that they were participant-oriented, generating in-depth descriptions and interpretations of the research participants' 'lived experiences' vis-à-vis how the ineffective music copyright and commercial laws, has impacted their lives and livelihood.

Musicians, record labels and publishers, have been interviewed to provide triangulation by gathering information on opposing views and comparing narratives that enable valid, reliable and robust academic research and critical analysis. Radio officials were inquired about their procedure of sourcing music, their policy on royalty payments, what lead to the current business culture in the

¹⁹³ Herbert J. Rubin & Irene S. Rubin, '*Qualitative Interviewing: The Art of Hearing Data*' (3rd Edition, Sage Publications, Thousand Oaks 2012)

music industry etc. A number of follow up questions were included to elicit a more detailed recollection from participants.

The third section of the interview guide contained questions designed to understand findings from the document analysis. In this section, a finding from the document review was shared with the participant (e.g. according to international commercial practice, sound recording rights and publishing rights are separate rights on sound recording and sheet music respectively.) and the participant was asked how the finding fit with their experiences (e.g 90% of the participants stated that this has not been their experience) and to offer possible explanations (e.g., Do you have any thoughts as to why this was the case?). Participants were also asked similar questions to provide their perspectives on how any policies or legislative efforts in relation to music copyright laws in Bangladesh had effects on them or might potentially impact them. Questions were also fashioned to acquire their narratives on how they think social, economic and political factors (e.g, lack of awareness, poor access to on-line banking, etc) can in turn influence implementation and enforcement of IP laws and the smooth running of businesses in the music industry. The final section of the interview guide consisted of inquiries about their views on what possible legal and non legal changes were required both from a financial, creative and right-based perspective.

Application of Research Strategy: Document and Data Analyses

QUALITATIVE DOCUMENT ANALYSIS

The application of Qualitative Document Analysis in analysing documents for the doctrinal exam-

ination enabled to understand the meaning of the words as used in the document rather than using my own understanding of the words and their meanings. In answering my research question, document analysis provided evidence of policy directions, legislative intent, understandings of perceived shortcomings or practices in the legal system which were crucial discoveries in forging a perspective that led to further investigation using qualitative method. However, this approach can lead to the conclusion that the document represents nothing but the words and meanings within it therefore the research opts for the an additional method to analyse and interpret the qualitative data procured, called the IPA (Interpretative phenomenological analysis).

Data Analysis : Coding process

Following the guidelines of Interpretative phenomenological analysis or IPA, I began the data coding by reading through the interview responses to identify common themes; search for words or phrases that are repeated in the participants' responses. This facilitated narrowing down the words or sentences in each transcript. The next step was to re-read each transcript (and/or listen to any recording devices used during the interviews), for clarity, to finally be able to generate categories and sub-categories following the pattern of responses of the research participants. According to Smith, the approach of IPA is more concerned with the "human lived experience, and posits that experience can be understood via an examination of the meanings which people impress upon it"¹⁹⁴. The last step of the method of analysis called for a statement that tells the readers "what" the research participants have experienced and "how" they experienced the phenomenon in a contextual format.

¹⁹⁴Jonathan Smith, Paul Flowers, Michael Larkin, *Interpretative phenomenological analysis: Theory, method and research* (1st edn, SAGE Publications Ltd 2009)

I also maintained throughout the coding process that I look at the data through the lens of the Theory of emptiness and identify the various components that compose the music copyright regime of Bangladesh. Adopting the theory of emptiness meant that I was able to identify each component that impacted, influenced, defined, facilitated or in anyway contributed in the making and sustaining of the current music copyright regime.¹⁹⁵ For instance, elements such as cultural context creating unawareness of legal rules, lack of access to online banking causing inability to legally purchase music contents digitally (which is the most widely used distribution methods for sale these days with CDs being almost redundant.), are non-legal components that has direct impact on implementation and enforcement of copyright laws, complex industry practices and a substantial decrease in artists' revenues. Using IPA I not only focused on the use of words, tonality of their voices and body language to understand their narrative but also deduce how they felt about what they were saying and whether they believed in the statements they made. By merging IPA with the lens of Emptiness I was able to perceive the realities of the participants from various fields of the music industry in a way that allowed me to understand why existing enforcement bodies and implementation policies on copyright law fell short in offering adequate protection and support. Application of IPA and Emptiness also revealed how the impact of unawareness on the rights and obligations under copyright law, can have deep rooted behavioural impact on the stakeholders which in turn can adversely affect general industry practices whether in terms of contract negotiation, revenue shares or royalty payments.

In countering bias (which has been done on almost every stage of the research) at this stage, I had offered one of my colleagues (Bangladeshi) from the the University of Oxford and one of my colleagues from the school of law at Westminster , to code equal number of interviews each, at ran-

¹⁹⁵See Volume 7 on Analysis for details on the Theory of emptiness which has been adopted as the lens to interpret empirical Data collected from the field.

dom to identify if there were any new codes or themes that had emerged from their coding process which I had missed and how coherent all our narratives sounded together. Considering that I have had to wear both the hats of a researcher and a musician throughout the process, I have tried to be meticulous in the aspects of bias, triangulation and ethical considerations.

ETHICAL CONSIDERATION, BIAS AND TRIANGULATION

According to *Lofland*¹⁹⁶ interposing one's own view in generating a reliable, valid and dependable academic finding should not be the role of a qualitative researcher. Instead a researcher should aim to describe another's experience with precision and sincerity and to provide quotes as evidence, rather than to judge through one's subjective lens. In approaching the research there were a number of ethical considerations taken into account in deliberating on methodology, data collection, and validity of information, to avoid bias and unreliability. For example, in carrying out purposive sampling for collecting data, participants were chosen mindfully to avoid selecting interviewees who have personal connection with me. An important point to be noted here is that, my association and professional links within the Bangladeshi music industry and musicians community was instrumental in gaining initial access to participants, without which empirical qualitative fieldwork of this nature could prove to be much more difficult and inaccessible. Further measures were taken to facilitate triangulation and avoid bias by characterising the groups in a manner that would provide multiple perspectives on the same aspects of the investigation narrative. Therefore labels and broadcasting and publishing entities like radio's, telecommunication companies (telecom companies like Grameen, Airtel, Banglalink are some of the biggest buyers of music contents who then offer

¹⁹⁶John Lofland, 'Analyzing Social Settings: A Guide to Qualitative Observation and Analysis' (4th edn, Wadsworth/Thomson Learning, 2006)

streaming or downloading options to their subscribers and generate significant revenues) have been incorporated in the group along with songwriters and performing artists. This would mean that the narrative of the musicians would not go unchallenged by the opposing parties which involve the labels, publishers and broadcasters and vice versa. The generous and diverse pool of information drawn from these groups would enable impartial analysis and assessment and mitigate any further ethical doubts.

Keeping any form of bias in check is an integral part of producing ethically and materially robust and authentic study findings. IPA research study requires empathising with the participants to a deeper level so as to be able to discover the true deliberation of their lived experiences, which risks inducing bias. Being a researcher and a musician who is conducting an IPA study on her own community of musicians, I recognised the risk of any explicit or implicit bias that may jeopardise the goal and integrity of the research, at every step and have therefore consciously bracketed my personal experience from the lived experience of the research participants.

My triangulation strategy involves comparing my lived experience with the doctrinal findings and subsequently comparing that with my qualitative empirical findings. As a musician researching about musicians' rights, triangulation appears to be paramount in achieving validity and reliability. It helps to explore the same phenomenon, from more than one source of data. Information coming from different angles can be used to collaborate, elaborate or illuminate the research problem.¹⁹⁷ In sum, triangulation enables richer and potentially more valid interpretations by combing data

¹⁹⁷ Alain Decrop, 'Triangulation in Qualitative Tourism Research' (1999) <https://www.scribd.com/document/193294323/RN-Decrop-1999-Triangulation-in-Qualitative-Tourism-Research>> accessed 15th May 2020

Limitations and Conclusion

A number of methodological and practical limitations have presented themselves while conducting the research. They are listed as follows:

1. Methodological limitation:

- a) One of the major methodological limitations in terms of acquiring research materials from Bangladesh, was the country's poor archiving and documentation system. Most existing materials on cases, legal journal articles or reports is yet to be converted into digital format. Hardcopies are filed inconsistently which makes them harder to find and refer to. There is a scarcity of aca-

¹⁹⁸In Order to achieve triangulation multiple informants or groups of participants were used. An important advantage of using multiple informants is that the validity of information provided by one informant can be checked against that provided by other informants. Hence, I interviewed multiple participants from each perspective. I focused on selecting groups of participants who are professionally placed in a relatively opposing position so that each perspective or group of perspectives is challenged and verified against the other. To this end, I selected two groups of professional musicians from various genres and backgrounds. One group consisted of participants who are, currently, or have previously been signed with a music record label while the other group included participants who self record. To validate the information from these groups, I also used further criteria by selecting participants that are affected by the copyright law in a different way than the musicians and are professionally positioned such that their interests might be conflicting with that of the musicians on multiple aspects. One of this group includes labels and publishers, who mostly operate as one entity in Bangladesh. The other includes broadcasting entities like Radio and telecommunication companies who are the major content streaming authorities in Bangladesh.

demic research and publications on IP, especially content relating to music copyright and commercial music contracts of Bangladesh which initially posed as a limitation but later created an opportunity to explore qualitative empirical work which has never been carried out in this field before in the context of Bangladesh.

b) Ethnography has been considered as a method for this research initially. However Ethnographic methods applied by a researcher like me with personal connection to the subject and community of participants, are likely to expose the research to elements of bias in data collection and analysis which might render the research unreliable. Moreover the method requires time to be spent with the community, during research, which international student visa would not permit. Ethics approval would also be difficult to acquire for a covert ethnographic method from the university, although it might be worth mentioning that my lived experience as musician generated my initial hypothesis which I am now able to test by a range of methods.

2. According to my research, all disputes regarding music IP in Bangladesh till date, have been settled out of court. Due to an absence of case laws serving as precedents, it is difficult to portray a genuine depiction of the attitude of the courts and the approach of the judiciary.

3. Travelling to the field (Bangladesh) for the qualitative fieldwork from UK has proved to be problematic in itself given the cost, distance and time involved. Considering that my fieldwork was in progress when the Covid-19 pandemic hit the globe, additional hurdles presented themselves which brought a forced early end to my fieldwork. This meant I had to complete some of my interview online at a later stage. Progressing, writing and conducting online research work during the quarantine had proved to be less effective, making concentration and focus more difficult to achieve, given that I had to complete the major part of my research during the unprecedented years of global pan-

4. Interviewing creative people, especially musicians, means having to deal with the indecisive and distracted aspects of their personalities. It was a difficult task to reschedule their appointments time and again in the already limited time frame I had for my overall fieldwork during the onset of the pandemic.

5. Record Labels were hard to get hold of for the purpose of interviews. They appeared reluctant to be investigated. Therefore I had to use various contacts, correspond with numerous messages over weeks to bring them to the table.

6. Sampling need to be representative, therefore I have endeavoured to interview participants from varied groups (musicians, labels, radio broadcaster - all of whom have diverse narratives and point of views) and carried on until I hit saturation with individual groups. Further interviewing of participants from the Label/publisher category would be conducted as soon as the global pandemic situation permits, to facilitate saturation with this particular group.

7. As part of the music community I am aware that my natural bias lie with the musicians which could act as a limitation against producing reliable, robust research. Keeping that in mind, I had taken a number of measures: a) I have kept myself persistently aware of my possible bias. b) I insisted on recording the interviews so it can enable me to have a different person translate the transcripts of , so the text is an interpretation and translation of someone completely neutral. c) I have avoided interviewing friends in the community to gain impartiality. This I believe would help me with transparency and triangulation.

In conclusion, despite the many limitations having access to such a wide pool of information proved very useful in discovering the right steps to be taken at various stages of this research. This was only possible because of my engagement with the music community soaking two decades. The

volume following this one, demonstrates in detail the historical and contextual revelations on Bangladesh and Bangla music, found through my doctrinal research, informed and guided by the discoveries of my lived experience as a musician and the primary sources of legal documents that I have come across during the course of the research.

Volume 4

Bangladesh and Bangla Music: Songs of Stories Past and Present

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Bangladesh and Bangla Music: Songs of Stories Past and Present

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Introduction

In understanding the complexities associated with developing an effective legal framework for IP in Bangladesh, the role of its cultural history and significance is paramount. The theory of functionalism adopted in the theoretical framework demands the legal issues to be perceived in their social context, which calls for a discussion on the geo-political and socio-cultural history of the country. The contextual background forms the basis of the development of current social environment in Bangladesh within which the IP law has to operate. This volume introduces the historical context and significance of Bangla music and the socio-political and legal specificities in which it is created, distributed, and consumed. Bangladesh has a long and complicated geo-political history which includes being governed and influenced by multiple rulers, sharing long standing heritage with multiple cultures from across the subcontinent. A brief but contextualised knowledge on the history of the nation in terms of its political, economic, cultural, religious and social milieu, therefore, is cru-

cial for understanding important components of this research in answering the research question.

This involve exploring why copyright laws within the IP regime of Bangladesh operate the way they do, what economic and social factors impact its growth and implementation, how political proclivities influence policy and enforcement, how such factors help perpetuate cultural appropriation, piracy, etc. The volume therefore, creates the landscape against which the legal issues are set.

In accessing the effectiveness of the protection of IP rights of Bangladeshi musicians, three broad categories of music has been considered for the purpose of this research. These include, music that comes within the ambit of protection of the widely accepted concept of contemporary copyright laws, traditional folk music, (which has been called, ‘Traditional Cultural Expressions’ in contemporary intellectual property terms in WIPO [World Intellectual Property Organisation] reports) and the Baul sect. The nature and process in which traditional folk music of each nations evolve is deemed distinctive globally where each community has traditional expressions, cultures and methods of cultural evolution that are unique to them. The nature of the protection of such expressions, in this region have historically been more aligned with the notions of Marxian IP¹⁹⁹ where intellectual contents are not owned by the author but by the community it generates from (for example, Baul music which is said to be grounded on Lalon’s philosophy. Lalon²⁰⁰ was a mystic and did not believe in claiming ownership over his creative work²⁰¹). Traditional folk music is still considered as one of the most performed and widely consumed form of music in Bangladesh and remains outside the ambit of any form of existing protective legal instrument.

¹⁹⁹Karl Marx and Friedrich Engels, *The Communist Manifesto* (Penguin Classics 2015)

²⁰⁰Fakir Lalon, the guru of baul culture spread the message of building a society transcending barriers of caste and creed and propounding love and peace, through his songs and poems. They renounce worldly life and accept the mendicant’s order of life. See, Falguni Dey, ‘Folk Culture of West Bengal’ (2008) <https://www.academia.edu/25262464/Folk_Culture_of_West_Bengal> accessed on 14th July 2020

²⁰¹Falguni Dey, ‘Folk Culture of West Bengal’ (2008) <https://www.academia.edu/25262464/Folk_Culture_of_West_Bengal> accessed on 14th July 2020

On the other hand, songwriters creating original music and claiming ownership over their creation is a relatively recent phenomenon in the subcontinent. This evolved adhering to the notion of the western copyright laws and its influence, owing to varied factors such as colonisation, legal transplants, treaties and impacts of globalisation. The importation of legal and governing rules, during British India initiated the informal implantation of the copyright laws which were subsequently adopted by independent nations, post the British regime. These laws were based on the notions of author's rights, later established in the Berne Convention.²⁰² Protection of the entire collection of Rabindranath Tagore's work by Visva-Bharati, is one of the first examples of contemporary copyright law being successfully applied and implemented in the Bengal region or in the entire subcontinent for that matter²⁰³. Visva Bharati (currently Visva Bharati is a University which operates according to the instructions and philosophies of the late Rabindranath Tagore) which was founded and conceptualised by Tagore himself, has been vested with the sole copyright over all of his literary and musical works²⁰⁴. Present day copyright laws of Bangladesh cover such original work by Bangladeshi artists, whose creation can be traced back to their origin and work that is not considered to be traditional cultural expressions.

The geo-political and socio-cultural history of Bangladesh, discussed in the following section, is

²⁰²Berne Convention for the Protection of Literary and Artistic Works (adopted September 1886) UNTS Volume Number: 828 (p.221) (Intellectual Property Convention); The Berne Convention for the Protection of Literary and Artistic Works sets out ground rules for protection of copyright at national level; it has since been amended several times. Many nations are signatories to the Convention, including the UK and, more recently, the United States.

²⁰³Partha Ray, 'Tagore in Print: A Comparative Study Before and After Expiry of Copyright' (2012) <https://www.researchgate.net/publication/281318416_Tagore_in_Print_A_Comparative_Study_Before_and_After_Expiry_of_Copyright> accessed 13th Aug 2020

²⁰⁴Parliament of India (1992), Statutory Re. Solution RE Disapproval of the Copyright (Amendment) Ordinance, 1991 And Copyright (Amendment) Bill <<https://parliamentofindia.nic.in/ls/ldeb/ls10/ses3/2217039201.htm>> accessed on 22nd July 2020

intrinsic to the traditions and historical practices of music the influences of which can be observed in the current climate of the Bangladeshi music industry. This context is instrumental in understanding why the existing copyright regime appears to be ineffective in protecting the IP rights of musicians, why implementation and enforcement is deemed difficult and the contextual reasons obstructing the effective integration of a legal transplant of copyright laws that has been attempting assimilation for over two centuries.²⁰⁵ For the purpose of this volume, the research has drawn from different kinds of Bangla materials including court poetry (from various courts of kings, emperors, nawabs etc) , *vaiṣṇava* hagiography, local and regional geo-political history, various catechismal literature and philosophies, socio-legal and socio-economic studies, to present a connected history of music from divergent perspectives. This historical context directly contributes to the creation of the current socio-legal atmosphere in Bangladesh within which the music industry and the copyright right regime has to operate.

Historical background of Bangladesh : Colonialism and The Partition of Bengal

Bangladesh has a long and complicated geo-political and cultural history which includes being governed and influenced by multiple rulers and sharing long standing heritage with multiple cultures from across the subcontinent. A brief but pertinent narrative can be found below under discussion surrounding evolution of music, which has been traced back to the 13th century. The natives of the region have not been in charge of its governance since King Shashanka's rule in the 7th century AD²⁰⁶ and until the independence of Bangladesh in 1971. Since the ancient times Bengal had con-

²⁰⁵See detailed explanation in the following sub volumes.

²⁰⁶Shariful Islam, *New Light on the History of Ancient South-East Bengal* (Asiatic Society of Bangladesh 2014)

tinued to exist as tribal states until its conquest by the Gupta²⁰⁷ Dynasty, under which Sovereigns hailing from various religious belongings ruled Bengal, including the Buddhist Pala Empire (an imperial power during the [post-classical period](#)). The suffix *Pala* means protector in Sanskrit), the Hindu Sen dynasty and the Muslim Mughals. The influences from such varied religious and cultural origins had a fundamental impact on the evolution of the art, music and culture, the evidence of which can be found in literary, musical and historical texts²⁰⁸ along with paintings²⁰⁹. This section of the volume, focuses on the colonial and post colonial era prior to which the region was under the Mughal government and then subsequently the Nawabs of Bengal and Murshidabad.

The British Regime in Colonial India

The conquest of India by the British East India Company in the late 18th century included the region of Bengal. The colonial exploitation of wealth and resources is said to have directly contributed to the Industrial revolution of Britain while simultaneously the Bengal witnessed famine and deindustrialisation which the region is observed to be still recovering from²¹⁰. The consequences of the Churchill-Era British policies in 1943, lead to the Bengal famine which was the only one in recent history that occurred not as a result of serious drought, according to scientific backing and

²⁰⁷Shariful Islam, *New Light on the History of Ancient South-East Bengal* (Asiatic Society of Bangladesh 2014)

²⁰⁸Abhaya Pada. Malik, *History of Bishnupur-raj: An Ancient Kingdom of West Bengal* (University of Michigan Library 1921)

²⁰⁹Kenneth and Joyce Robbins. Das, *Murshidabad*, p 45 of Richard David Williams, ‘Hindustani music between Awadh and Bengal, *Figure 2.a. Mehfil ensemble, c.1758-190*’ (2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

²¹⁰Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (Yale University Press 2017)

renowned news publishers like the Guardian²¹¹. The most obvious manifestation of colonialism in Britain can be seen in their acceptance and maintenance of class. The class system maintains the hierarchy between the kings and the peasants. Part of the British political chambers of power constitutes of the House of Lords who assume such positions largely through hereditary birth rights. This was reflected in the governing and administrating of British India which accentuated the existing segregation in class (esp in the hindu community where the caste system was prevalent) and created a great divide based on religion between people sharing customs, cultures and ways of life for centuries²¹². The early and prolonged exposure to British administration resulted in the expansion of Western education, culminating in infra-structural expansion, development in institutional education, and social reforms in the region. Cultural impact is evidenced in Tagore's musical compositions which included Western instruments like the piano along with western melodic patterns²¹³. Owing to his aristocratic lineage as a *zaminder*²¹⁴ himself, Tagore was able to discriminate between the British domination in India and the virtues of the Western modern thought. Therefore despite being conflicted between his anger against the British exploitation and his admiration for certain cultural aspect of the West, Tagore managed to position himself in such a manner, that would enable him to support and elevate the exploited, for years to come without being persecuted by the British authorities. His Nobel prize had greatly contributed to achieving this. As opposed to Gandhi, who was a fierce advocate of right winged nationalism, Tagore was a believer of humanism over patriot-

²¹¹Michael Safi, 'Churchills policies contributed to 1942 Bengal famine', (2019) <<https://www.theguardian.com/world/2019/mar/29/winston-churchill-policies-contributed-to-1943-bengal-famine-study>> accessed on 23rd July

²¹²Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (Yale University Press 2017)

²¹³William Radice, 'Keys to the Kingdom: The Search for How Best to Understand and Perform the Songs Of Rabindranath Tagore', (Visva-Bharati, 2009) pp.123

²¹⁴Zaminders were rich land owners during and post the Mughal era, who commonly hailed from aristocratic families and possessed great wealth.

ism and was a leading voice against the partition of Bengal in 1947²¹⁵. The song “Amar Shonar Bangla”, which later went on to become the national anthem of independent Bangladesh was written by Tagore, during this revolution in support of a united Bengal. The partition of Bengal was a consequence of the Partition of India which divided the British Indian province of Bengal based on the Radcliffe Line between India and Pakistan²¹⁶. West Bengal which predominantly consisted of a Hindu population became a state of India and the East Bengal (now Bangladesh), which had a larger section of Muslim population, became a province of Pakistan.

FIGURE 1.0 - MAP OF BENGAL : PRE 1947 PARTITION



²¹⁵Saurav Kumar Rai, 'Nation and Nationalism: Revisiting Gandhi and Tagore' (2017) <<https://www.mkgandhi.org/articles/nation-and-nationalism-revisiting-Gandhi-Tagore.html>> accessed on 21st May 2019

²¹⁶Kamruddin Ahmed, *A socio political history of Bengal and the birth of Bangladesh* (Unknown Publication 1975)

The partition of Bengal based on religious majorities, along with various other political and cultural unrest, intensified and deteriorated the relationship between India and Pakistan radically which resulted in subsequent wars at different borders between the nations like Kashmir and the East Bengal. Though predominantly muslim, the liberation war of Bangladesh was grounded in the fact that the population of east Pakistan refused to define themselves solely by virtue of religion, but rather by the culture, literature and customs of the land which was not consistent with that of Pakistan since it identified itself as a muslim state. East Bengal had a rich cultural heritage with Bangla as its language, which belonged to the Indo-Aryan group of languages, related to Sanskrit and originating from Pali.²¹⁷ Historically the Bengali community welcomed music, art and literature from various religions and tribes to influence and add to its roots. This is portrayed in more details in the section below which features evolution of Bangla music in the region and the varied influences involved. The post colonial effect of the Radcliffe Line between India and Pakistan which divided Bengal, therefore instigated an uprising amongst the Bengali population which was rooted in their protests for the right to retain their culture and the right to establish Bangla as the state language (as opposed to Urdu which was the state language of Pakistan). The undisputed evidence of how invested the people of the region were in protecting and retaining their culture, heritage and folk traditions can be observed in the subsequent political movement of Bhasha Andolon or the language movement²¹⁸ in former east Pakistan (now Bangladesh) in 1952, with the ban of Bangla, by Pakistani

²¹⁷Encyclopædia Britannica (2020) <<https://www.britannica.com/place/Bangladesh/Languages>> which relates the language of Bengal with the Pala civilisation. The [Pala](#) rulers of [Bengal](#) (8th to 12th century)—who were Buddhists and whose religious language was Pali—did not [inhibit](#) the emergence of a [colloquial](#) tongue known as Gaudiya Prakrit, the language from which Bengali developed.

²¹⁸Mohammad J. Shahadat , 'Language Movement Museum and Library, Dhaka, Bangladesh' (2011) <<https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1780&context=theses>> accessed 12 May 2020;
S. M. Shamsul Alam, 'Language as political articulation: East Bengal in 1952' (2007)

government as the language of the state. This resulted in the establishment of Bangla as the language of the state and fuelled a civil war in Pakistan leading to the war of Bangladesh's independence in 1971.²¹⁹

The casualty of over a 30 million death, included a majority of the artist and intellectual community (this was the section most brutally persecuted, owing to the fact that they embodied the cultural and traditional heritage of Bengal which was the prime reason that lead to the liberation of Bangladesh), the Hindu community and a systematic use of rape as a weapon of war. This impacted the economic and infra-structural state of the country which witnessed multiple periods of political unrests including a political coup and military take over. The geo-political and socio-economic history of the country is reflected in its current social climate in which its legal system operates. Corruption and constant political unrests leading to poor standards of social welfare and security for the mass, including inadequate standards and access to education, basic access to health care and security, reflects the typical characteristics of a developing nation²²⁰. Nevertheless in recent decades the GDP of the country has seen a significant rise which impacted multiple areas including digitising the nation and bringing internet access to the mass, encouraging globalisation by entering the global market, especially through the RGB sector (ready made garments) and becoming signatories to the Berne convention and the TRIPS, with the aim of updating and expanding its legal Ip regime. This growth in GDP, however, does not reflect the standard of living of its population.²²¹ In the age where information translates to power, a significant fragment of the country remain bellow the liter-

²¹⁹ [Willem Van Schendel](#), *A History of Bangladesh*, (Cambridge University Press 2009)

²²⁰ Kamruddin Ahmed, *A socio political history of Bengal and the birth of Bangladesh* (Unknown Publication 1975)

²²¹ H Zafarullah, N. A. Siddiquee, "Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control", *Public Organization Review* **1**, 465–486 (2001) <<https://doi.org/10.1023/A:1013740000213>>

acy rate with a large section of the population undergoing education only through primary schooling while the rest is taught under sub-standards curriculum and educational environment. As a result communicating legal rules, maintaining law and order and transforming a labour based economy of agricultural background into one of industrial disposition have proved to be a difficult task. The enactment of the Copyright law 2000, albeit being the first IP law enacted in independent Bangladesh, has not been the first IP law of the region, as discussed in the previous volume. Bangladesh had inherited its intellectual property system from the British regime. The first codified laws on IPR in the subcontinent was passed in 1847 called the Indian Copyright Act 1847, which was based on the British Copyright Act of the time.

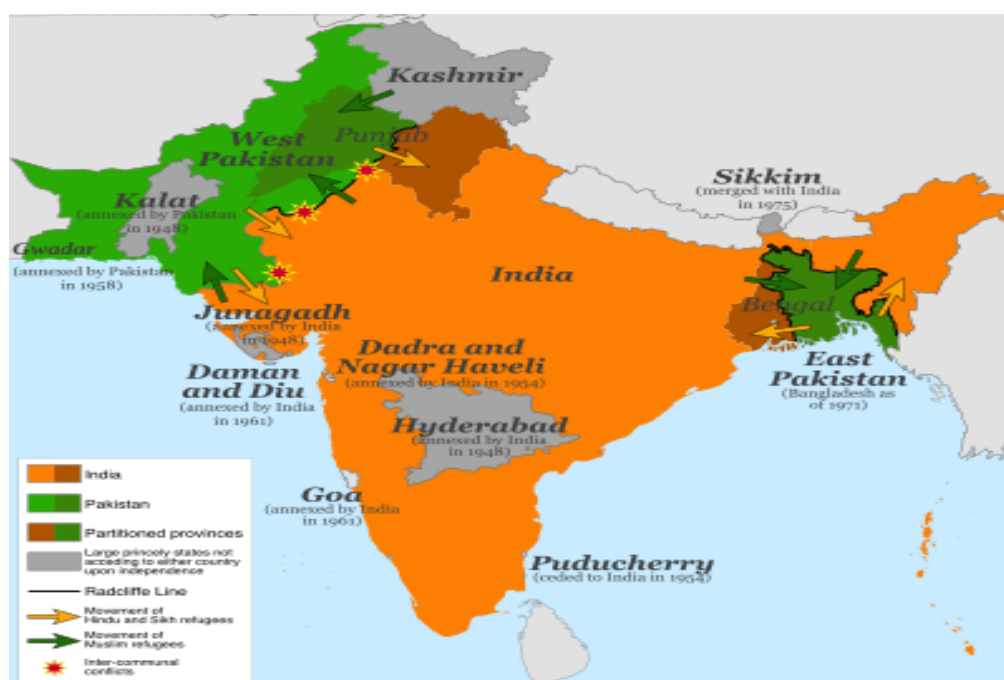


FIGURE 2.0 - MAP OF INDIA AND PAKISTAN DIVIDED AFTER WAR: BENGAL



FIGURE 3.0 - MAP OF INDEPENDENT BANGLADESH POST 1971

Evolution of Music in Bengal : Patronage, Traditional Folk Music and Baul Philosophy

The earliest traces of Bangla music was found in 11th century²²², in poems and songs performed in the court of the last king of Sen line, Laksman Sen. Since then the tradition of patronage of music which was established over time by religious institutions, kings, nawabs and other noble benefactors, played a vital role in the development and flourishing of Bangla music. While the following section discusses the patrons and musicians tracing back its lineage to the 13th century Bengal, it is crucial to establish the networks and geographies in place and identify provincial nodes of patronage in order to understand how the tradition of patronage of music developed. It maps out how the

²²²Santisudha Mukherjee, The history of Bengali Songs, < <http://www.srishtisandhan.com/SrishtiSandhanE/music/SSAN01MBaanglaaGaanerItihaas.htm>> <accessed 4th Sep 2018>

conventional culture of music patronage transformed into the *gharana* tradition and subsequently evolved into modern day corporate philanthropy.

The Tradition of Music Patronage

Historically, interregional musical exchange in Bengal developed around the political structures of provincial Mughal government and relied upon patrons who were not themselves Bengali, but had moved there with the political economy, in their roles as Hindustani or Central Asian Mughal officers, Rajasthani Jain bankers, and European merchants and officials. During the 13th century, following the conquest of western India by Alauddin khilji, a section of Hindus from the lower caste (caste system is a prevalent religious practice in Hinduism) accepted Islam as an escape from religious discrimination by upper caste hindus and in acceptance of the nature of living extended by Amir Khusru.²²³ (Amir khusru was a prolific sufi poet and musician of royal courts of Dehli Sultanate in the 13th century). Amir Khusru allowed practice and performance of music and advocated for the people to be able to lead a life more inclined to culture and music as opposed to service in the military.²²⁴ This was instrumental in the growth of ragas, a particular type of music amongst others, that form an integral part of Bangla classical music in present day Bangladesh. Initially, Darghas (is a shrine built over the grave of a revered religious figure, often a Sufi saint or dervish), Temples, Royal Courts, Buddha-Jain monasteries, Sikh Gurudwaras, and Sufi bhakti followers were the main patrons of music. Under the Mughals the leading political families of Bengal were not ethnically

²²³Ihsan Ul Ihtisam, 'Evolution of Hindustani music:Patron and Patronage' (2018) <https://www.academia.edu/40633249/Evolution_of_Hindustani_music_Patron_and_Patronage> accessed 14th Aug 2020

²²⁴ibid.

Bengali, but imperial servants of West Asian or Hindustani descent²²⁵. Though Mughal rule was first established in Bengal with the battle of Tukaroi in 1575, the administration only became settled under *subahdār* Islam Khan (1608-1613).²²⁶ With the move of the regional capital from Rajmahal to Dacca (currently, Dhaka, capital of Bangladesh)in 1612, the court culture of the *subahdār* was en-

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visaged to flow seamlessly from Agra and Delhi. Passing between these imperial nodes were circulating streams of tribute and specialised court servants, particularly musicians.

During the office of Islam Khan, courtesans and musicians from the provincial court, were procured by his office in Agra. Musicians were also imported into Bengal from Hindustan and Bihar.

Amongst the many nawabs who acted as passionate patrons, the nawabs of Murshidabad “understood arts, was fond of exquisite performances, and never failed to show his regard to the

²²⁵Richard David Williams, ‘Hindustani music between Awadh and Bengal, c.1758-190’(2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

²²⁶ Tapan Raychaudhuri, *Bengal under Akbar and Jahangir: An Introductory Study in Social History* (Munshiram Manoharlal 1966) pp. 49-53 ;
Md. Enamul Haq *Muslim Bengali Literature*, (Pakistan Publications 1957)p. 97.

artistes.”²²⁷ Musical patronage was further anticipated after successful military campaigns, following Alivardi’s victory at Katwa circa 1745, when Nawab Shahamat Jang “assembled every kind of instrument of pleasure, [and] wishing to increase them, sent large sums to Delhi and summoned dancers from that city.”²²⁸ This patronage extending from the Muslim rulers in the era, included commissioned works by Bengali intellectuals that anthologised locally produced lyrics, as well as those by Hindu *padābali* poets, using mainstream *rāgamālā mats* for their structures.²²⁹ This is best evidenced in the works of Fazil Nazir Muhammad, who composed his versified *Rāgamālā* in 1727 at the request of Wahid Muhammad, the landlord of Sultanpur (Chittagong, now part of southern Bangladesh), in which 6 *rāgas* and 24 *rāginis* are discussed according to family and appropriate season²³⁰.

After the Mughal and Sultanate period, the nawabs and zaminders of smaller regions adopted the

²²⁷Tabataba i Gholam-Hoseyn Khan, *A Translation of the Seir Mutaqherin: Or, View of Modern Times* (Gale ECCO, Print Edition 2010)

²²⁸ibid (n9).

²²⁹Munshi Abdul Karim and Ahmad Sharif, *A Descriptive Catalogue of Bengali Manuscripts in Munshi Abdul Karim’s Collection* (Asiatic Society of Pakistan 1960) pp. 399-402.

²³⁰Richard David Williams, ‘Hindustani music between Awadh and Bengal, c.1758-190’ (2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

culture²³¹. It was in this patron-client relationship, that the musical culture of the subcontinent is

said to have excelled and assimilated. Amongst the many *nawabi* patrons the arrival of Wajid Ali

Shah, along with an extremely wealthy court famed for its appreciation of music, played particularly significant role in the music patronage of the time. The musical culture of Murshidabad (which was the centre of patronage) was disrupted but not discontinued by the decline of the Nawabs from the mid 18th century. Nevertheless, the patronage continued outside the Nawabi court . By 1758 the fourth Jagat Seth, Mahtab Rai commissioned a *Rāgamālā* written in Brajbhasha by Yasodananda

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Sukla “Kavidas”, completed in 1758. This *Rāgamālā* portrayed a theoretical musical text de-

signed to establish the political authority of its patron.²³²

With gradual decline of both Murshidabad and Hindu courts, the rural population slowly rose to the privileged class that navigated the socio-political shifts of the late 18th century and joined ranks

with a new aristocratic class, consolidating a substantial body of potential patrons.²³³ Such condi-

²³¹Narayan Chaudhuri, ‘Musical Literature of Bengal’ (1973) 16 Indian Literature 14 <<https://www.jstor.org/stable/24157426>> accessed 10 April 2023.

²³²ibid.

²³³Ray Sukumar, ‘Phases of music of Bengal in the 19th Century: Dhrupad, Journal of the Indian Musicological Society 2’, (1980), pp. 9-13.

-Significant urban patrons included the Tagores of Jorasanko and Pathuriaghat, Sobhabazar (Raja Nabakrishna), Paikpara (Sinha family), Maszidbari (Guha family), Simulia (Ashutosh Deb, and Kailas Bose’s concert hall), Entally (Debs), the Malliks of Sindurpatti, Bowbazar (Matilal), Dewanbari of Hidaram Banerjee Lane, Harakutir of Pathuriaghat, the House of Taraknath Pramanik, Mahishadal Bhavan of Wellesly, House of the Chakraborty family of Thantharia, Bhawanipur (Kesab Mitra), and many others.

tions initiated the *Baithak*²³⁴ culture, which was a space where established Hindustani repertoires continued, alongside innovative Bengali musical forms. This was similar to a *mehfil* culture which was a nuanced social space that allowed patrons to negotiate social conventions amongst themselves (including political exchanges, expressions of companionship and displays of connoisseurship and self-mastery) and in relation to the performing artists.²³⁵

This was the same patronage culture of the Bengali courts, just in a different setting with musicians offering their service as commissioned session players, with no rights over their own creation to properties on. This aristocratic class became the patrons post the nawabs and zaminders which initiated the emergence of the ‘Gharana’ tradition. The meaning of the word Gharana is associated with the word ‘Ghar’ which means ‘home’ both in Hindi and Bangla. The musicians of respected Gharanas practiced and propagated new styles of singing (Gayana customs) according to (North Indian) spatial and patronal features. This diverse branches of Gharanas were preserved by contemporary native rulers, musicians and their family chains. Following the financial losses of the Nawabi court, musicians and artists had to now rely on the aristocratic class for financial and social support. The Gharana tradition however transformed the way music was being perceived both in terms of its prestige and significance. From being vessels of entertainment for the kings, music had changed into something that required extensive training and dedication and was being widely practiced by houses of honourable repute. This slowly ushered a time where music was being taught as a skill, which later went on to become part of educational curriculum globally in contemporary times.

British India saw Kolkata as the main centres of musical performance, patronage, commercial re-

²³⁴Baithak translates to “the parlour” in Bangla,

²³⁵Katherine Butler Brown, ‘The Social Liminality of Musicians: Case Studies from Mughal India and Beyond’, (2007). 3:1, pp. 13-49. <<https://doi.org/10.1017/S147857220700031X>> accessed 28th June 2020

cording, and music collection.²³⁶ The Nobel laureate Rabindranath Tagore, one of the most prominent Bengali poet, writer, composer and painter of the 19th century Bengal, whose patronage of music and active support in educating future musicians can be observed as part of his elaborate work of philanthropy by him and the Tagore family, in building an entire university town in Santiniketan where Visva Bharati was later founded. It is a central university with unique curriculum built according to the needs of the students and where classes are conducted in unconventional manner and structures. Tagore left the rights of his entire literary and musical work entrusted to the board of Visva Bharati, in order for his patronage to continue post his lifetime. Visva Bharati until recently enjoyed exclusively all rights over Tagore's work enabling the institution to finance itself from the revenues and royalties generated.

Traditional Folk Music

The emergence of the notion and practice of traditional folk music was a departure of sort from the historical tradition of patronage. This was a culture contrary to the patronage tradition in this region where, art and music was being created independent of commissions by patrons. The basic notion that was common in all the approaches that grounded the folk artists was that musical creations were not primarily something requires propertization.²³⁷ At this stage, it can be observed that the nature of authors' ownership in this tradition is perceived in a manner that can be distinguished from the vantage of music patronage. While one tradition appears to propagate the Marxian approach on protection of IP and ownership, the other is entirely based on work for hire concept ,

²³⁶Professor Amlan Das Gupta, 'Digital archive of north Indian classical music' (2007) <<https://eap.bl.uk/project/EAP132>> accessed on 14th June 2020

²³⁷ibid (n3).

where ownership and creative freedom is always vested on the one who commissioned the work.

The history and origin of traditional folk music in the Bengal can be traced back to the 13th century²³⁸, the creation of which was a result of the impact of diverse religious²³⁹ schools of thoughts and culture²⁴⁰. The earliest Bangla music was said to be influenced by [Sanskrit](#) chants, and evolved under the influence of [Vaishnav](#) poetry such as the 13th century [Gitagovindam](#) by [Jayadeva](#), whose work continues to be popular in many eastern Hindu temples. The influence of Vaishnava cult is at the root of many widely practiced genre of folk songs including *keertan* (songs about the Hindu Lord Krishna and Radha)²⁴¹. Broad categorisation of traditional folk music of Bengal (part of which forms present day Bangladesh) marks two general branches : Lokoshongeet or Lokosangeet (These are songs of villages and its people, boasting the stories of the rivers, ways of life of villagers of various professions like fishermen, snake charmers, farmers, shepherds etc) and *Baul* music (Baul music is performed by bauls or hermits who are followers of the baul philosophy, expressing songs with deep meanings involving creation, society, lifestyle and human emotions). Lokosangeet or traditional folk music had compositions of multiple forms, reflecting varied ideas and patterns of tunes and performed with locally invented and produced musical instruments. Folk instruments

²³⁸Hazra, T. and Chandalya, D. S. *Banglar Lokosangeet*, (Yakya Publishers, West Bengal, 2011)

²³⁹ “According to Hindu mythology, Music is the divine knowledge that Shiva passed to Narada, Narada to Gandharvas, Gandharvas passed to Apsaras, Apsaras to Kinnaras and finally to humans. But in Persian mythology, Moses by the order of God taps on a rock which got split into seven pieces, further originated into seven springs, and this revealed the secret of seven sur to the mankind. David and his music which is mentioned in the Holy Bible can be read in this context” — Ihsan Ul Ihthisam, ‘Evolution of Hindustani music: Patron and Patronage’ (2018) <https://www.academia.edu/40633249/Evolution_of_Hindustani_music_Patron_and_Patronage> accessed 14th Aug 2020

²⁴⁰ibid.

²⁴¹Stephan Schuhmacher, [The Encyclopedia of Eastern Philosophy and Religion: Buddhism, Hinduism, Taoism, Zen](#) (Shambhala 1994);

Freda Matchett, [Krishna, Lord or Avatara?: the relationship between Krishna and Vishnu](#) (Routledge 2001);

Anna King, *The Intimate Other: Love divine in Indic Religions* (Orient Blackswan 2005)

mostly consisted of simple handmade, earthy acoustic instruments like tabla, harmonium, ak tara, do tara, khomok etc. The melodies boasted simple yet soulful compositions and the lyrics depicted the sorrow, pain, love, separation, the beauty of nature and natural calamities associated with rural living. These included regional songs such as bhatiali (songs of fishermen), Bhawaiya (a musical form which is popular in Assam [India] and Rongpur-Dinajpur [Bangladesh] and sung by the coachman of cow-drawn carts as they drive), Jatra, Pala, (Songs associated exclusively with plays performed on-stage. Usually involves colourful presentations of historical themes.), devotional songs etc²⁴² .

The Baul Philosophy

Arguably, the most profound manifestations of folk music in Bengal can be found in the *Baul* culture and is said to have evolved from a mixture of Vaishnavism²⁴³ and Sufism. As such influences from various religions especially hinduism and islam can be observed in the illustration of baul culture. An example of this can be seen in how islam has had an effect on the meaning and interpretation of the term baul and the philosophy they embody . In Arabic language ‘Ba’ means ‘self’ and ‘ul’ means ‘explorer’ and thus *baul* means the man who explores himself. This has been translated in varied forms of poems and musical compositions especially found in the profound and elaborate works of Fakir Lalon Shai²⁴⁴. Echoing the teachings of Lalon, the baul tradition embraced a life

²⁴²Rumana Chowdhury, ‘Bangladeshi Folk Songs: A “Nation-Thing”’ (2022) 06 International Journal of Research and Innovation in Social Science 536 <<https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-6-issue-3/536-540.pdf>> accessed 10 April 2023.

²⁴³Freda Matchett, [Krishna, Lord or Avatara?: the relationship between Krishna and Vishnu](#) (Routledge 2001);

²⁴⁴ibid (n2).

grounded in the notion of exploring self.²⁴⁵ According to Baul Samrat Purna Das, “Baul philosophy embraces the positive streams of numerous faiths and philosophies, recognising the ultimate unity of the supreme being whose eternal abode rests within man, at the core of the human heart. The Bauls therefore strive for attainment to the supreme divinity within their own inner being, referring to the divine truth as the man of the heart who sits enshrined in the temple which is the human body.²⁴⁶” Through their songs the Bauls articulate matters pertaining to their spiritual quest, outlining the path of accomplishment in simple yet deeply meaningful words.

Etymologically, the word *baul* derives from Sanskrit, *vatula* (has several meanings including "enlightened, lashed by the wind to the point of losing one's sanity, god's madcap, detached from the world, and seeker of truth), or *vyakula* (meaning restless or disordered). According to their philosophy, if a baul is *vyakul* for the vision of Govinda (Govinda in his complete incarnation as Krishna is regarded as the Supreme God in the Vaishnava tradition and also by much of the pan-Hindu tradition), then a fakir is *vyakula* for his Allah²⁴⁷. This indicates that the baul tradition draws essence from diverse religious (Hindu and Islamic in particular) heritages and has therefore been considered a bridging tool to maintain peace during times of religious war and disputes. The baul faith follows that, a true fakir does not dream of a heaven but surrenders himself to all his impulses, in the name of his mad love for God. Their madness is often reiterated in the description of their ways of life, their renouncement of earthly relations and possessions,²⁴⁸ and is said to be directed entirely towards

²⁴⁵Jeanne Openshaw, *Seeking Bauls of Bengal* (Foundation Books 2005)

²⁴⁶Baul Samrat Purna Das and Selina Thielemann, *Baul Philosophy* (APH Publishing Corporation 2003)

²⁴⁷Jayita Sengupta, ‘The Baul Sursadhak: The Tradition and Individual Talent’ (2015) <<http://www.david-publisher.com/Public/uploads/Contribute/550bb18b7fa44.pdf>> accessed on 14th Aug 2020

²⁴⁸Charles Capwell, *The Music of the Bauls of Bengal* (Kent State University Press 1992)

their love and longing for God²⁴⁹. This state of being *vyakul* or *mad* became the philosophy of the bauls and can be crucial in inferring their take on the nature of authors' ownership over their creation. Such spiritual and contextual notions perpetuated over the tradition of baul music rendering the concept of author's right as defined by contemporary copyright laws and the Berne ineffectual. Such rights were deemed beyond the philosophy of the bauls which appear to align with that of Karl Marx and his thoughts on intellectual and private properties and that of the indigenous native tribes of various regions.

Social Implications of the Philosophies

The aforementioned forms of cultural traditions prevalent in the region boast one factor in common. The nature of the author's right, which is central to contemporary discussions on copyright law globally, is evidently perceived by all three traditions, as discussed above, in a way, that does not advocate for author's ownership over her creation. Conventionally patronage of music promoted a service based employment dictating both creativity and ownership, allowing no room for negotiations considering the uneven economic and social positions held by the patron and the musician respectively. Similarly the baul culture perpetuated a tradition where the purpose of creation, was not to make property of and commercialise one's creation but to instil a certain philosophy of life by which one lives²⁵⁰. Strong adherence to such cultural practices have been observed in this region over centuries, where the culture of patronage evolved to missionary activities, (missionaries were largely responsible for spreading messages and preaching through music and therefore can be considered an extended prances of early religious patrons such as churches, dargas, temples etc²⁵¹)

²⁴⁹Jeanne Openshaw, *Seeking Bauls of Bengal* (Foundation Books 2005)

²⁵⁰Baul Samrat Purna Das and Selina Thielemann, *Baul Philosophy* (APH Publishing Corporation 2003)

²⁵¹*ibid* (n7).

evidence of which can be found in literary and documentary work of the region²⁵².

The social implications of such practices over such a prolonged period of time is that, the concept and operation of the practice is so deeply entrenched in the psyche of the people that any other concept that contradicts this traditional notion, fails to penetrate the society. In the early 20th century, corporate philanthropy began to replace missionary activity with capitalism and imperialism. Consequently a distinct change in society and governance could be observed which subsequently had an enormous impact on the livelihood of musical artists. This includes circumstances relating to musicians, who were previously funded by patrons or missionaries or lived simple rural lives and who no longer could sustain a living or perform the way they did or earned the living they were accustomed to.

The issue was twofold. Firstly, the non-baul section of musicians (musicians of patronage), as discussed above, practiced a range of classical music and contributed to its evolution through developing *gharanas*.²⁵³ They did not share the baul philosophy of non-ownership but had to forego such right on the grounds that they simply did not hold the economic positions to challenge the norm of service, due to the nature of their financial relationship with the patron benefactors. Nevertheless

²⁵² Charles Capwell, *The Music of the Bauls of Bengal* (Kent State University Press 1992); Ibid (n22)

²⁵³ Ihsan Ul Ihtisam, 'Evolution of Hindustani music: Patron and Patronage' (2018) <https://www.academia.edu/40633249/Evolution_of_Hindustani_music_Patron_and_Patronage> accessed 14th Aug 2020—"Gharana tradition came into the scene and was coined from the root word 'Ghar' in Hindi which means Home. The musicians of respected Gharanas practiced and propagated new styles of singing according to (North Indian) spatial and patronal features. This diverse branches of Gharanas were preserved by contemporary native rulers, musicians and their family chains (khandan). Gharanas influenced the ideologies, thoughts, way of practice and performance of music . Gwalior Gharana (Vishnu Digambar Paluskar, Pandit Omkarand Takur) Kirana Gharana (Abdul Karim Khan, Begum Akthar, BimSen Joshi , Prabha Athre), Jaipur-Atrauli Gharana (Ghulam Ahamed 'Allah Diya' Khan, Mallikarjun Manzoor, Kishori Amonkal), Agra Gharana(Haji Sujan Khan, Faiyyaz Khan) Patiala Gharana (Ustad Bade Ghulam Ali Khan, Ustad Bade Fateh Ali Khan, Ghulam Ali, Kaushika Chakraborty), Rampur-Sahaswan Gharana (Ustad Inayat Hussain Khan, Ustad Rashid Khan) Maihar Gharana (Ustad Alaaddin Khan, Tariq Ali Khan, Anapoorna Devi, Pandit Ravi Shankar, Anoushka Shankar, Ashish Khan, Hatiprasad Chaurasya, Neeladri Kumar) are for Sitar and Sarod, Punjabi Gharana (Ustad Allah Rakha Khan , Zakir Husain) is renowned for Tabla Gharanas.)"

unlike the baul sect these musicians branched out into a school which encouraged the evolution, teaching and flourishing of their music as a creative skill which could be used to earn a living. But despite the dichotomous notions of ownership between the two sects, it can be inferred from their approach to teaching that, they share a common ideology. According to them the sense of wisdom prevalent in the sub-continent is different from the western wisdom in that they both believe that musical teachings and philosophy cannot be bought or sold. One either has to inherit it through the teachings passed down by generations or a *guru* has to agree to pass down his teachings, to a student of his choosing. In Ghana traditions one had to pay for the knowledge in labour, or in sacrifice as decided by the *guru* himself²⁵⁴. This reflects a shared ideology between the two sects, adding to the notion of non-ownership to the end that, the maestros of the *gharanas* did not believe that the worth of creative lessons could be measured in monetary terms. As a result the Lockean notion of author's right or monetising one's creation has been partially conflicting to this section of the musical community, though their position on adherence to this notion appeared to be a far smoother transition than that of the baul or traditional folk community.

Secondly, a receding rural landscape resulted in a change in the cultural climate in former agricultural Bangladesh, where a large section of the contents, philosophy and essence of traditional folk and baul music remains rooted. Traditional folk songs of fishermen and boatmen (*bhatiyali*), shepherds (*bhawaiya*), Jatra/ Pala(travelling musical dance plays) that originated from these respective communities, faced the risk of losing their history, identity and practice with a decline in the rural lifestyle and the need for these professions. The songs are still performed amongst various communities and by main stream musicians of the country but the process in which they derived monetary donations or worth in terms of respect in the community had altered due to a rise in the urban

²⁵⁴Sw. Vandana Jyothi *Guru Dakshina : A love offering* (Foundation for Cosmic Religion 2011)

culture. However without a change in their approach as to how to properties their music, these musicians remain vulnerable and outside the scope of the contemporary copyright regime.

Additionally, the bauls who had previously been able to support their livelihood by resorting to a life of minimalism, through receiving donations and contributions in exchange for their teachings and wisdom through music, were confronted with similar adversities. Maintaining a livelihood and preserving the baul heritage without copyright protections or national heritage protections have generated problems concerning the safeguard of the Bangladeshi traditional cultural expressions, rights of individual baul artists and issues regarding their incomprehension of the concept of authors or performer's rights. In light of this and the contextual discussion on evolution of music, it can be inferred why the Lockean notion of intellectual property remained alien and contrary to their beliefs. Considering that a large section of the musical communities of Bangladesh consist of the above two groups of traditional musicians who adhere to such philosophies, it may not be difficult to understand why this can be a contributory factor in the ineffectiveness of the copyright regime of the country.

The Role and Significance of Bangladeshi Music:

The geo-political and historical context discussed above provides a landscape against which the role and significance of Bangladeshi music can be understood and perceived. The cultural and social values of the various genres of Bangladeshi music is significant in understanding the importance of its protection and how it impacts the parties within the music industry. The composition and performance of music played various roles throughout time in the region of Bengal, some of which will be touched upon chronologically, in order to form a coherent narrative. It is difficult to find extensive evidence on the nature and existence of early Bangla music but certain era's would nonetheless

be considered in the discussion, albeit briefly, since the influence of those era's still hold significance in how music is performed, perceived or conceived in Bangladesh. From the literary evidence of the historical journey of music in Bengal, valid inferences can be made about an evolution in its role and significance. The role of music in ancient times can be distinctly contrasted with that of today's although elements of traditional functions remain.

Historic Role of Music in Bengal

The early Bangla music consisted mostly of songs of devotion or ones depicting life in different classes but in the last two hundred years, it witnessed a revolutionary change brought about by the emergence of creative titans like Fakir Lalon Shai, Rabindranath Tagore, Kazi Nazrul Islam, Satyajit Ray, S. D Burman etc. Religious expressions in melodies had been a popular method of preaching and praying in the region owing to a variety of religion including Islam and Hinduism. The outlook towards practitioners of music in the early 13th and 14th century appeared to be one of pious preachers who sang in dargahs and temples to spread the message of god and therefore lived on donations received by the houses of religion.

Williams²⁵⁵ argues that Persian *Ḥayy al-Arwāh* and the Brajbhasha *Rāgamālā* of Yasodananda Sukla was the original sources for music history in the Indian subcontinent, using evidence of the pervasive interregional social and intellectual connections between Bengal and the Hindustani heartlands in 18th century. Bengalis certainly studied Hindustani music, but barring a few exceptions, Bengali musicians were underrated by their local patrons, who preferred to employ “authentic-

²⁵⁵Richard David Williams, 'Hindustani music between Awadh and Bengal, c.1758-190' (2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

ic” Hindustani *ustāds* (masters/gurus). The theoretical basis of elite music (both in its broadest sense as pertaining to *rāga* and *tāla*, or in the more elite sense of identifying with particular canonical texts) was used widely across Indian society, from *vaiṣṇava* temple priests to populist Muslim writers. This versatility of musical knowledge, featured in different kinds of texts indicate the applications of non-sectarian range of Hindustani and Bangla music at the time and portrays how Bangla music was perceived by upper class middle India and what the musicians did to evolve and elevate their positions .

Under the Mughals the regional capital moved from Rajmahal to Dacca (currently, Dhaka, capital of Bangladesh)in 1612, where the court culture of the *subahdār* was envisaged to flow seamlessly

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from Agra and Delhi. Passing between these imperial nodes were circulating streams of tribute

and specialised court servants, particularly musicians. During the office of Islam Khan, courtesans

and musicians from the provincial court, were procured by his office in Agra. Musicians were also

imported into Bengal from Hindustan and Bihar. Amongst the many nawabs who acted as passionate patrons, the nawabs of Murshidabad “understood arts, was fond of exquisite performances, and never failed to shew his regard to the artistes.”²⁵⁶

²⁵⁶Tabataba i Gholam-Hoseyn Khan, *A Translation of the Seir Mutaqherin: Or, View of Modern Times* (Gale ECCO, Print Edition 2010)

Muslim rulers, circa 1700 commissioned musical works that enabled them to amalgamate nuances of both Bengali and north Indian literature. It appeared that the patrons had beneficial motivation behind such philanthropy. This patronage extending from Muslim rulers, included commissioned works by Bengali (Chittagong region, part of southern Bangladesh) intellectuals that anthologised locally produced song lyrics, including those by Hindu *padābali* poets, using mainstream *rāgamālā mats* for their structures.²⁵⁷ This is best evidenced in the works of Fazil Nazir Muhammad, who composed his versified *Rāgamālā* in 1727, in which six *rāgas* and twenty four *rāginis* are discussed according to family and appropriate season²⁵⁸. Despite the language of these compositions being Bangla, the imagery was highly resonant with other north Indian literatures and with vocabularies that were not so regional as to be entirely unintelligible to non-Bangla audiences. The balance between Hindustani organising principles and Bengali nuances enabled the patron to appear grounded in both elite, musical connoisseurship and Bengali high culture.²⁵⁹

A doctrinal study of musicological texts of the region reveal how late Mughal texts were taken in a very new directions by Bengali musicologists over a relatively short period of time. Musical instruments were perceived as technologies of Mughal colonisation, and as valued gifts that served as a form of glorification between courts and regions.²⁶⁰ Musical professionals were transported

²⁵⁷Munshi Abdul Karim and Ahmad Sharif, *A Descriptive Catalogue of Bengali Manuscripts in Munshi Abdul Karim's Collection* (Asiatic Society of Pakistan 1960) pp. 399-402.

²⁵⁸Richard David Williams, 'Hindustani music between Awadh and Bengal, c.1758-190'(2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

²⁵⁹ibid.

²⁶⁰Capwell, Charles, *Sourindro Mohun Tagore and the National Anthem Project* (1987)

between Hindustan and Bengal in the same capacity, and in the early eighteenth century musicians from respected lineages followed these established routes through Bihar to seek refuge from the turbulence in Delhi and Awadh.²⁶¹ In his research Williams draws from the Nawab's own substantial writings in Persian and Urdu, in proposing several new considerations for interpreting the decadence of the Nawabs as an aesthetic style rather than imposing an Eurocentric concept of "conspicuous consumption or immorality". These considerations include the poetic virtue of vulnerability, an appreciation of musical affect and the sensorium in relation to exerting power over others; music as the facilitator of social companionship; the appeal of fantasy and magic in the royal court and the legitimization of Nawabi rule by appealing to the musical legacies of other Muslim rulers. This analysis casts light upon the inner culture of the Nawabi court, and specifically Lakhnavi appreciation of musical aesthetics. The potential inherent in music for cultivating sensibilities and forging relationships has been explored by multiple scholars²⁶² as powerful objects of intellectual history and cultural study that can have significant and extensive implications for social and political history²⁶³.

Prior to the 19th century, music in Bengal was a limb of a larger body, whose core was incontrovert-

²⁶¹Richard David Williams, 'Hindustani music between Awadh and Bengal, c.1758-190'(2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_ethesis.pdf> accessed on 20th June 2020

²⁶²Katherine Butler, 'The Social Liminality of Musicians: Case Studies from Mughal India and Beyond' (Cambridge University Press 2007) pp. 13-49 <<https://www.cambridge.org/core/journals/twentieth-century-music/article/social-liminality-of-musicians-case-studies-from-mughal-india-and-beyond/2B2CE65E434E7764F04C383DEED3EC39>> accessed 17th June 2020; Rosalind O'Hanlon, 'Manliness and Imperial Service in Mughal North India', (1999)pp. 47-93

²⁶³For example see, Amanda J. Weidman, *Singing the Classical, Voicing the Modern: The Postcolonial Politics of Music in South India*, (Duke University Press 2006)

ibly in the Mughal heartlands of upper India.²⁶⁴ Under the Mughals the leading political families of Bengal were not ethnically Bengali, but imperial servants of West Asian or Hindustani descent²⁶⁵. To change their cultural standing, Bengalis required a new set of tools (including a corpus of technical writings in their own language), and a recognised position of authority. The colonial period under the British empire witnessed rise of the nawabs and zaminders who revered art, music and literature which produced prolific writers, lyricists, composers and musicians²⁶⁶. Their works played varied political and socio-cultural roles at the time of geo-political turmoil sometimes mitigating tension and sometimes acting as tools of dissent. This was also considered instrumental in building a connection between the colonised and the colonisers as can be seen in the case of the Bengali musicologist, S.M Tagore for example.

The case of S.M. Tagore for instance portrays how his work underlined the value of his bi-musicality, being “convinced that any advance on existing methods must be based on comparative investigation” because his work spoke to Hindu nostalgia but also to contemporary British imperialism. S.

M. Tagore was a prolific musicologist in the early 19th century from the influential, upper-class Tagore family of the Bengal region and was trained by Hindustani and Bengali masters as well as a

²⁶⁴ ibid (n24).

²⁶⁵Richard David Williams, ‘Hindustani music between Awadh and Bengal, c.1758-190’ (2015) <https://kclpure.kcl.ac.uk/portal/files/106694680/2015_Williams_Richard_1136497_thesis.pdf> accessed on 20th June 2020

²⁶⁶Capwell, Charles (2010). ‘Representing “Hindu” Music to the Colonial and Native Elite of Calcutta’, in Bor, *Hindustani*, p. 286.

German piano tutor. Capwell and Farrell²⁶⁷ discussed Tagore's musicology in terms of the intellectual hegemony of colonialism, claiming that he articulated "a nationalist agenda" through his representation of Hindu music.²⁶⁸ His musicology was read as evidence of both internalisation and resistance to colonial thought. Farrell argued that Tagore's comparative and ethnomusicological approach to world music was a response to imperial Europe's desire to categorise and control through knowledge, with the intention to "fight the British on their own ground, and try to match their music with a Hindu version based on scientific and rational principles..."²⁶⁹ The personal and regional dimensions to his work in particular, conditioned the flavour of his nationalism, which was driven by his Brahman credentials and the intellectual reputation of Bengal, rather than his contemplations on imperialism or a latent communalism. S. M Tagore advocated an approach of applying innovative, scientific methodologies to an ancient core of knowledge²⁷⁰. He wrote substantially in Bangla and Sanskrit, both to promote his own prominence and to re-cast Bengal from a subdominant region in Hindustani musicology to the centre of learning and innovation. Muslim musicians were celebrated with medals and ceremonials by S. M. Tagore which played a vital role in further development of music in the regions of the subcontinent that were predominantly muslim, a large portion of which consists of present independent Bangladesh.

²⁶⁷Gerry Farrell, 'The early days of the gramophone industry in India: historical, social and musical perspectives',((1993) pp. 31--53.

²⁶⁸Charles Capwell, '*Representing Hindu Music to the Colonial and Native Elite of Calcutta* (Manohar 2010). p. 286.

²⁶⁹ibid (n27)

²⁷⁰Sourindro Mohan Tagore *Yantrakosa* (A.C. Ghose1875) p. 2.

Music continued to act as a tool of dissent and revolution throughout the British colonial reign over the Indian subcontinent. If past is prologue, then by following historical analysis, it could be argued that music and poetry has been deemed as an integral part of the Bengali psyche and therefore could be used as a powerful instrument of resistance and rebuilding. Post the Mughal era of musical patronage, over the colonial period the role of Bangla music evolved into bearing a broader significance, reflected in its use as a voice of rebuilding and a tool of dissent and revolution against the colonial powers, exploitations of the zaminders and the ruling class. The subcontinent simultaneously underwent prolonged periods of protests and revolution as well as arguably witnessed the most devastating famine²⁷¹ in recent history (see discussion above on the section: The British Regime in Colonial India). Exemplary works by film makers like Ray(Pather Panchali)²⁷², literature and art by creative minds such as Bibhutibhushan Bandopadhyay, Jibonanondo Das and Joyal Abedin's art works on realism were amplified at the heart of the mass, through the songs of these musical titans which humanised the sufferings of the people of the Bengal province. This was instrumental for the spirit of rebuilding during and post the Bengal famine in 1942. Journalism during the time had reportedly viewed the paintings and musical works as instruments through which creatives strived to soften the harsh impoverishment, human degradation and anguish by romanticising the beauty of the rural Bengal in their songs and literature²⁷³.

²⁷¹ Michael Safi, 'Churchills policies contributed to 1942 Bengal famine', (2019) <<https://www.theguardian.com/world/2019/mar/29/winston-churchill-policies-contributed-to-1943-bengal-famine-study>> accessed on 23rd July

²⁷²Krishnan OP nair, 'Pather Panchali – The song of the road; A review of the book' (2013) <<https://nairview.wordpress.com/2013/11/06/pather-panchali-the-song-of-the-road-a-review-of-the-book/>> <accessed 11.09.2018>

²⁷³Suhana manzoor, 'Bibhutibhushan Bandopadhyay and the famine of the fifties' (2018) <<https://www.thedailystar.net/in-focus/news/bibhutibhushan-bandopadhyay-and-the-famine-the-fifties-1631569>> accessed 11th Sep 2018

The war against the British Rule generated songs of patriotism (glorifying the land) and songs of revolution appearing as early as the 19th century which gained momentum during the Swadeshi Movement (part of the Indian independence movement against the British Raj, encouraging use of everything local and discouraging British goods), when compositions of Ishwar Chandra Gupta inspired writers like Bankimchandra Chattopadhyay and Dinabandhu Mitra. Though Tagore's involvement in the movement during the war was not a direct one, contribution through his songs branded him as a clear supporter of the opposition of undivided Bengal. He was perhaps the only author to have written the national anthems of two countries (Bangladesh and India). His views were evident in songs "o amar desher mati "(the earth of my land), Bangla mati Banglar jol" (the earth and water of Bengal) and "Ekla Cholo Re" (Walk alone)²⁷⁴, which spoke his love for the land and the spirit of the people.

In the later years, Bangla music subsequently took the shape of cultural and communal protests against religious and cultural oppression by the Pakistani government on east Bengal (which was also known as East Pakistan and constituted the eastern part of Pakistan according to the British divide of India based on religion. See historical background section above.). Bangla melodic compositions and lyrics generated by voices of revolution, communal sentiments and expressions were central in the liberation war of Bangladesh in 1971, considering that the root cause of the divide between east and west Pakistan, was rooted in its population prioritising cultural heritage and traditions over religion. The national poet of the country Kazi Nazrul islam is known as the rebel poet owing to his elaborate work on songs of revolution and nationalist activism during the Indian Independence movement which led to his frequent imprisonment by the colonial British authorities.

²⁷⁴Ekla Cholo Re, translates: "If no-one heeds your call - then walk alone"(Translation in prose of the Bengali original rendered by Rabindranath Tagore himself)

While in prison, Nazrul wrote the "Rajbandir Jabanbandi" (which translates to 'Deposition of a Political Prisoner') which can still be seen to inspire motivation and fearlessness in political movements in Bangladesh. His writings were a source of great inspiration and driving force during the liberation war of Bangladesh the spirit of which influenced a generation of pop, soft and hard rock musicians in the succeeding years.

Throughout the 1980s and 1990s, the Bangladeshi government alternated between [military dictatorship, illiberal democracy and autocracy](#).²⁷⁵ Though rural development spurred some economic growth, 41 percent of Bangladesh remained below the poverty line which increased class inequality and social disparity²⁷⁶. Rise of globalisation in the 90's opened up the economy of Bangladesh to the world, leading to a rise in its textile and shrimp exports, access to cable tv, import of luxury vehicles, etc. As a result a surge in inequality could be observed, particularly in rapidly growing cities, where poverty persisted and new wealth accumulated.²⁷⁷ Political instability played a vital role in affecting economic growth but more importantly the standard of living and access to basic and human rights.²⁷⁸ Criticising the corrupt political administration through musical activism, the rock community gained popularity as a voice that stood against such class difference and political injustice.²⁷⁹ The culture of rock music created an alternate universe of sort, where criticism of the

²⁷⁵David Lewis, *Bangladesh: Politics, Economy and Civil Society* (Cambridge University Press 2012)

²⁷⁶Mubashar Hasan, 'Once a popular tool for political expression, Rock music is fading away in Bangladesh' (2018) <<https://scroll.in/article/903086/once-a-popular-tool-for-political-expression-rock-music-is-fading-away-in-bangladesh>> accessed 1st Sep 2020

²⁷⁷ibid (n75).

²⁷⁸Rafijur Rahman and Md Mamunur Rashid, 'Political Instability and Economic Growth in Bangladesh' (2018) <https://www.researchgate.net/publication/325474974_POLITICAL_INSTABILITY_AND_ECONOMIC_GROWTH_IN_BANGLADESH> accessed 1st Sep 2020

²⁷⁹[Shams Bin Quader](#) & [Guy Redden](#), 'Approaching the Underground: The Production of Alternatives in the Bangladeshi Metal Scene' (2014) <<https://doi.org/10.1080/09502386.2014.937945>>

government was encouraged and religious zealotry was frowned upon. The songs expressed discontent over the failing democratic administration of the country. The song *Jibondhara* by Warfaze (a famous Bangladeshi rock band), for instance, depicts the way corrupt politicians dictated terms in the country during the 1990s.²⁸⁰

Research and publications²⁸¹ have observed that rock bands followed in the footsteps of freedom-fighter turn musicians like Azam Khan, who took inspirations from western music and often delivered social and political messages through his songs. As a pop culture phenomenon at the time, his music was instrumental in telling thought provoking stories that reflected the state of the mass

²⁸⁰Translation of JibonDhara by Warfaze, Translated by the lyricist of the band.

“Listen to my country's great tale,
 Leaders change, yet in the same boat they sail,
 Locked inside a life of despair,
 Where politicians play games, so unfair,
 So many things have happened, yet we're silent,
 This will pass we say, this is how its meant,
 So many hopes, so many desires,
 For this country, we fought against fire,
 For freedom, we broke a thousand barriers,
 Yet they use the sign of freedom,
 To increase their pocket's sum,
 Listen to my country's great tale,
 Leaders change, yet in the same boat they all sail...”

Naimul Karim, ‘Where have the rebel bands of Bangladesh gone?’ (2017) <<https://www.thedailystar.net/star-weekend/where-have-the-rebel-bands-bangladesh-gone-1504948>> accessed 1st Sep 2020

²⁸¹[Shams Bin Quader](#) & [Guy Redden](#), ‘Approaching the Underground: The Production of Alternatives in the Bangladeshi Metal Scene’ (2014) <<https://doi.org/10.1080/09502386.2014.937945>>

and was relatable to the wider population of the country, undergoing extreme poverty. For instance, his famous song ‘Rail liner oi Bosti’ (the slum near the rail lines) portrays the struggle and destitution of a boy, born in a slum near the rail lines who dies of poverty. Throughout the melancholic, guitar-driven song, Khan depicts the desperation of Bangladesh’s early years, punctuating his lament with cries of “Oh, Bangladesh, in the song.” Khan, who died in 2011, influenced a generation of young Bangladeshis to critically reflect on their country’s traditions by redefining Bangladeshi culture and promoting liberal values like freedom against oppression and conservative values.”

The insurgence of the rock music culture also brought about a change in the social and cultural environment. The structure of large venue concerts with audiences of massive scales were revolutionary in a place where musical performances were historically held in a quiet, calm and disciplined manner. This was considered vital in promoting and upholding liberal values in a society which was simultaneously beginning to battle religious unrest owing to its potent status as a political tool in the country. In 2016 Bangladesh's High Court decision of recognising Islam as the official religion of Bangladesh, arguably forced the country into a more socially and religiously conservative state²⁸². The Bangla music community especially, the baul sect and the hard rock community played a key role in trying to establish and spread secular and progressive social values during the time. The musical works were manifestations of protests against the religious extremisms that had begun festering, with Islam as the declared state religion, in contrary to the constitutional secularism which founded the nation.

Bangladeshi bands like Uccharon, RockStarta, Warfaze, Aurthohin, LRB, Feedback, Artcell and

²⁸²David Bergman, ‘Bangladesh Court Upholds Islam as Religion of the State’ (2016) <<https://www.aljazeera.com/news/2016/03/bangladesh-court-upholds-islam-religion-state-160328112919301.html>> accessed 1st Sep 2020

artists like Maqsood, James, Sumon and so forth have supported religious tolerance, democracy and explicitly criticised authoritarianism and rampant corruption. Without being anti-Islamic (which was an important social factor to consider in a muslim majority state), these bands and musicians were at the forefront in changing values of Bangladeshi youths in the post-independent years. There is a growing literature exploring the link between political identity and popular culture, as illustrated by the recent volume ‘Popular Culture and World Politics: Theories, Methods and Pedagogies, edited by Federica Caso and Caitlin Hamilton. Furthermore, there have been several studies indicating the contribution of the rock culture not merely as source of entertainment, but as a genre of music that is able to shape national and individual identity.²⁸³ In his book Dr. Altschuler documented how this particular genre challenged conservative attitudes in the 1950s²⁸⁴. The discussion on rock music in Muslim majority countries has received less attention, perhaps because it clashes with the orientalist paradigm of Muslim youths.²⁸⁵ To this end, Hasan highlights in his article, how post independence, some Bangladeshi citizens reacted against globalisation by turning to radical forms of Islam, while others adopted the ‘rock aesthetic’, creating a home-grown ‘rock generation’ of Bangladeshi artists, producers, sponsors and listeners who used music to question, challenge and explore political and societal issues.²⁸⁶

Alternatively traditional folk and baul music signified the spirits of rebuilding post war and natural calamities, spiritual existentialisms and provided a system of co-existence despite religious and

²⁸³Mubashar Hasan, ‘Rock ‘n’ Roll, Social Change and Democratisation in Bangladesh’ (2015) <<https://blogs.lse.ac.uk/southasia/2015/12/04/rock-n-roll-social-change-and-democratisation-in-bangladesh/>>
Accessed 1st Sep 2020

²⁸⁴Glenn Altschuler , *All Shook Up: How Rock ‘n’ Roll Changed America* (Oxford University Press 2004))

²⁸⁵ibid (n42).

²⁸⁶ibid (n42)

class divides in a newly liberated Bangladesh. The Bauls emerged as religious messiahs who propounded humanism. Though their philosophy hailed from varied religious roots, they did not follow any institutional religion. Instead, their syncretic tradition was considered to be a reaction to all kinds of institutionalised religion of Bengal, Hindus and Muslims alike. This played a vital role in mediating for peace during disruptions and unrests, post the Mughal reign. Lalou's poems and songs are considered instrumental in spreading the message of building a society, transcending barriers of caste and creed, advocating love and peace. It is considered, that, their music which constitutes an important tool on the path of self-realisation, can be regarded as a representative of the religion of man and of humanity, according to which god resides within man and so does god's highest divinity²⁸⁷. Their teachings holds true, even now, and can be seen in how rural Bangladeshi communities of diverse cultural and religion co-exist. The role of baul music has been significant in mitigating class divides in rural and urban Bangladesh, both in economic and social contexts as well as propagating a spiritual secular environment in the face of attacks from religious fundamentalism in the past decade.

Sufism and its intricate relationship with the Islam practised in Bengal was embedded in the lives of the people and was of significant political and social important in reviving its role as a carrier of islamic culture and civilisation. Its parallel function in the identity of Bangladesh and the larger Bengal has been deemed vital as a balancing factor between religion and culture. Mamoon reiterates in his research that, "The Sufi influence helped foster tolerance, cultural diversity and vitality, infusing the Bangladeshi Brand of islam with a profoundly celebratory spirit quite unlike the restrained and repressive character more often associated with the islamic tradition."²⁸⁸

²⁸⁷Baul Samrat Purna Das and Selina Thielemann, *Baul Philosophy* (APH Publishing Corporation 2003)

²⁸⁸Mamoon, Trina R. (2008) "Conversations/Subversions: Sufi Subtet of Bangladeshi Identity," Comparative Civilisations Review: Vol.59: No. 59, Article 8.

The nature of evolution of music in the Bengal along with its changing role and significance provides a narrative that is useful in understanding the subject matter (i.e. Bangla music), the scope and environment in which it is created and defused , the philosophies which it adheres to and the various aspects that may require attention in formulating an effective and sustainable legal safeguard. In support of the theoretical framework, the research had therefore explored the social, cultural and historical context of the subject which is essential in order to assess and analyse the effectiveness of the current IP laws of Bangladesh with respect to its functionality in society and from a right-based perspective. The following section discusses how protection for IP had developed in the region of Bengal and Bangladesh specifically and the varied issues regarding effective establishment of the law, stemming from previous and existing social and traditional philosophies obstructing change. The universal copyright provisions that exist for contemporary IP regime, as endorsed by the Berne convention, is a homogenised edition created for the protection of IP, which demands attention of domestic legislators of Bangladesh for the purpose of coherent and justified incorporation into national laws.

Development of Copyright in the Indian Subcontinent and Bengal

The development of contemporary copyright laws in the subcontinent extended over 150 years, in roughly three distinct phases and successive waves of copyright amendments, culminating in the present day copyright laws of individual domestic legislations, of each independent countries within the subcontinent . Modern copyright law developed in the subcontinent by virtue of colonial trans-

plant of English laws. This was first evidenced in the application of the English Copyright Act 1842 by the High Court of Bombay in the case of *Macmillan Vs Kahn Bahadur Shamsul Ulama Zaka*²⁸⁹, prior to the formal enactment of such laws in the land²⁹⁰. The first piece of IP legislation in the region was enacted on December 1847, called the Indian Copyright Act 1847, which was based on the British Copyright Act of the time. The application of British statutes on Bengal (and the rest of the Indian sub continent) during colonial times was administered by the British East India Company which extended the English Copyright laws along with other British laws to territories under its control. The law was developed on the notions of justice, equality and good conscience. This was the first phase. The term of copyright was for the lifetime of the author plus seven years *post mortem auctoris* (PMA or after the author's death). Initially, offences in respect of infringement carried civil sanctions. The Act provided specifically that under a contract of service copyright in any encyclopaedia, review, magazine, periodical work or work published in a series of books or parts shall vest in the proprietor, projector, publisher or conductor. Infringing copies were deemed to be copies belonging to the proprietor of copyrighted work.

Phase two began in 1914, when the then Indian legislators enacted a new Copyright Act which merely extended the majority of the UK's Copyright Act of 1911 to India but with few minor changes. First, it introduced criminal sanctions for copyright infringement.²⁹¹ Second, it modified the scope of the term of copyright but importing limitations under s4 of the act. It provided that, the sole right of the author to 'produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work'. The author,

²⁸⁹ILR (1895) 19 Born. 557 as referred in Lal's Commentary on the Copyright Act, 1957(Act 14 of 1957) with the copyright rules, 1958 and neighbouring rights 4th ed., Delhi Law House, 2006, p. 5

²⁹⁰Unknown Author, Copyright : Historical Retrospect (PhD Theses, Published on Shodhganga - A reservoir of Indian Theses) <https://shodhganga.inflibnet.ac.in/bitstream/10603/61938/8/08_chapter%201.pdf> accessed on 15th June 2020

²⁹¹Indian Copyright Act 1914, s7-12 <<https://www.wipo.int/edocs/lexdocs/laws/en/in/in121en.pdf>>

however, would retain her 'sole rights' if within the period of ten years she published or authorised publication of a translation of her work, in any language in respect of that language²⁹².

Such alterations may reflect the inclination of the colonial British government to generate translations and possibly promote wider diffusion of the regional works of the Indian subcontinent. But the consequences appeared to have adverse effect on authors and turned beneficial for the publishers.

Authors who were unable to acquire translation deals or remained unaware of such limitations lost revenues and ownership to publishers who took the opportunity to publish translation of the works of prolific writers of wide readership. This can be seen from the following observations in a note of dissent by poet Dinkar, when the continuation of the same provision was urged by the Joint Select Committee of the Indian Parliament in 1956 (a recommendation which did not ultimately prevail).²⁹³ Ram Dhari Singh 'Dinkar' (renowned Hindi poet especially deemed important for his poetry on nationalism and patriotism) argued that this provision has worked to the detriment of authors. He stated, "Most of the novels by Sharat Chandra Chatterjee (a distinguished Bengali poet) were translated in Hindi, while the author was yet alive. The author's novels, in translation sold thousands of copies, but the author did not get a pie out of the sale proceeds. Something like this happened in the case of Gurudeva (Tagore). Publishers in Hindi and other languages were making good money out of the translations of his works, but the poet, revered by the nation, was in his extremely old age touring the country for money to support the Shanti-Niketan."²⁹⁴

The statutory intent that supported and somehow benefited publishing business, can be inferred from such statutory provisions, limitations and consequences of the legislation. This scenario re-

²⁹²Indian Copyright Act 1914, s4 <<https://www.wipo.int/edocs/lexdocs/laws/en/in/in121en.pdf>>

²⁹³Unknown Author, Copyright : Historical Retrospect (PhD Theses, Published on Shodhganga - A reservoir of Indian Theses) <https://shodhganga.inflibnet.ac.in/bitstream/10603/61938/8/08_chapter%201.pdf> accessed on 15th June 2020

²⁹⁴Report of the Joint Select Committee, The Gazette of India Extraordinary, pt. 2, s. 2, p. 907 (1956) cited in Baxi, U.

flects the nature of exploitation of author's rights in his argument on how the Lockean notion of copyright in a capitalist society eventually alienates its workers from the product of their own labour while the ruling class enjoys the benefits. It could also be argued that, given that the legal rules were being passed down from a ruling class that intended to extend its law with the intention to control and govern, it had little room for the cultural and traditional philosophies of the class being ruled. Not only did the legislative language favoured the business community like the publishers, it avoided exploring provisions for performers and authors of traditional folk expressions and the baul sects. The musicians who previously flourished under patronage (see discussion on music patronage above) were now brought under provisions of commissioned work or work under contract of service, either by the aristocratic families or the emerging film industry who only produced music through commissioned work. As a result none of these musicians appeared to have witnessed the desired effect of the copyright laws which aimed to encourage and empower creative authors and practitioner like them.

However the biggest example of successful application and implementation of copyright laws in respect to music can be seen in Visva-Bharati's management and regulation of the protection of copyright for all creative works of Tagore until it expired very recently²⁹⁵. Rabindranath Tagore had vested the copyright of the entire collection of his creative works to Visva-Bharati. As a result Visva-Bharati enjoyed the revenues from the copyright (which as instructed by Tagore, was to be used for the purpose of the running of his University in Shantiniketan) up to December 1991, until the Indian Parliament extended the copyright period keeping in mind, Tagore's work and Visva-Bharati, from 50 years to 60 years after the death of the author. The main argument for such a decision was to create a more affordable and wide access to Tagore's work. The impact of Visva-Bharati's protection could be seen in Bangladesh post-independence and through recent decades, in

²⁹⁵Visva-Bharati History <<http://www.visvabharati.ac.in/History.html>> accessed 22nd June 2020

how local musicians had observed restraint in reproducing Tagore's musical work. This was maintained to the extent that the musicians who practiced Tagore songs did not even attempt improvisations or deviations from the melodies of the sheet music written by Tagore nor did they attempt rhythmic arrangements contrary to Tagore's arrangements. The concept, that Tagore songs ought only be sung in accordance to his sheet music, (with revenues that would flow back to Visva Bharati) had such deep and faithful integration into the Bengali psyche that it perpetuated long after the partition of Bengal and until the expiry of its copyright on 1st January 2002. (Why such attitude towards protection of IP and understanding of the concept of copyright did not extend to other forms of music or art in Bangladesh, is something that shall be further discussed against the finding of the qualitative phase of the research, in the later volumes.)

Subsequent legislations addressing trademark and patenting were enacted in the region, like the Act VI of 1856 on the Protection of inventions which echoed the British Patent Law of 1852.²⁹⁶ In 1962 a Copyright Ordinance amalgamating the different copyright laws which existed at the time were promulgated. This law remained the prevailing law throughout the period when India gained its independence from colonial rule which also divided the subcontinent into three regions, India, Pakistan and Bangladesh. Independent Bangladesh witnessed political, economic and social turmoil post liberation war which resulted in delays in focusing on reconstructing its domestic legislations. As explained in a larger discussion on the political and economic factors, in the volume on literature review, it is not until the 2000 that the country enacted its first national legislation on intellectual property.

Impact of Berne and WIPO on Copyright and TCE

The Copyright Act 2000 was constructed with the aim to align with the guidelines of the Berne convention and appears to be largely based on the British Copyright, Designs and Patents Act 1988.

²⁹⁶ Nour Mohammad, *Intellectual Property Law in Bangladesh* (Five Jewels Publication 2012)

The 2000 Act was largely propelled by the need for compliance with the Berne convention²⁹⁷ requirements after Bangladesh joined the Berne convention in 1999²⁹⁸. The Copyright Act 2000 was amended in 2005 to include small provisions for folk knowledge and traditional expressions. The Act contains the subject matter of the TRIPS agreement in respect of copyright and all trade related rights, computer programmes, databases, cinema, broadcasting, performer's rights, literary, musical and dramatic works.²⁹⁹ (Detail discussion on the doctrinal study and examination of the 2000 Act, its impact and effectiveness will follow in the next volume 'Copyright Law and Bangladeshi Music'). The legislation however does not protect musicians of folk tradition or baul sect. The legislators have repeatedly raised the issue and stated that musical folk expressions would be considered in their upcoming amendments.³⁰⁰ No new amendment has followed till date.

WIPO (World intellectual property Organisation) being one of the largest global authority on intellectual property, defined TCE (Traditional Cultural Expressions also called expressions of folklore), as expressions that may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions³⁰¹. This creates a wider definition which can include various indigenous and traditional

²⁹⁷Berne Convention for the Protection of Literary and Artistic Works (adopted September 1886) UNTS Volume Number: 828 (p.221) (Intellectual Property Convention) ; The Berne Convention for the Protection of Literary and Artistic Works sets out ground rules for protection of copyright at national level; it has since been amended several times. Many nations are signatories to the Convention, including the UK and, more recently, the United States.

²⁹⁸B Khondker & S Nowshin , '*AN ASSESSMENT OF NATIONAL INTELLECTUAL PROPERTY SYSTEM : DEVELOPING NATIONAL INTELLECTUAL PROPERTY POLICY FOR BANGLADESH*' (2013) ((https://dpdt.portal.gov.bd/sites/default/files/files/dpdt.portal.gov.bd/notices/5c4a8a90_d825_46f9_8c-c8_3505e47e0053/IP%20Policy.KS.pdf) <accessed 11.01.2020>

²⁹⁹WIPO , Traditional Cultural Expressions (2004) <<https://www.wipo.int/tk/en/folklore/>> accessed 23rd May 2020

³⁰⁰Jatanta Saha, 'Copyright Office finalises new Draft' [bdnews24.com](https://bd-news24.com/bangladesh/2017/08/26/copyright-office-finalises-new-draft-of-law) (Dhaka 26 Aug 2017) <<https://bd-news24.com/bangladesh/2017/08/26/copyright-office-finalises-new-draft-of-law>> accessed 22 March 2019

³⁰¹WIPO Handbook, 'INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE' <https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf>

community and their folk expressions, like Bangladesh. The organisation is however yet to provide a well structured and detailed guideline as to how protection of such expressions can be provided with effectiveness. The WIPO website states that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is, in accordance with its mandate, undertaking text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s), which will ensure the effective protection of [traditional knowledge](#) (TK), [traditional cultural expressions](#) (TCEs) and [genetic resources](#) (GRs).³⁰²

Amongst the various surveys and policy suggestion studies carried out by WIPO from the context of different countries, studies from Norway³⁰³ suggested that, the main objective of the protection of TCE should be to prevent misappropriation and to preclude the granting of unauthorised IP rights. Furthermore, it states that the protection should include prior informed consent and exchanges based on mutually agreed terms, promote equitable benefit-sharing and promote conservation and sustainable use. The research would like to argue that one of the more significant suggestions indicate the need to secure recognition and respect of the intrinsic value of TCE. Traditional expressions represent the roots and heritage of a culture and what makes it unique. The need for the protection of TCE ought to be aligned with the necessity of preserving, safeguarding and perpetuating the very cultural identity and values that is grounded in the folk expression of folklore, traditional knowledge or traditional folk expression including literature on cultural folklore, traditional folk music, traditional handicrafts , etc.

³⁰²WIPO Mandate on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore <<https://www.wipo.int/tk/en/igc/>> accessed 17 Dec 2019

³⁰³WIPO, 'Norway: Traditional Cultural Expressions/Expressions of Folklore' <https://www.wipo.int/export/sites/www/tk/en/igc/pdf/norway_tce.pdf> accessed 15 May 2020

A common understanding of what constitutes misappropriation, is essential in formulating an effective guideline for protection against misappropriation and unfair use. This research proposes that in defining misappropriation it's important to take into account attempts by infringers to exclude recognition of the heritage or plagiarised folk expressions whereby credit is being taken away from the community which produced such expressions. Cultural appropriations can have larger impact on the political and economic aspects of a nation. Cultural influences can be deemed as a pivotal factor in the composition of soft power which is a persuasive approach to international relations. In politics, soft power is the ability to attract and co-opt, rather than coerce. In other words, soft power involves shaping the preferences of others (other nations) through appeal and attraction. India has used its cinematic influences (unique to India) and the appeal of spiritual, mental and physical disciplines like yoga (originating in ancient India) as strong factors that have successfully raised India's position in global politics and economy. Protecting cultural expressions therefore have a larger impact which ought to be taken into account by Bangladesh, in formulating TCE protection laws or guidelines.

The enactment of the Copyright Act 2000 and the subsequent amendments including the new draft attempting to include TCE and formulating its own guidelines indicate that Bangladesh is prepared to focus on acknowledging and rendering importance to its own traditional culture and heritage in formulating and developing its legal rules and guidelines, as opposed to simply borrowing from colonial laws. This was an important endeavour on the part of Bangladesh in its attempt to leave the least developing country bracket and in providing improved protection for its art, music, literature and culture, especially taking into account its cultural and traditional heritage that will help build a distinct identity for the nation.

Dichotomy between the concept of Copyright and Patronage and the Baul Philosophy

The concept of copyright in recent history, adheres to the philosophy of ‘author’s right to own’ which is a departure from the age old practice of patronage by kings, emperors and beneficiaries of the arts, where artists were simply commissioned practitioners as opposed to owners of their creations. Berne convention which is an important authority governing international copyright provides an inferred definition of copyright. The Convention refrains from clearly defining "copyright" in terms, notwithstanding that its worldwide protection is the Convention's main aim. It however states that, “ Copyright consists of a number of rights enjoyed by the author and the protection of copyright means that, with some qualifications and limitations, the use of the work is not allowed except with the consent of the author or his successor in title”³⁰⁴This is a complete departure from the tradition of patronage and the baul philosophy of service and non-ownership respectively, which has been perpetuated by these traditions and the social constructs of that period, much of which aligns with Karl Marx’s take on private and intellectual property³⁰⁵ and legal theories³⁰⁶.

³⁰⁴Guide to Berne Convention for the Protection of Literary and Artistic Works (WIPO Publication GENEVA 1978) <https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf> accessed 27th May 2020

³⁰⁵ Karl Marx and Friedrich Engels, *The Communist Manifesto* (Penguin Classics 2015)

³⁰⁶See, for example, the essays in C. Varga (ed.), *Marxian Legal Theory* (Aldershot, 1993)

This research proposes that there is a shared vision between the Baul philosophy and the Marxian ideologies in terms of how they view authors' ownership over their creations. Both of these school of thoughts advocate community ownership of properties, regardless of who created or conceptualised said properties. The research makes this comparison and uses the marxian philosophy to explain the sensibility and intent of the Baul philosophy with an established and well known concept, such as that of Marx. Karl Marx and Frederick Engels argue in their manifesto, that intellectual property is a form of private property which shall always remain a product of society and will contribute in the betterment of the society if it is shared and improved on.³⁰⁷ Marx's advocated that private property, including the means of production, should be converted into public, or *communal*, property so that the society as a whole can labour and prosper collectively³⁰⁸. Based on this volumes discussion on the baul philosophy and the teachings of Lalon³⁰⁹, this research argues that the Marxian approach of communal ownership of private property is in alignment with the beliefs and practices of the baul sects to a certain extent. Through his poems, songs and spiritual education Lalon had upheld that the purpose of his creation was not to properties but to spread knowledge and wisdom to usher enlightenment of self and by extension, of the entire community that had contributed in raising that individual self. Such notions reflect a sense of development and betterment of society as a whole as a result of the progress of individual. Though the purpose with which creation takes place in each tradition is different their approach of ownership appears to be similar in nature.

³⁰⁷ibid.

³⁰⁸Jared Wright, A Marxian View of Intellectual Property (2014) <https://www.academia.edu/7867256/A_Marxian_View_of_Intellectual_Property> accessed on 18th July 2020

³⁰⁹Baul Samrat Purna Das and Selina Thielemann, *Baul Philosophy* (APH Publishing Corporation 2003);

Furthermore, both the Marxian and baul philosophy advocates for class equality evidenced in their elaborate works on communism and musical literature respectively. In his works Lalou addressed that social constructs created with the goal of attaining control and power was a reflection of a lack of understanding of what was truly needed for growth, prosperity and enlightenment of being; that materialism would only breed emptiness with the greed for more and therefore true power lies within the knowing and loving of self and others since according to the baul philosophy the divine resides within.³¹⁰ Lalou's songs were said to be instrumental during religious and communal disputes and in creating a balanced coexistence amongst people of diverse religion³¹¹. This is considered to be one of the vital roles played by baul music which echoes Marx's broader thesis about the nature of the connection between law and class, which studies the idea that property is an instrument of the powerful. According to Marx, the origin of property lies in the productivity of labour situating the significance of the contribution of labour at the centre of growth, acknowledgement of which is crucial in breaking class divide. It can be argued that this is similar to Lalou's idea of enlightenment of society, upholding that a power dynamics is detrimental rather than beneficial for growth. His theses follows that structural construct of the two principal classes in capitalism, the ruling class (bourgeoisie, capitalists) and the proletariat (workers) enables a power dynamic where law serves the ruling class and enables the ruling members to retain control over the source of their power³¹².

Marx asserted that private property is the outcome of externalised, alienated labour, where workers

³¹⁰Charles Capwell, *The Music of the Bauls of Bengal* (Kent State University Press 1992)

³¹¹ibid (n37).

³¹² M. Cain and A. Hunt, *Marx and Engels on Law* (London, New York, San Francisco, 1979), see chapter 3 for readings which support this simplified thesis. As Cain and Hunt point out, in their introduction to the chapter, Marx's work also contains a more nuanced view of law's role in capitalism.

are alienated from their environment, from the products of their labour and finally from themselves³¹³. Here it is not the ownership of private property that is perceived to be problematic, but the social power that results from the amassing of private property by the bourgeoisie and the deprivation of private property from the working man.³¹⁴He pointed out that while discussing ownership of private property, he was referring to 'bourgeois property,' and property relations, not the hard earned property of the worker³¹⁵. Therefore similarities can be drawn in the attempts both schools of thoughts make in trying to mitigate class divides, in how they believe in a system that does not result in unequal distribution of wealth and power.

According to Drahos³¹⁶, capitalism in its evolution, depended on and actively encouraged, creative labour. It may also be evidenced in the fundamental changes that took place in the social construct and productive forces of some of the major capitalist economies like the USA, UK and Australia. Recent history has seen a rise of capitalism globally which created a system where, workers are forced to relinquish their productive capabilities to another, or to the owners of the means of productions. According to the capitalist system, ownership over the fruit of one's own labour is not vested in them thus they are alienated from the products of their labour. Instead they are forced to sell their labor in order to acquire the necessary means of survival³¹⁷. Productive activity therefore ceases to be a natural act of creativity and becomes instead something outside of and alien to the

³¹³Karl Marx and Frederick Engels, *Collected Works* (London, 1975), vol. 3, 229. (Alienation was a term used by Marx to describe counterproductive relations of separation in capitalism)

³¹⁴Marx, Karl & Frederick Engels, *The Marx-Engels Reader* (2nd ed, W.W. Norton & Company, Inc. 1978)

³¹⁵Peter Drahos, 'A Philosophy of Intellectual Property' (2016) <<http://press-files.anu.edu.au/downloads/press/n1902/html/ch05.xhtml>> accessed on 18th July 2020

³¹⁶ Peter Drahos, 'A Philosophy of Intellectual Property' (2016) <<http://press-files.anu.edu.au/downloads/press/n1902/html/ch05.xhtml>> accessed on 18th July 2020

³¹⁷ Jared Wright, A Marxian View of Intellectual Property (2014) <https://www.academia.edu/7867256/A_Marxian_View_of_Intellectual_Property> accessed on 18th July 2020

worker according to Marxian views.³¹⁸ It can be argued that, this mirrors tradition of folk music where their music was deemed a productive activity that is a natural act of creativity which when put through the process of modern copyright production and recording transforms into alienated creation, as record labels remain entitled to the sound recording rights of any recorded songs, as opposed to the folk musician.

Legal Implications of the Philosophies

The legal implications of such long standing traditions of employment under music patronage and the baul philosophy, on the social and cultural constituent of contemporary independent Bangladesh, is reflected in the ineffectiveness with which the IP regime operates in Bangladesh. While the western world shifted from its long history of patronage and missionary tradition to developing legal rules for the protection of intellectual property, some of the eastern regions continued to practice their age old process and approach in IP. Until factors such as colonisation, globalisation, digitisation and international economic policies compelled countries in the eastern region (esp southeast Asia, region including the Bengal part of which constitutes present day Bangladesh and the Calcutta region [eastern part of India], Singapore, Sri Lanka etc.) to join international conventions protecting IP (for example, the Berne convention), these regions did not invest in developing a legally enforceable standard of intellectual property protection or guidelines of their own detailing how they want to define IP, the nature of its creation, ownership and control in distribution. The western concept of copyright developed over the last few centuries, is a sharp departure from this long standing eastern philosophy of ownership discussed above. The WIPO and Berne are considered to be the global authority on IP. The idea of having any right over ones own creation is a concept that

³¹⁸Marx, Karl & Frederick Engels, *The Marx-Engels Reader* (2nd ed, W.W. Norton & Company, Inc. 1978)Pp 70-72, 74, 77, 191, 484, 486, 493.

had been absent from the region of Bengal and its surrounding territory until influences from the West began penetrating the system.

Considering the contrasting traditional context of IP rights in the region, including the Bengal (part of which is present day Bangladesh), it is thus, not surprising to observe problems of legal transplant in establishing contemporary copyright laws that are compatible to the guidelines of the Berne convention. This research suggests that the challenges that Bangladesh is facing in establishing the Berne convention based western copyright law, must be addressed in light of this historical context of long standing cultural and social norm of music patronage, tradition of folk music and the baul philosophy. By the 18th century it was apparent that the role of art , music and its creators had transformed. Thus the notion of author's right became more central to the discussion and intent surrounding intellectual property. Bangladesh, with its many geo-political and socio-economic conflicts, had been late in acknowledging that a change in approaching IP in the current economic, social and political environment was vital and that the old philosophies of rights and ownership would fall short. It however joined a long list of countries in changing its IP legal regime in the last few decades. This is evidenced in their endeavours in attaining membership of major IP related treaties and conventions and in their enactment of a national copyright legislation³¹⁹. However the research proposes that, in formulating or amending a legal instrument that will be effective and sustainable in protecting the rights, history and knowledge on the cultural and social norms are vital in order for the law to be functional in relation to the society, as supported by functionalism discussed in the theoretical framework.³²⁰

³¹⁹Copyright Act 2000 (Bangladesh)

³²⁰Benton Johnson, *Functionalism in Modern Sociology: Understanding Talcott* (Parsons Morristown, N.J. : General Learning Press, 1975)

It is surprising that intellectual property laws are less invested and interested in the rights and protection of originators of intellectual property as opposed to the rights of others, such as labels, and publishers, given that a standard justification for intellectual property is that it provides individuals with motivation to devote time and resources to innovate and create. This creates confusion in communities and societies in countries like Bangladesh and India, which had only in the last century departed from its long tradition of baul and patronage tradition and only is coming to accept the newly conceptualised western form of copyright laws in recent times. Despite its ideologies being grounded in labour theory, it can be observed that the ultimate consequences of such a copyright system do not lead itself to ownership on the author's part as initially proposed by Berne guidelines.³²¹ For example, the master license copyright over a sound recording is entirely claimed by the record label according to cultural business practices globally³²². These generate legal implications include unsuccessful integration and assimilation of the foreign copyright laws in Bangladesh, as a result of how the people of this region conventionally perceived ownership and rights over intellectual property. It can argued that, further confusions could potentially arise in the process of indoctrination of the western concept of copyright. In changing their collective understanding and gaining awareness regarding the western concept of copyright, the population have visibly been struggling to comprehend this new nature of author's ownership and the legal and commercial nuances attached. This is observed to eventually contradict the initial purpose with which copyright laws were conceived, namely to motivate and reward creators. This contributes to uncertainty in the comprehension of the instrument, operation, implications and purpose of the western copyright laws which is now in the process being assimilated and integrated into the Bangladeshi IP legal regime.

³²¹Guide to Berne Convention for the Protection of Literary and Artistic Works (WIPO Publication GENEVA 1978) <https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf> accessed 27th May 2020

³²²Ann Harrison, *Music:The Business* (7th edn, London : Virgin Digital 2017)

Justification and Social Impact

As a result of how artists were perceived by the baul philosophers and the tradition of patronage, it somewhat created a sense of identity crisis for the artists where it was not clear as to what their stand should be. The component of financial support translating to control over the artists in the tradition of music patronage also produced an image of the artists that reflected the gaze of the patrons and holds true even today. The image portrayed artists as creative individuals who ought to be rich in creativity, truth and their artistry as opposed to rich in terms of monetary wealth. In my qualitative research sessions, a prolific musician³²³ of Bangladesh echoed this very sentiment in criticising the image that have been created over time. He stated that, according to this tradition, artists ought not to concern themselves with money since the patrons exist to manage that aspect. Disapproving this notion he suggested that this approach was still prevalent in the Bangladeshi music industry and exists as an underlying reason behind why musicians are still treated as employees and has their rights taken away. The music business industry still perceives artists in a similar manner which leads them to continue following that, artists should concern themselves with finding true love in their art and if that can be achieved then they will lead a rich life. It may have worked in the past but the radical change in social and economic constructs globally means that the way artists were perceived would also have to change to justify the social and economic impact these changes are having on them.

The radical expansion of intellectual property regimes, both nationally and internationally, in recent decades is deemed as an important superstructural transformation in Marxian terms. The creation of

³²³ Participant 4, (Dhaka, 22nd Feb 2020)

legally enforceable international standards of intellectual protection may be observed in states that are using intellectual property law to control and maintain various forms of power, as their mode of production undergoes a profound transformation³²⁴. Therefore it can be argued that Bangladesh's attempt to establish an effective IP regime is an indicator of its progress. However, as discussed in the literature review volume, the economic growth does not reflect the standard of living in Bangladesh and the legal amendments in the IP regime is not focused on the music copyright aspect as much as trade and revenue related IPs like trademark and patent. Bangladeshi music of all genres (as discussed above) have gone through a massive change of context, especially in the past century. From a court tradition for predominantly connoisseur listeners and courtesan tradition, it had moved to much wider and more diverse demography of audiences. In the process, the position and life-styles of musicians witnessed a drastic change where adhering to previous philosophies of non-ownership and mere service providing became problematic, inconvenient and non-conducive to maintaining a respectful living as music practitioners.³²⁵

The evolution of Bangla music had broadened the scope of its role and significance and created a new reality for musicians where owning one's creation and teaching music as a professional skill were possibilities. The various methods in which diffusion of music and generation of revenues take place in contemporary time requires legal guidance, governance and monitoring. It can be inferred from the recent international policies of the country, that Bangladesh recognises the importance and benefits of harmonising its IP laws with the international standards set by Berne Convention. This is considering that the only way its musicians and cultural expressions can thrive is through regulated

³²⁴Peter Drahos, 'A Philosophy of Intellectual Property' (2016) <<http://press-files.anu.edu.au/downloads/press/n1902/html/ch05.xhtml>> accessed on 18th July 2020

³²⁵Huib Schippers, 'The guru recontextualised? Teaching and learning North Indian classical music in a western professional training environment' (2007) <<https://pdfs.semanticscholar.org/5abe/e39e912c835c54a84807cc94fcfb95572fb3.pdf>> accessed on 15th July 2020

legal safeguard and effective implementation. Bangladesh's attempt in establishing legal rules, to regulate the rights of the musicians is an important step towards transitioning into a new era of IP rights protection albeit the various issues surrounding its efficacy. Prolonged exposure to the tradition of music patronage, traditional folk and baul philosophies, pose as a crucial challenge for Bangladesh, obstructing the assimilation of the contemporary concept of copyright laws.

The impact of changes in social and economic constructs on musicians has been far and wide. Therefore a change in the way they perceive their own profession and how the society perceives them is necessary in order for the implementation and enforcement of IP laws to enjoy effective establishment. The economic implication of such alteration in the social and economic contracts has been problematic globally for musicians having to shift from a prolonged set of traditional practices to corporate philanthropy and record label production culture, the need for fair and just share of IP ownership and a fight for creative control and freedom.

Conclusion

Recommendation for future research would include the freedom of expression aspect of creativity. Corporate philanthropy, government policies, and religious influences have been the fundamental factors in hindering freedom of expression through music and arts. This research argues for rights to be vested in the authors of the original creation which can also extend to the scope of their freedom and control when they create. Creative control over one's content whether musical, lyrical, literary and any other forms of creative outlets should be retained not by the government, financiers or pub-

lishers but in the hands of the creators.

The following volume focuses on the legislative provisions, statutory language, enforcement policies and implementational disparities relating to copyright laws in Bangladesh, drawing comparisons with the UK and India selectively, in analysing the scope and effectiveness of the law.

Volume 5

Music Copyright Law : Songs of Wisdom without Experience

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Introduction

This volume shall focus on the analysis, assessment and comparative study of copyright laws in Bangladesh, in regard to the effective protection of musicians' and songwriters' rights. The following sections systematically concentrate on the gaps in the existing copyright legislation and on areas that have crucial influence on the effective establishment of the nature of copyright protection and provisions required for musicians, in the context of Bangladesh. Copyright law determines the social framework in which music is marketed, artists are rewarded, and all the uses to which their work is put are licensed³²⁶. It analyses the gaps and misconstructions, identified through the review of literature and in terms of legislative intent, statutory language, omission of relevant provisions, ——. The comparative study would include comparing and contrasting certain social-cultural, commercial and implementational aspects of copyright laws and regulations between Bangladesh, the UK and India. Such comparisons are necessary in establishing why adopting or transplanting foreign legal rules may not always result in similar legal outcomes. For the purpose of comparison, the two countries have been selected for its respective geo-political and historical connections with Bangladesh.

Not only does the Bangladeshi legislation on copyright laws draw heavily from the current UK copyright legislation, the IP laws that were prevalent in the region before the liberation of Bangladesh, also extended from the then British legal system owing to the British colonisation of the Indian sub-continent between the 1612-1947. The research makes such historical and contextual comparison of the legal instruments of these countries in an attempt to identify reasons underlying the adoption of certain legal solutions and intentions and interpretations behind the use of specific

³²⁶Simon Frith, Lee Marshall, *Music and Copyright* (2nd edn, Edinburgh University Press 2004)

terms or definitions . The research explores the various degrees of influences exercised by international treaties and conventions, government authorities, philosophical suggestions and political forces and the impact it has on the music copyright regime. The juxtaposition of music copyright laws in India and Bangladesh is an important discussion in generating appropriate and sustainable recommendations and reforms, considering that the countries share geographical borders, along with a long standing cultural, political and social heritage. The analysis will demonstrate how and why legal concepts and solutions across borders, change in nature and have effect, when adopted in another jurisdiction.³²⁷ If the Bangladeshi legal instrument of copyright is analysed and compared in context to its historical and contextual background, as supported by the theoretical framework, these elements would help to overcome the misconceptions that an outright dogmatic reading of a legal instrument may generate. By applying the theory of functionalism, it might reveal the hidden interpretative patterns that determine the evolution of the doctrines or concepts in copyright and explain why apparently similar definitions may produce radically diverging results in different systems. It is important to discuss global legal provisions in music IP since the domestic music industry is expanding to and collaborating with, the global music industry more and more with the growing use of internet and the crucial part it plays in changing the music industry globally; now music from one country is often used in films, visual mediums and performing arts of other countries.

The Concept of Copyright

The very concept of being able to legally and exclusively own intellectual property, the infringement of which could result in legal consequences, is relatively contemporary, both in the West and

³²⁷ Caterina Sganga, *Propertizing European Copyright: History, Challenges and Opportunities* (Edward Elgar Publishing 2018)

more so in developing countries of the East. This research focuses on Berne's concept of copyright law and its effectiveness in Bangladesh, as a signatory nation. Berne in turn was influenced by the French, "right of the author" (*droit d'auteur*), which contrasts with the Anglo-Saxon concept of "copyright" which only dealt with economic concerns³²⁸. The contemporary concept of copyright has been generated from the idea that intangible creative works such as musical compositions, literary works, designs and even dance compositions, can be deemed as properties, the ownership of which is vested in the author or creator of the original work³²⁹. In other words, the authors can have rights akin to proprietary rights over their creative works since intellectual/creative expressions are being considered as intellectual 'property'. Copyright protection on works of creative expressions as such, allows the authors to exploit their work for revenues and have the law protect their property when others attempt to use it without permission. The use of music copyright in terms of creating, adapting, performing, re-producing and syncing sound/music on any visual medium, by anyone other than the right holder, must be done through acquiring relevant licenses and permissions or paying royalties, according to the notion of contemporary copyright laws³³⁰. In the music industry these are rights attached to composition, lyrics, performance, recorded sound, publishing etc.³³¹ Music copyright is therefore defined as an intellectual property that allows a person to own the musical expression they create and obstruct others from copying or reproducing their work without permission.³³²

³²⁸ Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton University Press 2016) 15

³²⁹ Jim Jesse, *The Music Copyright Manual* (CreateSpace Independent Publishing Platform; 1st edn 2016)

³³⁰ *ibid.*

³³¹ [Thomas O. Tremblay](#), *Music Licensing Rights and Royalty Issues* (UK ed. edition, Nova Science Pub Inc 2011)

³³² <https://www.musiciansunion.org.uk/Files/Guides/Education/Toolkit/What-is-copyright> <accessed 16.09.2019>

The development of the notion of authors' rights is relatively recent. Traditional approach towards the notion of intellectual property rights (IPR) and its protection in various communities, existed centuries preceding the formation of the institutionalised intellectual property law. As discussed in detail with context in volume 4, the diverse perspectives held by traditions of patronage, tradition of folk expressions and the bauls sects, perpetuated notions of author's right that were at odds with the contemporary concept of copyright protection endorsed by the Berne convention³³³. As with other IPRs, notions of author's rights and protections of musical work emerged centuries after the formation of the main private law institutions.³³⁴ Their normative justifications have been varied and overlapping, applying legal terms and concepts in a non-technical manner, with the result that the same proprietary definition of copyright has not necessarily had similar implications. Over time, when these concepts were translated to law, they penetrated legal systems characterised by well-defined, often different technical notions and doctrinal constructions, resulting in different responses from legal formants while interpreting and implementing the copyright rules.³³⁵ The national pieces of legislation developed earlier in time served as model laws that circulated across boundaries, sometimes merging in second-generation mixed statutes, other times being colonially transplanted, and subsequently producing different results when read through the lenses of another legal system.

³³³Berne Convention for the Protection of Literary and Artistic Works (adopted September 1886) UNTS Volume Number: 828 (p.221) (Intellectual Property Convention) ; The Berne Convention for the Protection of Literary and Artistic Works sets out ground rules for protection of copyright at national level; it has since been amended several times. Many nations are signatories to the Convention, including the UK and, more recently, the United States.

³³⁴Caterina Sganga, 'Propertizing European Copyright History, Challenges and Opportunities' (2018) <https://www.elgaronline.com/view/9781786430403/09_chapter1.xhtml?#Footnote_0006> accessed 21st June 2020

³³⁵ibid

This research now turns to explore the various global notions and guidelines on the protection of copyright that, Bangladesh is obligated to comply with. A global focus on the significance and importance of intellectual property rights can be observed which is positively affirmed in numerous international conventions, like the Berne Convention for the Protection of Literary and Artistic Works (1886), The Paris Convention for the Protection of Industrial Property (1883), The Universal Copyright Convention (UCC) (1952), The Patent Cooperation Treaty (1970), The Agreement on Trade Related Aspects and Intellectual Property Rights (TRIPS) (1995). Further affirming the validity and importance of such rights, The Universal Declaration of Human Rights (UDHR) (1948) states that, “Everyone has the right to the protection of moral and material interests resulting from scientific, literary or artistic production of which he is the author.”³³⁶ These international instruments also provide the guidelines for enforcement mechanisms by the state parties. For example, Part III of the TRIPS agreement in its article 41 to 61 denotes the enforcement provisions for intellectual property rights. Other guidelines include fair and equitable enforcement, expeditions trial for offences, etc. Article 36(1) of the Berne Convention provides that, “Any country party to this convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this convention.” Paragraph 2 of the same article provides that, “it is understood that, at the time a country becomes bound by this convention, it will be in a position under its domestic law to give effect to the provisions of this convention.” However based on previous discussions on Bangladesh’s economic and social conditions, this research argues that, the country is not in a position where its domestic law can in fact give full effect to the provisions of the conventions through its domestic copyright regime. The efficacy of the legislation, especially in regard to its implementation, enforcement and IP legal practices in the music industry is at the core of this research, which question the country’s ability to achieve compliance with Berne.

³³⁶[Thomas O. Tremblay](#), *Music Licensing Rights and Royalty Issues* (UK ed.edition, Nova Science Pub Inc 2011)

As signatories to most of the above treaties and conventions, Bangladesh is bound by these instruments to legally give effect to its provisions. In support of that the country enacted the Copyright Act 2000 which is expected to have incorporated all the provisions required to enable compliance with the treaties and conventions. It is important to address that, the concept of intellectual expressions being considered as properties is also embedded in the constitution of Bangladesh. The Constitution of Bangladesh 1972 in its article 40 and 42 guarantees the citizen's right to property. It included property produced through creative thoughts, within the general definition of property. This reflects the philosophy and approach of the law makers, in regard to music, culture and IPs in general, with which the nation was conceived. In support of this proposition patents, licences, trademarks and copyrights are held to be intangible property distinct from physical or material property.³³⁷ Following this proposition it is evident that, the Constitution recognises intellectual property rights in express terms. On paper, the country's legislation reflects a somewhat organised structure, that provides for the various rights, obligations and institutions required to establish an effective music IP regime.³³⁸

Over the past few decades, the modernisation of copyright laws in response to the digital revolution and its supranational standardisation have followed new, hybrid normative inspirations and altered the balance between exclusivity and access, strongly based on the propertization debate.³³⁹ Developed countries like the UK, with sustainable economic growth and the adequate frameworks to

³³⁷F.K.M.A. Munim, 'Rights of the Citizen under the Constitution and Law, Bangladesh Institute of legal and International Affairs' (1975).

³³⁸Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³³⁹Caterina Sganga, *Propertizing European Copyright: History, Challenges and Opportunities* (Edward Elgar Publishing 2018)

support establishment and execution of music copyright property laws are fighting more advanced battles in terms of inefficacies, right sharing, and streaming royalty rates, whereas Bangladesh still finds itself in basic dilemmas such as who owns particular IP rights in a song, whether the music contracts signed are valid and why royalties are never paid. However, having an adequate framework involves not only a constructive legislation but all the tools that executes the legislative machinery. In other words, development of a robust IP system depends on the effective implementation and enforceability of IP laws and policies.

Copyright through the lens of Bangladesh

As discussed in the previous volumes, Bangladesh has only recently emerged as a nation with a growing economy which has drawn the world's attention to its many discrepancies, corruption, political scandals and lack of adequate implementation and establishment of laws in many sectors, including the intellectual property laws.³⁴⁰ The country has never been equipped to deal with enforcement or infringement of intellectual property laws given that the concept was a foreign one. According to all interview participants, buying and selling of pirated books, music, designs and even screenplays were a common practice with no legal repercussions. In fact people were habituated of buying illegally reproduced imported text books because it was much cheaper compared to the original pricing set by international publishers. The economic state of the 70's newly independent Bangladesh was unstable and debilitating, where the exchange rates for Bangladeshi Taka was too high for ordinary student to be able to afford imported school and college text books.³⁴¹ Instead of subsidising the import or production of educational books, the government allowed piracy to

³⁴⁰Nour Mohammad, *Intellectual Property Law in Bangladesh* (6th edn 2017, Five Jewels Publication 2012)

³⁴¹Participant 9 (Dhaka 2021)

thrive which seeped into other areas of intellectual properties. As for films and the music in films, the market was so insignificant that foreign movie productions remained unaffected by the infringement. This was mostly made possible since the internet did not exist world wide until a certain time, which made detecting breach of intellectual property rights much harder.

As CDs and cassettes became obsolete a surge in an already serious case of piracy was observed . Technological advancement and online streaming hadn't been accessible in Bangladesh at the time or at an affordable rate therefore piracy became a widespread phenomenon and largely accepted by the masses especially because it enabled them to buy books, music, and a variety of other products at a much lower price. As an agrarian nation battling to recover from its political unrests, natural disasters and economic instability post war, vast difference in its inventor to consumer ratio worsened the conditions for creativity and innovation to breed³⁴². But at the turn of the 21st century, a radical decline in sale of physical copies of music (CDs, cassettes, etc), a surge in the streaming culture, piracy and a growing alternative platforms for online revenue generation propelled Bangladesh to pay attention to the protection of intellectual properties and fulfil its convention obligations.³⁴³ But with the absence of any international enforcement or monitoring body, non-compliance on Bangladesh's part was not met with any consequences.

³⁴²Mustafa K. Mujeri and Neaz Mujeri, *Bangladesh at Fifty Moving beyond Development Traps* (Palgrave Macmillan 2020)

³⁴³MK Uddin , 'WIPO Draft Report on Innovation and Intellectual Property Policy and Strategy for Bangladesh' (2011)

Assessment of Copyright Act 2000 in comparison to International laws

COMPARATIVE ANALYSIS: COPYRIGHT ACT 2000(BD) VS COPYRIGHT, DESIGNS AND PATENTS ACT 1988 (UK)

The Copyright Act 2000³⁴⁴ (amended in 2005) is the ruling legislation in Bangladesh on IP. The legislation draws heavily from the Copyright, Designs and Patents Act 1988 which, is the current UK copyright law containing the rights and obligations entailing the ownership, copying and distribution of original artistic expressions and performance. The basic notion being that, original idea must manifest into something and become more than just a concept, with no formal requirement of registration or payment³⁴⁵. According to it the right is owned exclusively by the creator unless it is transferred, assigned or treated as ‘work for hire’ (or commissioned work).

The Bangladeshi IP legislation mirrors the notions of the UK IP laws, with the exception that it requires formal registration of the original work. Under the Copyright, Designs and Patents Act 1988 of UK, the copyright protection takes place automatically and provides safeguards against unlawful copying of their work. On the contrary, in Bangladesh copyright is required to be registered with the copyright registrar, for proof of ownership and legitimacy. The Bangladesh copyright registry office in Dhaka, offers registration provisions. There is only one registry office which is situated in the capital which means musicians from around the country has to travel to Dhaka to complete the registration formalities. My qualitative interviews suggested that the registry office is under staffed

³⁴⁴Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁴⁵Gov.uk, "How Copyright Protects Your Work - GOV.UK" (2015) <<https://www.gov.uk/copyright/overview>> accessed 27 December 2015.

and ill equipped to handle the increased number of back logged applications.³⁴⁶ An interviewee³⁴⁷

highlighted that a lack of strong infrastructure and educated workforce has resulted in inefficient handling of copyright registration.

In practice it is always useful to register to avoid unnecessary disputes over possible claims by others, in the event of infringement or breach of contract (In countries like the UK registration can be carried out through membership with collecting societies like PRS³⁴⁸ or PPL³⁴⁹ or MCPS³⁵⁰ for published works given that there appears to be no copyright index or registration authority like the services offered for Patents by the Intellectual Property office³⁵¹ in the UK or like the provisions in the USA³⁵²). However the qualitative interviews carried out for the research suggests that, most musicians in the 90's and early 2000 ignored such formalities claiming that the implementation of the fragments of the existing Pakistani and Indian legislation, prior to the enactment of the 2000 Act, was almost non-existent. This was a period post the liberation war of Bangladesh, which meant that the country was still battling basic issues such as political and economic instability, access to health and education and eradication of poverty. It can be argued that such environment might have resulted in the ignorant operation and implementation of the existing IP laws at the time and negligence

³⁴⁶ Arif Ahmed, Enforcement of Intellectual Property Rights (Iprs) in Bangladesh: An Appraisal, Department of Law and Justice, (2016) PP 37-46, <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue4/Version-3/D0214033740.pdf>> accessed 8 Dec 2019

³⁴⁷ Interview Participant 5, (Dhaka, 18th Feb 2020)

³⁴⁸ PRS- Performing Rights Society (explained in detail later in the paper)

³⁴⁹ PPL- Phonographic Performance Limited (functions of this organization is explained later in the paper)

³⁵⁰ MCPS- Mechanical Copyright Protection Society (functions of this organization is explained later in the paper)

³⁵¹ Gov.uk, "Intellectual Property: Patents - GOV.UK" (2016) <<https://www.gov.uk/intellectual-property/patents>> accessed 27 December 2015.

³⁵² U.S. Office, "U.S. Copyright Office" (*Copyright.gov*, 2015) <<http://www.copyright.gov>> accessed 27 December 2015.

towards creating a robust domestic IP regime.

On the other hand, albeit not being a requirement, according to artists in the UK, it is customary that they record the material in a tangible medium and post it to themselves or to their lawyers if they have one at disposal, through registered mail for safekeeping for the purpose of having legal evidence of ownership of original work. Registered mails are dated and stamped which can act as documented proof of when the creative material came into existence and who it belongs to. Alternatively artists can register with private organisations such as The Guild of International Songwriter and Composers in exchange for a fee, which could act as an index, although it could be expensive and haphazard since an extra payment needs to be made every time a work is updated and a membership is renewed³⁵³. Ownership upon creation is a powerful concept because the copyright ownership is born with the art itself indicating that no law or authority can give this right to the author. The fact that the right resides within the creator from inception reflects how the legislatures felt about these intrinsic rights over creation.

In Bangladesh the law states that copyright shall subsist in any literary, dramatic, musical or artistic work (except a photograph) published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies. In the case of sound recording, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the sound recording is published³⁵⁴. Copyright law comes into effect when a person uses a song or a sound recording of that song without permission but the copyright law

³⁵³Unknown Author, 'The Guild Of International Songwriters & Composers - Songwriting - Composing - Publishing' (2015) <<http://www.songwriters-guild.co.uk>> accessed 27 December 2015.

³⁵⁴The Copyright Act 2000 (Bangladesh), [pdf of an English translation of the document is attached to the application]

does not dictate how these rights ought to be distributed, what proportion of the right a record label can keep and who dictates how these rights are to be exploited. Most of these issues come within the ambit of freedom of contract and owing to the inequality of power between the artist and the record label, the freedom is mostly afforded by the powerful. According to practices in most countries around the world, the record label keeps a 100% of the copyright attached to a sound recording and only pays royalties to the artist. This right remains with the label 50 years from the date of publication which is often the span of an artist's entire career. In countries like Bangladesh where royalty payment isn't a practice yet, artists are legitimately robbed of both their copyright and royalties because it does not directly contradict with any law. In the event of infringement, there exists no regulation or monitoring body to grant sanctions unless a litigation is brought forward. The law states that royalty payment is mandatory but does not specify the consequences of non-compliance and the particular transactions which would generate royalties. The following section discusses how ownership over these copyrights are distributed and exploited in practice in Bangladesh compared to the music industry practices in the UK.

Ownership of Copyrights

When a song is written and composed, it generates intellectual rights. Ownership of these IP rights over lyrics and composition at this stage remains with the lyricist and the composer respectively³⁵⁵ unless they are the same individual like Rabindranath Tagore, who wrote and composed all his songs. According to global music industry practices these rights over sheet music are known as publishing rights. Subsequently, when the song is in need of publication for diffusion to a wider audi-

³⁵⁵Lionel Bently, Brad Sherman, *Intellectual Property Law*, (4th edition OUP Oxford 2014)

ence, it demands the process of recording which traditionally almost always involved music record labels. A recorded sound/song generates separate rights called sound recording rights the scope of which is strictly limited to the recorded sound and not the original lyrics and composition of the sound/song. This distinction is made clearly in the UK copyright legislation where sound recording and musical work are distinguished with clear mention of the scope of first ownership of such rights and which party it is vested in. Diagrams 1 shows the standard structure of share of rights in the global Music Industry, including the UK. Diagram 2 show how the same rights are distributed differently according to the Bangladeshi music industry practices. The diagrams only show, cases of songs being recorded with a music record Label as opposed to self recored sound recordings.

Diagram 1, Standard share of rights according to **UK music industry practices** , when a label funds the recording of a song.

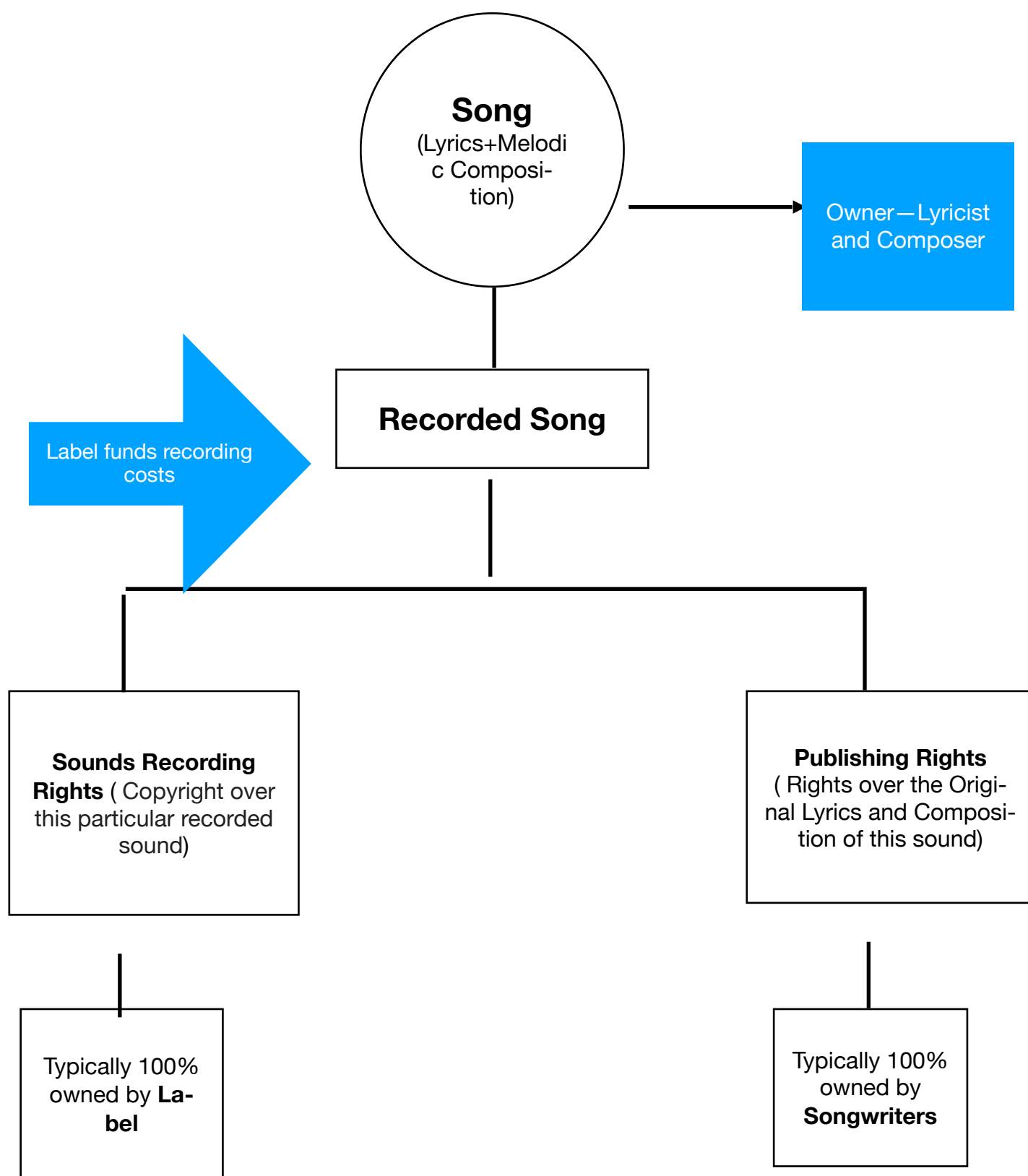
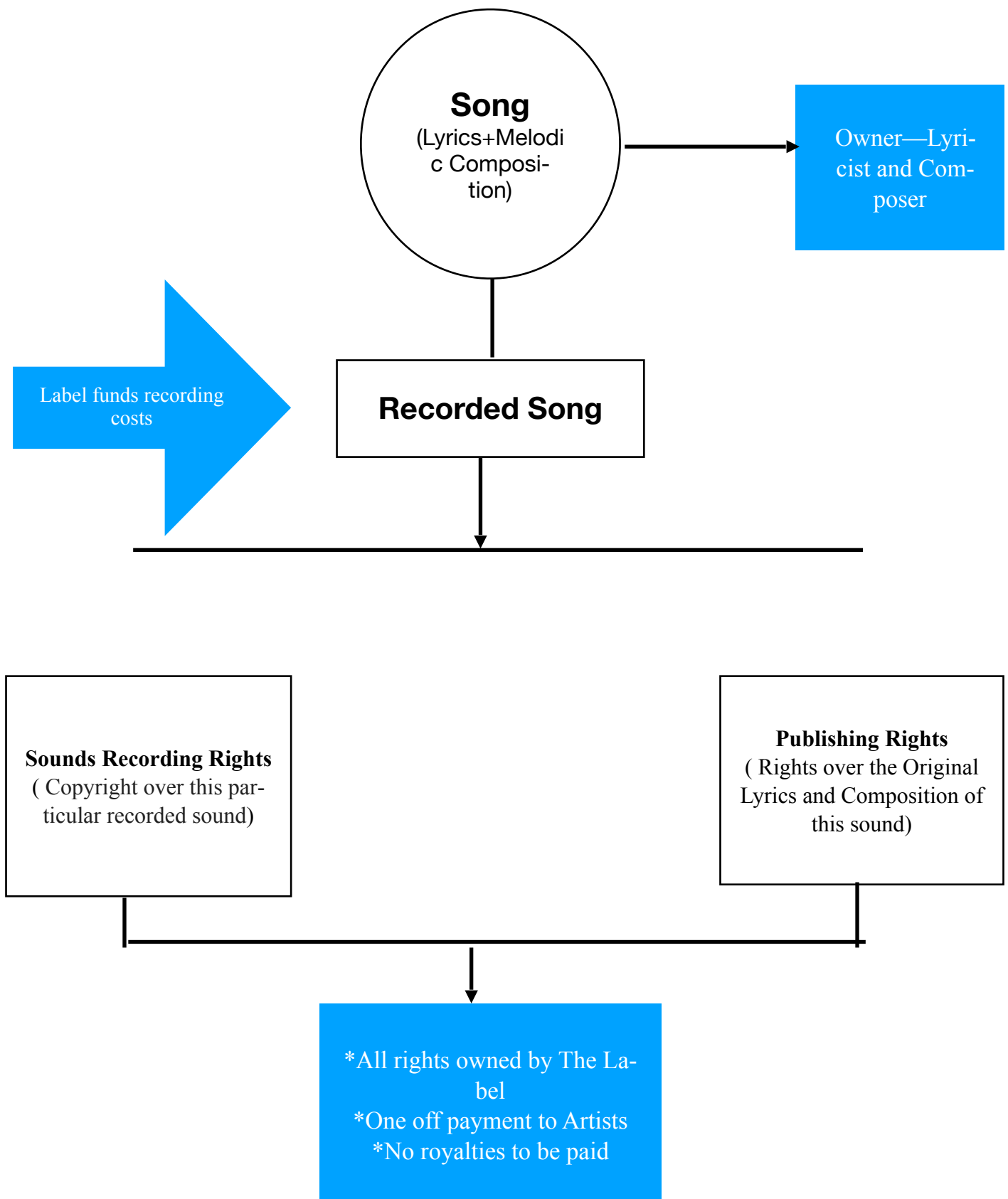


Diagram 2 Standard share of rights in **the music industry of Bangladesh**, when a song is recorded with a record label attached.



The Bangladeshi legislation refrains from clearly laying out such distinctions or providing any clear definition as to what musical works entail or who these rights should be owned by. Chapter 4 of the 2000³⁵⁶ Act which covers provisions regarding ownership of copyright and the right of owners, does not mention ownership of any form of musical work including sound recording, lyrics or composition. It only indicates that, the first owner of copyright, subject to the provisions of this Act, shall be the author of the work. In its subsection the provisions include dramatic, literary artistic work, commissioned work, speeches, government work etc with no mention of musical work. In doing so the statutory instrument empowers entities like record labels, publishers and other stakeholders in the transaction of music in the music business, to adopt such interpretation of the statutory language that is beneficial to them. The musicians or musical artists are unable to grab similar opportunities because of the inequality of bargaining positions between the parties which is often seen to affect them adversely.³⁵⁷

The UK statute also deems the author as the first owner but it elaborates on it, clearly identifying the owners of the rights. Copyright Designs and Patents Act 1988 (UK) states that, “The author of the work, that is the person who created the work, is the first owner of copyright in it. So, as regards to the music (a musical work), the composer would be first owner of copyright, and as regards to lyrics (a literary work), the writer would be the first owner.”³⁵⁸ It also specifies ownership of sound recording rights which will be discussed in the following section. The statutory language of the legislation of UK reflect clarity as to definition of elements, how they are related, first ownership of

³⁵⁶Copyright Act 2000, Chapter 4, Section 17 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁵⁷Interview Participant 15, (Dhaka, 9th Feb 2020)

³⁵⁸The Copyright Designs and Patents Act 1988 , <http://www.legislation.gov.uk/ukpga/1988/48/contents>

copyright and their scope. The UK legislation and other provisions protect rights that are generated when a song is written (lyrics: songwriters right), when a melody is composed to be sung with the lyrics (composer: songwriters rights), when this song is recorded (rights over recorded sound: which is exploited fully by the labels), when songs need to be printed and published, when someone other than the author wants to reproduce or remix or perform that song or use it in a video (publishing rights: Mechanical rights, performing rights and synchronisation rights respectively) etc. The legislation outlines who the original author of a creation is, the rights she holds, how these rights can be assigned or transferred for a given period of time, with the permission of the original owner, in exchange of revenues and royalties. The statutory instrument does not however provide a guideline as to how these rights ought to be distributed and which party ought to own what proportion.³⁵⁹ Although the UK legislation gives creators an inherent power of owning their IP upon inception, its wording does not quite assist creators in retaining their position of ownership when it comes to claiming their fair share while negotiating a contractual agreement for transaction of rights.

The definitions provided by the Bangladeshi legislation, provides scope to infer that rights over melodic composition is covered by the term 'musical work' though it is not clear on who the rights may be vested. Section 2 (11) of the 2000 Act³⁶⁰ defines 'work' within the scope of copyright, for different categories including music. It states, that work means any of the following works, namely literary, dramatic musical or artistic work, cinematograph film, sound recording and broadcasting. It subsequently explains in s 2(37)³⁶¹, that musical work refers work consisting of music and includes

³⁵⁹Nour Mohammad, *Intellectual Property Law in Bangladesh* (6th edn 2017, Five Jewels Publication 2012)

³⁶⁰ Copyright Act 2000, (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁶¹ibid

any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. It is surprising that the statutory language does not include words or lyrics to this definition. Through out the legislation, the term musical work and sound recording is mentioned in respect to various rights and obligations without any mention of how lyricists would be affected as a consequence. The statutory language remains ambiguous in this aspect as a result it is difficult to distinguish the owners or between certain rights, as displayed in the UK legislation.

Sound Recording Rights

Section 2(35) of the Copyright Act 2000 defines, sound recording as “a recording of sound that may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced”³⁶². Sound recording rights arise, when lyrics and melodic compositions are recorded for further diffusion of music. The ownership of this right draws complicated discussion on contract negotiation and industry practices, which will be elaborated on in the following volume regarding commercial music contracts. In this volume, this section expands on the previous discussion on sound recording rights as defined by the Bangladeshi and UK legislations, comparing and analysing the effectiveness of the provisions provided, in respect to rights and obligations associated with sound recording, with historical context. Change in social constructs and socio-economic environment has impacted the rights and nature of ownership of sound recording rights globally. However Bangladesh industry practices are still at odds with the global customs of right sharing, in its distribution of percentage of rights owned and shared amongst stakeholders. Until very recently,

³⁶²ibid

record labels were the only means via which an artist could record their songs.

Until the digital revolution, music recording was an expensive business and would only be undertaken by companies backed by substantial funding³⁶³. The recording equipments, editing panels, post production and mastering expertise and all the skilled labours associated with the production of the track, demanded big budgets considering the high cost of the technology and equipments involved. This also includes the relatively uncommon skills of the sound engineers, recordists and post production personals. In the absence of the current technology, artists had no choice but to work towards acquiring a label deal in order to be able to record their music³⁶⁴. This environment empowered the labels to enjoy a dominant demeanour in the industry where they are able influence industry practices, contractual negotiations and even IP policies.³⁶⁵ It can be argued that the labels' influence and standing can be reflected in the statutory wording of the copyright legislation of both Bangladesh and the UK. The provisions in the act puts the labels in an advantageous position compared to the original musical artists. It appears that, not only does the copyright laws display favouritism towards labels and producers (the financier of the productions), the doctrine of freedom of contract further allows the labels to use the contractual tool to exploit the gap in the copyright law to their own advantage. As Diagram 1 above demonstrates how sound recording rights is originated and is separate from rights over original composition and lyrics or publishing rights. The producer royalty is also sometimes paid out of performer's royalty, on the grounds that it is deemed as part of the 'recording costs' and should thus be covered by the artist and not the label. It could be argued that this is an indication that the stance of the legislation in the artists' control and strength of

³⁶³Daniel Nordgård, *The Music Business and Digital Impacts*, (Springer Cham 2018)

³⁶⁴ Ann Harrison, *Music: The Business* (7th edition, Ebury Publishing 2017)

³⁶⁵Chris Anderton, *Understanding the Music Industries* (first published 2013, Los Angeles : SAGE, 2013)

Both the UK and Bangladeshi legislations refrain from directly indicating who the owner of the sound recording rights should be, but analysis of the statutory instruments suggest that the sound recording rights are usually owned by the person funding the recording which traditionally indicated record labels. Though the 2000 Act indicates that, the first owner of copyright, shall be the author of the work, the act does not appear to offer such rights to authors, in regard to sound recording. It does not elaborate on the subject which allows for varied interpretations. In defining who an author is, the act further reveals the attitude and position of the legislators. Quoting s2(24)³⁶⁶ of the 2000 act, “Author means, regarding a literary or dramatic work, the author of the work; regarding a musical work, the composer; regarding a cinematograph film or a sound recording, the producer. According to s2 (25)³⁶⁷ “producer” regarding a cinematograph film or sound recording, means a person who takes the initiative with investment and responsibility for making the work. The 1988 UK act which the domestic legislation of Bangladesh draws from, reflects similar wording on sound recording rights and ownership. It states that, in regard to a sound recording, the author is the producer; a film, the authors are the producer and principal director.³⁶⁸ In relation to a sound recording or a film, the act describes ‘producer’ as the person by whom the arrangements necessary for the making of the sound recording or film are made.”³⁶⁹

³⁶⁶Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁶⁷ibid

³⁶⁸ Copyright, Designs and Patents Act 1988 (UK)

³⁶⁹ibid

The fact that the very definition of the term “author” in regard to sound recording is defined as a producer, lends itself to the argument that influences of big labels, corporate publishers and distributors could be involved as lobbyists. Such construction of laws and wording also suggest that there is a lack of representation from the music or academic community involved in research and development stage of the making music copyright bills and legal instruments. The legislative language can provide scope for inference to be made on legislative intent which suggests restraint when it comes to constitutionalising that such intrinsic rights of artistic or creative ownership should not be transferable or transacted for life. Ownership upon creation is a powerful concept that the UK legislation endorses. The fact that the right resides within the creator from inception reflects the legislative intent and approach over such creative rights. In support off the above analysis, it can be argued that the Bangladeshi legislation does not appear to share such stance.

The 2000 Act clearly states and differentiates between the rights for a musical work and a sound recording and outrightly hands the control over to the labels by stating that while the author and owner of a musical work may be the songwriter, the author and owner of the sound recording is the producer. Such definition reflects the attitude of the law makers and empower corporate labels and publishers to control the art, the artist and the business, as will be elaborated on the following volume. However this is true especially in the case of recorded sound. Rights associated with non recorded sound or sheet music reveal a relatively generous legislative approach, albeit contrary industry practices of Bangladesh . In Bangladesh when a record label is associated songwriters typically have to sign away all their rights, including publishing rights, to the label in exchange of the recording facilities and costs and a lump sum amount. Even after the recording costs were recovered the right is set to never revert back to the original musical artist allowing for the label to capitalise on those tracks in however way they want (assign it for a film, allow for it to be used on

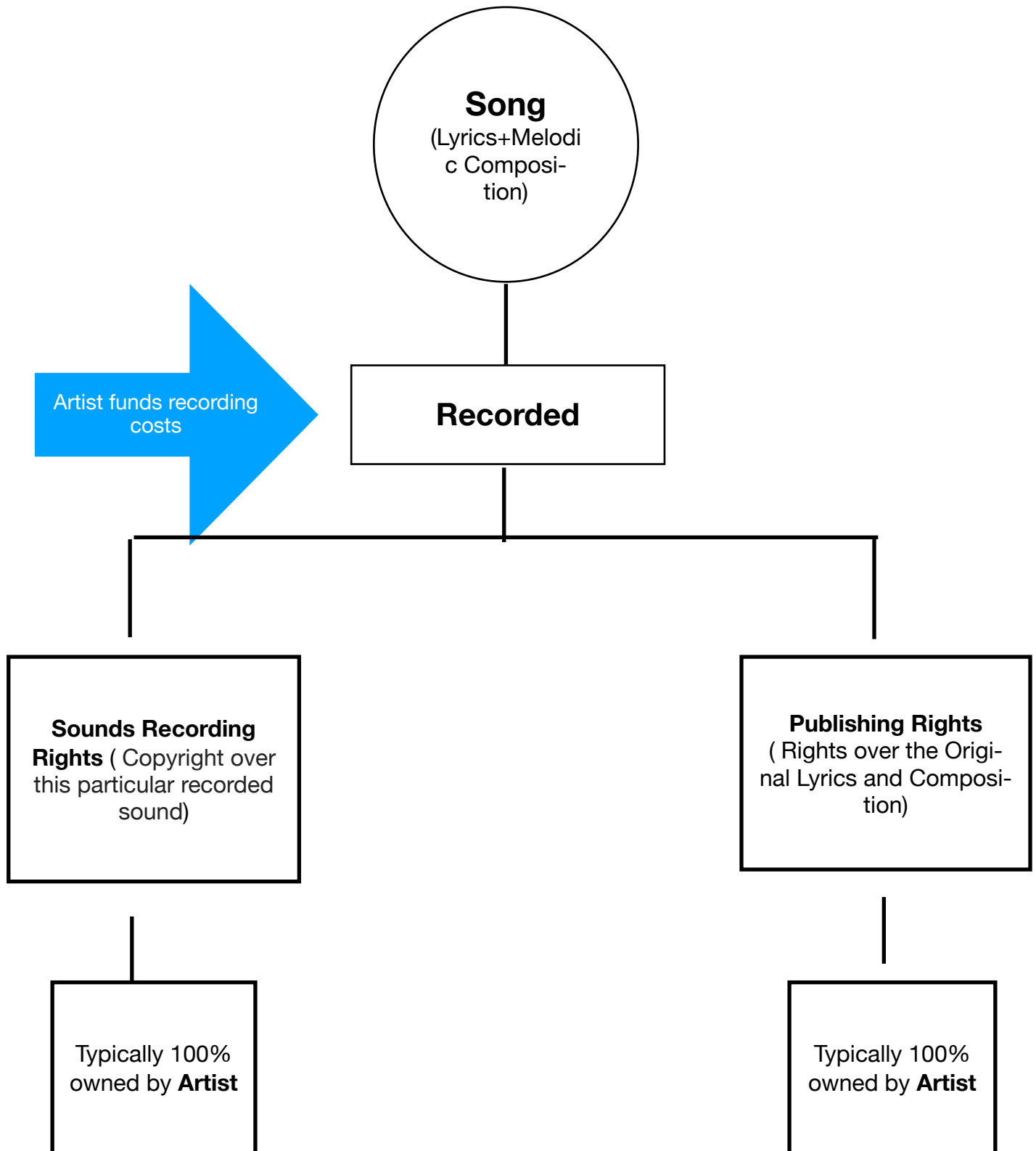
any video, decide who can cover this song, control mechanical rights etc, all of which generate revenue.). This continues for the entire period of the songs copyright which is 60 years from its publication in Bangladesh and 50 years for the UK.³⁷⁰

In order to release or publish a recorded sound (or the song), labels require control or ownership of the ‘master recording’ of a finished record. The statutes vest the ownership of the master recording right, to the producer of the sound recording by virtue of s2 (25)³⁷¹ of the 2000 Act, which bestows sound recording rights to producers. In cases where a record label or any other investor is not involved in the making of a sound recording, or where the recording has been made by the songwriter/artists herself, the master rights remain with the original author/songwriter (with performing rights share to the performing artist if separate). Diagram 3 bellow demonstrates the standard distribution of rights when a song is recorded by the music artists themselves without exterior funding or the involvement of a label. This holds true for all artists globally, until the rights are being signed off through commercial music contracts.

³⁷⁰Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]; Copyright, Designs and Patents Act 1988 (UK)

³⁷¹ibid

Diagram 3 - Standard share of rights in the music industry of Bangladesh and globally, in case of a song being self recorded by Artist.



Performer's Rights and Neighbouring Rights

Performer's rights are rights conferred on a music performer over the exploitation of his/her performance. While the Bangladeshi statute recognises performer's rights it does not translate to any economic gains since it is not related to any neighbouring rights as defined by the Rome convention 1961, rather than a moral right of being acknowledged. According to the legislative provisions in section 35 of the 2000 Act³⁷², performers' rights is defined as the following: "Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance". It is crucial that Bangladesh become signatory to the Rome Convention 1961 and recognise neighbouring rights of recording artists so that they can be compensated for the public performance of their recordings.

A performer's rights are included in neighbouring rights which are important sources of revenues for performers. Neighbouring Rights is a term that relates to the royalty earned from the public performance of a master recording.³⁷³ This is similar to the right that exists in the composition of musical works with the difference that copyright compensates the publisher and composers/writers of a song, while the neighbouring right compensates the master owner and the performers on a master recording when it is publicly performed or broadcast. The term "neighbouring" refers to the fact that these rights neighbour the compositional rights.³⁷⁴ According to the Rome Convention 1961, Where a phonogram published for commercial purposes gives rise to secondary uses (such as

³⁷²Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁷³Donald S Passman, All You Need to Know About the Music Business (Simon & Schuster, 9th Edition, 2015)

³⁷⁴William Krasilovsky. *This Business of Music* (New York: Billboard Publications. 7th ed., 1995)

broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application³⁷⁵. Sound recording owners (record labels and master rights owner) and performing artists are entitled to collect neighbouring rights.

In the context of neighbouring rights, public performances include music played in nightclubs, restaurants, and coffee shops, in addition to broadcasts on TV, Radio and streaming radio or anywhere that is not a private home. Public performance is the non-interactive broadcast of a master recording to an audience. This covers television broadcast and [radio](#) broadcast. Radio broadcast can be terrestrial radio or online radio. It also includes public performances which happen when your barber-shop, local pub or supermarket broadcast music within their premises. By this definition, streaming via the likes of Spotify does not fall under the Neighbouring Rights umbrella since they are an interactive service. In other words, the end-user can interact with the music by picking the song, skipping or rewinding.³⁷⁶ However neither Bangladesh nor the UK recognise such rights. Bangladesh is not a signatory of the Rome Convention and UK having enjoyed it throughout its time as a member state of the EU, finds itself in a conundrum post BREXIT. Since the UK is no longer a member state of the European Union, as a matter of international law, it can be assumed that UK does not recognise neighbouring rights³⁷⁷. However the government websites still state the following: “Performers’

³⁷⁵WIPO, ‘Summary of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)’ <https://www.wipo.int/treaties/en/ip/rome/summary_rome.html> accessed 2nd April 2023

³⁷⁶ibid

³⁷⁷LexisNexis Dispute Resolution Expert, ‘Rome Convention—introduction and interpretation’ (2022) <<https://www.lexisnexis.co.uk/legal/guidance/rome-convention-introduction-interpretation#:~:text=The%20UK%20is%20no%20longer,law%2C%20having%20left%20the%20EU>> accessed 2nd April 2023

rights can help to ensure that performers receive payment for their work. For example, when sound recordings of a performance are played in public, the performer should receive payment. This is also the case when sound recordings are made available to the public, for example, in a broadcast³⁷⁸.

Publishing Rights : Right in Sheet Music

For non recorded sound which includes composition and lyrics or sheet music, the 2000 Act (Bangladeshi copyright act) and the 1988 Act provides protection for 60 years and 70 years respectively from the end of the calendar year in which the last remaining author of the work dies, or the work is made available to the public, by authorised performance, broadcast, exhibition, etc. Sheet music³⁷⁹ can be in the forms of notations, symbols, chords, handwritten manuscripts of music etc, the rights of which always vests on the author until they assign or sell it. This produces sheet music which is protected by copyright of musical work, under the acts and is fully vested in the original songwriter. The bundle of rights associated with songwriting are known as music publishing rights³⁸⁰. A publishing royalty is public performance license and royalty payment are necessary whenever a song is played or performed "publicly" (outside of a private circle of family and friends). Public performance royalties are collected from multiple sources. These include: Radio

³⁷⁸Intellectual Property Office, 'Performers' Right' (2019) <<https://www.gov.uk/government/publications/performers-rights/performers-rights>>

³⁷⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554033/Copyright_Notice_Printed_Music.pdf <accessed 18.07.2019>

³⁸⁰Lionel Bently, Brad Sherman, *Intellectual Property Law*, (4th edition OUP Oxford 2014)

broadcasts, TV and film broadcasts, Bars/Clubs/Restaurants, Concert Venues, Streaming Services.

These are however rights that are not defined by statute but are rather terms acknowledged by the music industry. How these rights are distributed and the percentage of ownership determined, are based in practice as opposed to law, unlike that of the recording industry.³⁸¹

The implication of having sound recording and publishing as separate rights is that, a songwriter can license her song (lyrics and composition) to multiple recording artists. It also means that the songwriter will receive royalties for each sale or performance of the song, through the broadcast of the recording. The songwriter won't receive any royalties attributed to the master copyright of the sound recording. These will be claimed by the record label or the producer who funded the sound recording of the song. What the Bangladeshi legislation does provide for is a special right to authors which is defined in S78(1) of the 2000 Act as follows: "Notwithstanding that the author of a work may have assigned or relinquished the copyright in the work, he shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of any distortion, mutilation or other modification of the said work, or any other action in relation to the said work which would be prejudicial to his honour or reputation"³⁸².

The copyright laws do not govern, monitor, regulate or interfere in any way even when there is a serious history of infringement by the radio stations, broadcasters, tv stations etc in avoiding royalty payments in Bangladesh. Developed nations, such as the UK, are observed to have maintained strict implementations of copyright laws ensuring royalty payments and sanctioning breach. This creates a robust environment where royalty payments are a healthy practice and anyone intending to

³⁸¹David Byrne, *How Music Works* (first published 2012, Edinburgh : Canongate, 2012)

³⁸²Copyright Act 2000 (Bangladesh)

breach such practices are aware that their actions will have legal consequences. The law reflects the need of the society and sometimes it is also expected and required to forge and lead the way.

Interestingly enough, regardless of the variation in the nature ownership of rights in recorded sound or sheet music, the film industry and other commissioners of musical work in the Indian subcontinent have been known to engage contracts with artists which grants them exclusive rights of the songs they produce over both sound-recording and publishing. In Bangladesh publishing rights are taken away by record labels, from the songwriters via commercial music contracts which grants them exclusive ownership over both the recorded sound and the sheet music. This is perpetuated by the industry practices lead by corporate distributors, labels and publishers, at the expense of the artists' interest and is unsurprising owing to the severe lack of awareness amongst musical artists and songwriters in regard to their IP rights. Indian artists face similar difficulties. This is evident in the various news paper reporting by media journalists in India, who claimed that music companies of the Indian film industry, preclude songwriters from owning rights over their creation, commissioning the artists as employees for hire. Therefore there stands a long ongoing battle which arguably only succeeded in deciding in favour of the artists because of the unlikely existence of a writer/lyricist in the Indian parliament. This of course is not the case in other countries of the subcontinent.

Publishing Rights: Mechanical License

The bundle of rights held under the umbrella of publishing rights includes mechanical rights to reproduce. The songwriter (lyricist and composer) is the holder of mechanical rights and therefore the original right holder of mechanical license. Anyone other than the owner of the mechanical rights require a mechanical license to be issued by the right holder directly or by organisations who are authorised by the right holder to do so. Mechanical rights extend from a songwriters right in her

original composition/lyrics or in other words sheet music. This right comes into effect when a musical composition is in need of reproduction by anyone other than the author. In the UK³⁸³ mechanical rights are owed when music is copied as physical products, such as CDs and DVDs, digitally streamed or downloaded, used in TV, film or radio. The Copyright Designs & Patents Act, 1988 gives a copyright owner control of five restricted acts in relation to his/her copyright musical work. The 'mechanical right', as administered by MCPS, consists of two of these rights, the right to copy the work and to issue copies of the work in public. This means that every time a work is copied, or a copy is issued to the public, it translates to royalties generation from Mechanical licenses payable to the songwriter. When an artist decides to cover a copyrighted song or incorporate even a small section of a copyrighted composition or lyrics, a mechanical royalty must be paid in the form for every cd produced or every time it is streamed, downloaded, or reproduced in any digital or mechanical format.

Bangladesh music industry, in their copyright transactions do not recognise the term mechanical rights in practice or hold such rights as rights separate from sound recording rights. It can be argued that, such industry practices were able to develop and persist In Bangladesh, considering the statutory ambiguity in the copyright legislation, which refrains from clearly stating the nature or work that the copyright is extended over or whether these rights are separate from sound recording rights. Chapter 9, s(48) of the 2000 Act provides provisions for rights over licenses by owners of copyright. It states that, “The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the copyright by license signed by him or by his duly authorised agent.”³⁸⁴ The language is constructed in such a manner, that it does not

³⁸³Copyright, Designs and Patents Act 1988 (UK)

³⁸⁴Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

provide clarity on whether ‘the existing’ refers to rights over sheet music or sound recording rights.

This creates room for record labels, who in Bangladesh also act as a publisher, to interpret the legal instrument in a manner which allows optimum control over the IP. As will be discussed in detail in the following volume, the record labels in Bangladesh do not distinguish between the publishing and sound recording rights which allows them to obtain full control over the IP.

The statutory ambiguity revealed through the analysis of the legislation, seem to allow for such practices to perpetuate and the lack of legal rights awareness amongst musical artists contribute to such an environment significantly. However, when section 48 is read together with section 14 of the act, it can be derived that the mechanical rights are in fact vested in the original author of the musical work which sets mechanical right (under publishing rights) and sound recording rights apart. Chapter 3 of the act in defining the meaning of music copyright in s(14) includes the right to reproduce the work in any material form including the storing of it in any medium by electronic means.³⁸⁵ Though this can be deemed as a limited definition since it does not include digital reproduction or use in digital mediums like video games, adverts, commercial spaces etc, it indicates that ownership of rights to reproduce (mechanical rights) is held by the owner of the copyright of the musical work. In other words a critical analysis of the legislation can deliberate that there is in fact a distinction between rights over musical work and rights over sound recording, but in the absence of functional collecting societies or informed entities facilitating musicians like the UK’s Musicians Union, musical artists are unable to make out the difference in rights and therefore claim their ownership over rights or licenses.

According to international legal instruments and industry practices, a mechanical license pays roy-

³⁸⁵S(14) Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

ality to the copyright holder (owner) of the composition (song) . This is typically the composer or their publisher. However, mechanical rights can also be assigned, transferred or sold which changes ownership in exchange of revenues and royalties for the original owner. Therefore, it is essential for users to be able to identify the correct copyright holders before requesting to be issued licenses for mechanical copyrights, in the event of a song being reproduced. The Bangladeshi legislation dictates that licenses can be issued by the right holder herself or an authorised organisation such as a collecting society. Section (42) of the act covers provisions concerning the administration of rights by copyright society, stating that, “a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licenses or collection of license fees or both; Subject to such conditions as may be prescribed, a copyright society may issue licenses under section 48 in respect of any rights under this Act”.³⁸⁶ The country had its first collecting society registered under the act in 2014, called the Bangladesh Lyricist, Composers and Performers Society (BLCPS), which had supposedly only come into operation in September 2020.³⁸⁷ Therefore it the music community including the labels have not been accustomed to benefits and services provided by an entity like a collecting society. The participants from all the categories that have been interviewed for this research, have unanimously attested to this and expressed their frustration over the government's non-interference regarding the matter. They claimed that the legal authority ought to have withdrawn the License of BLCPS or initiate an audit since the collecting society had failed to commence operation and had not shown any progress until March 2020 when the interviews were conducted. Their claims can be deemed justified considering that they are aligned with the requirements of the 2000 Act which in its 8th chapter elaborates on the provisions regarding copyright so-

³⁸⁶S(42) Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

³⁸⁷Desk report, BLCPS starts registration to protect artistes' intellectual property rights (2020) <<https://www.thedailystar.net/arts-entertainment/news/blcps-starts-registration-protect-artistes-intellectual-property-rights-1949561>> accessed 23 Sep 2020

cieties (this shall be explored in detail in the section regarding collecting society below).

The Mechanical Copyright Protection Society or MCPS works in alliance with PRS for Music in the UK in administering mechanical rights, issuing licenses for reproduction and collecting and distributing royalties earned. In order for any physical reproduction of music to take place, by law, the manufacturer must be provided with a mechanical license which is generally issued by the MCPS in the UK. Fees vary depending on the type of license required, which in turn is determined by the need of the user. For instance, licenses can be required for, use of music in computer games or promotional products, in (eg jukeboxes) business locations for the purpose of playing to members of the public, to be played as background music to an exhibition etc. Where mechanical royalties in physical products are dealt with solely by the MCPS, for digital usage, the royalties are split between the MCPS and the PRS, who together make up PRS For Music. This can simplify the process of acquiring this royalty or even issuing the License for reproduction but the varying amount in the fees set for mechanical license can sometimes prove to be detrimental to musicians and performers trying to cover or recreate an old song for various purposes. For instance, according to the MCPS licensing scheme SG4, which provides fee structure for licenses under this scheme, a licensee would have to pay £250 per 30second unit per annum for covering a song in small public exhibition, even if it is for educational purposes and a non paying audience. For a medium or large exhibition including fee paying audience the amount is above £1400 per 30seconds which obviously will not cover an entire song.³⁸⁸

It is important to strike a balance between the need to compensate the songwriter and the need for other musicians to be able to cover those songs, in setting a mechanical license rate. The usage of a

³⁸⁸Annex 1 (MCPS license scheme for public exhibition)

song, part of a composition or even a chorus, by films, musicians or bloggers could increase the popularity of the song and in occasion had proven to have created new audience for an old song. In other instances, performance of old music and remixing it with new beats have in many ways revived old genres of music. A song can be covered for various reasons, for what the song is saying, for the musical vibe it creates for its iconic hook line and sometimes creating a new song doesn't have the same impact as certain existing songs because of their situational, nostalgic values that are specific to those songs. This is demonstrated below, in a brief case study surrounding similar factors and have been documented during the qualitative fieldwork carried out for this research.

In 2019, the prolific British Indian (west bengali) musician and activist, Moushumi Bhowmik, had been asked to sing, a famous S D Burman song, for a video installation that a photographer and an artist from Plymouth in the UK was creating. The exhibition opened at the Plymouth College of Art gallery in 2020 and was likely to tour. It was envisaged and have been executed as a free, community project. Bhowmik and some other artists, archaeologists, historians etc. have thought of this as an exhibition with found objects, memories, sound and images on the theme of lost homeland, forced voyages and shipwrecks. Plymouth being an old port is also connected with the history of slavery. The Burman song she selected had lyrical, nostalgic and melodic values that uniquely and effectively embodies the subject of their exhibition. This is an important requirement that is fulfilled by the creation of a song, albeit the specific lyrical or melodic intentions in hold. The beauty lies in the interpretation of the audience and future musicians who are inspired to carry the song forward by extending the definition of its purpose beyond consumption for entertainment and including varied purposes like education, activist etc. This is considered as one of the crucial roles of music or of any art for that matter.

By creating copyright provisions that have no involvement in the regulation of such schemes set by collecting societies and run by publishers association, it is precluding the song from serving this purpose. It makes the song unaffordable to artists eager to perform it and renders it counter-efficient for a piece of legislation, trying to protect musicians' rights. To most Bengalis and Indians, S D Burman songs have profound significance irreplaceable by any new compositions no matter how well crafted. Therefore, faced with the massive mechanical license fee obligations (a total of more than £2000 for a song of approx 4minutes according to the MCPS rate and more if posted on social media) Bhowmik was forced to write her own song for the event. In an interview she said:

*“This is the system that controls our lives. I wonder what SD Burman would make of such a world. I also wonder where Sachin Deb's own song comes from? Of course they come from the master artiste that he was. But the imagery, the melody, the idioms, the form--who should also be credited for a composition like 'Ke jash re'? Aren't these ideas of songs we draw from the well of folk knowledge and creativity? This project on shipwrecks has stood me again in front of the mirror. I watch our wrecked lives scattered on its waters. Sinking. Drowning. Perhaps I will write my own song and sing. The only way to live now.”*³⁸⁹

In revealing her frustration she points out that much of S D Burman's songs were themselves inspired by or drawn from folk knowledge, where there is no copyright restrictions. In support of her argument the circumstances indicate that the fluidity of creation is a crucial element that needs to be nurtured. She emphasised in her interview that, new musicians must create new sound but all future is founded in the past therefore old virtues and principles and techniques must be embraced and mastered in order to evolve into new age musicians, in the same way it is necessary for older gener-

³⁸⁹ Interview with Moushumi Bhowmik on July 2, 2019, London.

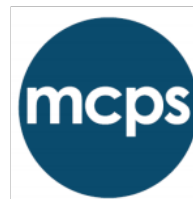
ation of musicians to embrace new technology, ideas and collaboration in global genres to survive and thrive. Britta Lange a cultural historian had written that, a song in an archive is a dead thing and it is only through our listening that we give it life³⁹⁰. The Bhowmik case demonstrates the need for songs to be re-sung by artists other than the creator and thereby giving life to a song which has not been in contemporary memory. By that analogy my theses is that, once a song is created, it has two broad non economic purpose: First is to be heard and the second is to be sung/performed. When a song is archived after only being consumed for a small span of time post released, it can be deemed redundant, unless the sound is resurrected through performance and further listening. The research proposes that this is an important factor to be taken into account in setting license fee rates and royalty rates. Diagram 4 Bellow is the License fee structure for music used as part of exhibition, indicating royalty rate by MCPS³⁹¹.

³⁹⁰Britta Lange, 'Archival Silences as Historical Sources' (2017) <10.7146/se.v7i3.105232> accessed 28 Sep 2020

³⁹¹<https://www.prsformusic.com/licences/releasing-music-products/public-exhibitions>

DIAGRAM 4 : MCPS LICENSING SCHEME STRUCTURE FOR PUBLIC EXHIBITIONS

Information relating to MCPS
Licensing Scheme SG4
(Public Exhibitions)



Subject to contract

Scope and type of uses covered

- Licensees economically resident in the UK, exhibitions within the EU.
- Covers the recording of musical works for playing to members of the public as background music to visual displays that are part of an exhibition within the premises of an exhibition Venue.
- Examples include: Museum displays featuring audio or audio-visual content as part of the display; Audio guides for museum exhibits; musically themed exhibitions.

Royalty rate structure

Licences under this scheme will be issued on an annual basis and licence fees will be charged as per the table provided below:

Small Exhibitions - Under 100,000 visitors per annum	
Non Paying Audiences	£250 per 30 second unit per annum
Fee Paying Audiences	£350 per 30 second unit per annum
Medium Exhibitions - Between 100,000 and 750,000 visitors per annum	
Non Paying Audiences	£500 per 30 second unit per annum
Fee Paying Audiences	£700 per 30 second unit per annum
Large Exhibitions - Over 750,000 visitors per annum	
Non Paying Audiences	£1000 per 30 second unit per annum
Fee Paying Audiences	£1400 per 30 second unit per annum

Licence Restrictions

Audio-visual recordings will be permitted only if the visual elements are restricted to music videos, live performance footage, artist related images or footage relating directly to the featured music. In all cases, exhibits that are obscene, defamatory, insulting or prejudicial to the writer of, or a performer associated with, any featured work will be excluded.

The United States addressed this issue by creating a statutory rate for mechanical licenses. In 1909 when mechanical royalties were first created, music publishers controlled the music industry. The US Congress had subsequently stepped in to regulate the rights via the 1909 Copyright Act and created the government regulation of mechanical royalty owed to songwriters and music publishers for the *reproduction and distribution* of their songs. A statutory rate of 9.1 cents per composition or 1.75 cents per minute for song for 5mins, has been set for physical and permanent downloads, where as the mechanical streaming rate is about \$0.06 per 100 streams, or \$0.0006 per stream.³⁹² For the next five years (from 2018 – 2022) the per-stream royalty rate for mechanical royalties is said to increase incrementally from the current 10.5% of Gross revenue to 15.1% of Gross revenue. Under the new model, by 2022, the 10.5% will increase to 15.1%.

Publishing Right: Synchronisation license

According to the industry praxis a synchronisation license is required to grant rights to the owner of the License to sync musical composition in audio-visual productions such as video, motion picture, television program etc. In other words, when a piece of musical work is required to be synced to any form of visuals, synchronisation rights arise and therefore the need for a sync license. Like most publishing rights, the ownership of synchronisation rights or sync rights of original composition are vested in the author/songwriter of the work. Therefore the songwriter has the agency to decide whether to share this with a publisher, deliberate on which sync deals would be beneficial for

³⁹²Mechanical Royalties Guide (2019) <<https://www.royaltyexchange.com/blog/mechanical-royalties#sthash.iHn8Tu6W.dpbs>> accessed 12 September 2019

the musical work or authorise organisations like MCPS to handle publishing details. In terms of sound recording rights, which is typically being owned by the labels, a different license is granted for synchronisation or mechanical rights called the “master license”. This grants the licensee the same benefits acquired from mechanical and sync licenses for sheet music but for a recorded song. Fees may vary according to, how the song is used, e.g. background music, theme song; where it will be played e.g. TV network, youtube; how many people will hear it: e.g. at regular sporting events; type of media using the song e.g. independent film, Hollywood movie; song writer’s experience.

The Bangladeshi legislation does not mention the term synchronisation right or license or indicate clearly what such rights may entail. In the context of particulars to be included in sound recordings and video films, it however mentions in s(73) that necessary license from the owner of the copyright in any work for making a video film must be obtained by any person wanting to publish a video. This can suggest some form of statutory rights pertaining to sync license but does not indicate who the owner ought to be. The position of the country’s legal landscape in terms of the sync licenses is the same as all other publishing rights licenses, as discussed above. Without a functioning copyright society, the industry praxis dictates how these rights are transacted and whether they will be considered as separate rights to begin with. As will be discussed in the following volume, the record labels include all publishing rights as a bundle and attach them with sound recording rights, enabling them to take exclusive control over the entire host of rights, through commercial contracts with artists. Considering that neither parties are well versed or educated in the area of copyright obligations and benefits, it contributes in creating a complicated cultural and business environment in Bangladesh that is detrimental for both the musical community and the music business industry.

The right to synchronise music into films, TV programmes, adverts and computer games can be a

valuable addition to revenue streams. 'Sync rights' can also generate publicity and raise an artist's profile.³⁹³ Landing a lucrative sync deal can prove to be a game changer leading to considerable success and revenue income for a musical artist. Music publishers can play pivotal roles and are specialised in finding the apt sync for songwriters. Most clients looking for a song to feature in their video find it hard to contact the original owner to negotiate for a License. In the UK, according to industry praxis, they usually approach the publisher attached to the artist who facilitate the business, provide support, negotiate on the artist's behalf and explore new channels and opportunities. This is why finding a good publisher is vital for a musician especially in contemporary times, when it can be detrimental, distracting and ineffective for an artist to play the role of both the creator and the publisher with such a wide range of scopes to explore, even if one can manage home recording and avoid a recording deal. When royalties are received from the collecting societies (MCPS for the UK, BMI, etc for the USA) they are divided between the songwriter and the publisher as agreed. (This is explored in detail in the following volume on “ Commercial music Contract”).

There are musicians unions in various parts of the world which, when effective, can make a substantial difference in aiding the musical community and create a united front against labels and publishers. Part of the infra-structural deficit in Bangladesh that, the research refers to, includes such organisations including collecting societies. The country can draw from the operations of such organisations abroad in creating a structure that can provide similar benefits and services to the musical community. The Musicians Union or the MU is a large community of musicians in the UK, which protects and supports its members. There has been a radical increase in the number of sync agencies exclusively committed in brokering relationships and deals between artists and brands. With its various resources it can facilitate negotiation of sync deal and achieve appropriate terms for

³⁹³Musician Union, 'Specimen Sync Licences' <https://www.musiciansunion.org.uk/Home/Advice/Recording-Broadcasting/Bands-Artists/Synchronisation-Rights-Licensing>

the use of the musician work on behalf of its members.

The MU for instance, provides template licences that cover the territory (UK-only, worldwide, etc), the term (the length of the Licensed period) and the media (television, cinema, online, etc). In working towards a fair and just music industry the union provides a vast number of services to its members including an hour of free legal advice on every new contract. A CAS scheme can be used to apply for the services for any new agreement like a recording contract with a label or a publishing contract. The MU office may also be able to authorise a legal firm to undertake further work if needed without a charge. This is deemed to be of enormous help to regular musicians familiar with the legal language and trappings, who may be vulnerable to unfair contract. Therefore having an organisation like the musicians union can be an immensely helpful to the musical community and an inspiration to jurisdictions lacking such unions like Bangladesh.

Therefore, In Bangladesh, an intelligent move on the artists' part would be to negotiate to retain their publishing rights when entering into any recording contract or publishing contract. This essentially mean that while the labels keep the copyright of the sound recording they paid for, spanning the entirety of its copyright term, the songwriting rights (composer and lyricists right) which is derived from sheet music, is vested in the artists unless assigned away through contracts. Retaining publishing rights allows the artist to control the bundle of rights under this umbrella, including mechanical rights and sync rights, resulting in increased revenue and a just control over creative reproduction and alteration.³⁹⁴

³⁹⁴Ann Harrison, *Music: The Business* (7th edn, London : Virgin Digital 2017)

License to Perform Live or Play Recorded Sound

In order to play live or recorded sound in public, the venue or authorities are required by law to acquire license which would compensate the copyright holders. The various venues include, public space, places of business (including background music on a CD, radio or music channel), live music events in public (for example, a concert or festival). Compensation also includes revenues from playing of live or recorded music in a theatre and from sound recordings in a theatrical production (including on-stage and off-stage effects). The UK government guidance site on IP explains such details with further examples of public places where music cannot be played without a license. This indicates effort on the governments part in spreading awareness and guidance in support of its legislations that explains the legal provisions in effect when applied in relation to the music industry and all associated stakeholders. Although the Bangladeshi legislation provides similar rights to copyright holders, but does not mention requirement for license to be acquired for playing live or recorded music in public. Unlike the UK the Bangladeshi IP regime does not provide any government guidance on the practices of the music industry should or provide explanations that go beyond that of the legislation.³⁹⁵ For instance the UK government guidance site provides a list of venues which would require a Licence in order to play live or recorded music in public, which includes shops, offices and factories, hairdressers and beauty salons, cinemas and theatres, hotels and guesthouses, restaurants and cafes, pubs, bars and nightclubs, sports grounds and other sporting facilities (such as bowling alleys), gyms and other health facilities, bingo halls and casinos, social clubs and members' clubs, churches and halls and public transport.³⁹⁶ The research argues that, Bangladesh could draw from such structural management approach in creating awareness and spreading useful information

³⁹⁵Government Guidance, 'Get a Licence to play live or recorded music' <<https://www.gov.uk/licence-to-play-live-or-recorded-music>>

³⁹⁶ibid

that could influence customs and traditions within the music industry.

The Advantages of Live Music V Recorded Music

The advantages of having a sound infra-structure for license management and royalty collection can be seen in both the live and recorded music industry. Michaels states, *"We have all the data on live music at the PRS because we license all live performances around the country, so we're able to put a number on how much live music is worth. By scaling up, factoring in VAT, adding the booking fee, we came to a number of £904m [for live music]. So then it came to looking at how much the recorded music industry is worth ... and in 2008 it came in at £896m"*³⁹⁷.

This shift was well on its way with international piracy³⁹⁸ costing the recording industry 4 billion pounds annually (according to the International Federation of Phonographic Industry). With the introduction of the Internet and digitalisation of music, it is extremely difficult if not impossible to trace information with any hope of bringing illegal downloading, home recording and internet file-sharing under control. The label "piracy" used consistently by the industry, to signify copyright infringement indicates their attitude towards this "immorally and politically loaded term"³⁹⁹ suggesting criminal activity and illegality. Therefore, as discussed in different instances above, live music had become the critical source of income for most, especially grass root musicians. The £896m revenue from the recording industry is simply a digit, closer to that of the amount of the live music revenue, since money earned by a single accomplished artist can raise the average significantly as

³⁹⁷Sean Michaels, "UK Live Music More Profitable Than Record Sales" (*the Guardian*, 2009) <<https://www.theguardian.com/music/2009/mar/17/live-music-out-performs-record-sales>> accessed 15 January 2016.

³⁹⁸*A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001)

³⁹⁹Richards Haynes (n 61)

opposed to the accumulation of small amounts building up to £904m in live music, the division of which is in fact a shared amount within band members and an individual income that is shamefully low. Despite this, the live music industry has surpassed the recording sales. It is the festivals and live music venues, pubs, clubs and theatres where musicians now primarily aim to earn their living from.

The number of festivals grew to 272 in 2011⁴⁰⁰ and generated very high revenue for the industry but this did not mean increased income for individual artists. Bands with experienced and passionate musicians are known to make as little as 40 pounds per member, for a live set, playing in venues in central London like the Forge in Camden. The Musician's Union (MU) has launched its Fair Play guide a few years ago which provides emerging artists with advice on steering their way through deals, competitions, showcasing events etc⁴⁰¹. Sheena Macdonald from the MU claims that these unsigned new artists tend to be victimised largely and this appears to be the reality of live musical performers in general. Setting up a minimum wage limit for musicians could essentially be a solution, which is exactly what the MU aimed to establish in 2014 (The new musicians union 2014 musician rate- Casual engagements for groups performing in pubs and clubs of up to 3 hours: £111). However this rate only tends to provide an example as to what should be paid as opposed to what musicians realistically earn. There is no real legal enforcement or interference ensuring the usage of the set limit. There are simply too many musicians and therefore too many options for venues and festivals to bargain with and if one refuses to comply, there is long list of musicians waiting to re-

⁴⁰⁰Robert Ashcroft, *Adding Up The UK Music Industry 2011* (PRSforMusic 2011) <<https://www.prsformusic.com/aboutus/corporateresources/reportsandpublications/addinguptheindustry2011/Documents/Economic%20Insight%2011%20Dec.pdf>> accessed 15 January 2016.

⁴⁰¹Sheena Macdonald, "The Musicians' Union Fair Play Venues Scheme – Sheena Macdonald |" (*Livemusicexchange.org*, 2015) <<http://livemusicexchange.org/blog/the-musicians-union-fair-play-venues-scheme-sheena-macdonald>> accessed 15 January 2016

Commissioned Work: Comparative study with Indian IP laws

In case of musical work commissioned by another, (usually a production house or an organisation) the first ownership of the copyright always vests in the person or organisation who created the work and not in the commissioner, unless agreed otherwise in writing.⁴⁰² This is the norm followed by most international legislations including the UK copyright laws. However in situations where the issue of ownership have not been dealt with in the contract for commissioned work, UK courts have been inclined to find that there was an implied license that would enable the commissioner to use the work for the purpose for which it was commissioned.⁴⁰³ It only grants the commissioner access to the work for a limited non-exclusive license and not a transfer of ownership. This demonstrates the importance of establishing who owns individual copyrights through a contract. The scenario appears to be quite different in India and Bangladesh according to copyright laws and industry practices. Vesting authors of commissioned musical work with ownership over the work they were hired to create positions authors in commercially stable position.

In India, the long standing practice by music producers for films to opt the “work-for-hire” clauses enabled by the provisions of Section 17, had made any artists’ rights over commissioned work largely ephemeral⁴⁰⁴. Section 17 (c) of the Indian copyright Act specifies that, “ Where the author is

⁴⁰²Government Guidance, Ownership of copyright works <<https://www.gov.uk/guidance/ownership-of-copyright-works#commissioned-works>> accessed 15 June 2019

⁴⁰³<https://www.gov.uk/guidance/ownership-of-copyright-works>

⁴⁰⁴Gregory Booth, Copyright Law and the Changing Economic Value of Popular Music in India [2015]

employed under contract or apprenticeship, the employer shall be first owner of the copyright”⁴⁰⁵.

The composers and lyricists who produced India’s popular film songs were invariably employed under contract to the producer of the film for which those songs were composed. Film producers were therefore the first owners of film songs⁴⁰⁶. However, in 2010 a ground breaking decision by the Indian parliamentary standing committee, in favour of the writer/lyricist and parliamentarian Javed Akhtar, held that composers and lyricists of a musical work will be able to retain their rights for commissioned work carried out for a film. This is considered a colossal triumph for the musical community in India which could prove to be an influence on the Bangladeshi copyright regime. This can be inferred given the country’s shared geo-political and cultural history with India and the fact that Bangladesh have been known to echo many policies of its neighbouring government. Javed Akhtar, the prolific writer and lyricist, also held a seat at the Indian parliament at the time. His compelling speech persuaded the entire house to voted in favour of the songwriters which led to changes in the 2012 Copyright Bill, containing the above amendment.

This is a landmark judgment for songwriters generally but for India the implications would be much larger. The North Indian Film industry otherwise known as Bollywood is the largest employer of songwriters and musicians in India, 80% of the country’s music revenue reportedly generated by soundtracks for Bollywood films.⁴⁰⁷ As of 2014, the largest Indian music record label is T-Series with up to 35% share of the Indian market, followed by Sony Music India (the largest foreign-owned label) with up to 25% share, and then Zee Music (which has a partnership with Sony).

⁴⁰⁵Indian Copyright Act 1957

⁴⁰⁶Gregory Booth, Copyright Law and the Changing Economic Value of Popular Music in India [2015]

⁴⁰⁷Dmitry Pastukhov, ‘Indian Music Industry Analysis: Streaming, Live Industry, Bollywood, 2020 Trends, and More’ (2019) <<https://soundcharts.com/blog/india-music-market-overview>> accessed 24Sep 2020

All three of these companies had begun their journey producing music for films barring a small percentage of music produced for individual albums outside of films.⁴⁰⁸ It has a long standing practice in the Indian film industry to employ authors and composers on a work-for-hire basis in exchange of a one-time fee. The lyricists and composers had to sign away the royalty rights for their music and songs to the producers by virtue of a mandatory clause in their contract.⁴⁰⁹ The historic Copyright Act (Amendment) Bill, 2012, replacing the earlier system, declares authors or song creators as the owners of the copyright, which cannot be assigned to producers. This overturned a judgement made by the Supreme Court in 1977⁴¹⁰. In reply to the adverse reaction from producers and labels raising concerns that monetising music and making films would become difficult, Javed Akhtar said:

“This is not true. I feel some vested interests are misinforming the producers. Besides copyright is not one right but a bouquet of rights. There are sound recording, publishing and performing rights. The producer is already getting 50% and from the other 50% he also gets the sound recording rights and publishing rights which totals up to 75%. It is from the 25% that is left that a lyricist and composer get 12.5% each. Is this an unfair deal to the producers? And will losing 12.5% to us affect the business of filmmaking? That’s ridiculous.”

Acknowledging the producers’ take on the fact that movie songs involve team work, Javed Akhtar

⁴⁰⁸Urvi Malvania, ‘Sony Music eyes numero uno position in India’ (2014) (https://www.business-standard.com/article/companies/sony-music-eyes-numero-uno-position-in-india-114042100807_1.html) accessed 24 Sep 2020

⁴⁰⁹ibid

⁴¹⁰Judgement : the ownership of all underlying works in a movie was vested with the film producer unless a contract provided otherwise. See Desk report, ‘Amendment Will Protect Writer, Composers: Javed Akhtar’ (2010) <<https://timesofindia.indiatimes.com/india/Amendment-will-protect-writers-composers-Javed-Akhtar/articleshow/7090479.cms>> accessed 15 Nov 2019

“If Mr Yash Chopra (head of the biggest film production house in India, Yash Raj Films) thinks we writer and composers are team members, why can't he give us our 12.5%? We are not taking away anybody's copyright. All we have asked for is a bar on assigning out rights to producers and music companies which have been forcing us to surrender them for years together and making crores if rupees by selling them on various platforms.”⁴¹¹

The Indian Parliament's declared that composers and lyricists will have partial rights on commissioned work and that these works will not be considered as fully commissioned. Sections 18 and 19 of the amended Act spelled out a new set of authors' rights which are defined as non-assignable. Section 19, sub-section 9, set out these new key provisions: “No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall”⁴¹². The subsequent sub-section provides that authors involved in the production of non-film recordings retain the right to claim an equal share of the royalties for any use of their work whatsoever⁴¹³.

This created a much stronger protection for the Indian artists (at least on a statutory level) than provided by the UK legislation which still allows for commissioned work to be owned by producers

⁴¹¹Desk report, ‘Amendment Will Protect Writer, Composers: Javed Akhter’ (2010) <<https://timesofindia.indiatimes.com/india/Amendment-will-protect-writers-composers-Javed-Akhtar/articleshow/7090479.cms>> accessed 15 Nov 2019

⁴¹²The Copyright (Amendment) Act 2012 (India)

⁴¹³Gregory Booth, Copyright Law and the Changing Economic Value of Popular Music in India [2015]

if agreed to be assigned or sold, in writing, as opposed to India which leaves no room for alteration through contract. Such legal provisions put the artists back in an unequal bargaining position during contractual negotiations where producers are free to set their terms which doctrine of freedom of contract has provisions for. The amended Indian copyright bill left no room for sole ownership via any contractual instruments and clearly states that the authors rights cannot be fully assigned or transferred. The consequences of this amendment was observed in 2018 when music when music composers and lyricists registered with IPRS (Indian PRS) received Rs 13 crore in largest royalty payout in the history of Indian music industry.⁴¹⁴ The amendment also changed the licensing provisions so that authors and composers could claim some share of the royalties resulting from the

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commercial exploitation of their work (Section 37). In his parliamentary speech, Javed Akhtar

noted that the standard contract signed by authors as employees of film producers include clauses that assigned, “all rights whatsoever, in any form now and in future” to the producer. His rhetorically comment on the matter, “If this isn’t bonded labor, then what is it?” portrays the brutal reality that the artists face in reality..

While this is inspiring, it clearly is not the case with Bangladesh, which is far behind in terms of basic infra-structure and administrative management of the music industry both culturally and legally. Its industry practices are however similar when it comes to commissioned work where composers, lyricists or performers sign away all their rights to the film producers and are commissioned in the basis of work for hire in exchange of a one off fee. This is also supported by the legislation

⁴¹⁴[Bella Jaisinghani](https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/music-composers-lyricists-receive-rs-13-crore-in-largest-royalty-payout/articleshow/63886673.cms), ‘Music composers, lyricists receive Rs 13 crore in largest royalty payout’ (2018) <<https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/music-composers-lyricists-receive-rs-13-crore-in-largest-royalty-payout/articleshow/63886673.cms>>

which regards producers as owners of copyright as discussed in the above sub sections. In order for Bangladesh to follow the footsteps of India in providing such protection to songwriters it must first educate itself and raise awareness as to the various rights and obligations and the distinction between them. The judgement above refers to writers' and composers' rights which are rights over sheet music or publishing rights. The Bangladeshi music industry is yet to recognise publishing and a sound recording rights as separate rights. Bangladeshis band associations and various other musical associations claim to have been fighting to incorporate these rights in commissioned work, in the new Copyright Bill of Bangladesh. This can be difficult since there exists large pressure groups of corporations and film producers lobbying against such rights considering that it would mean reduced profit for them.

Collecting Societies: A First for Bangladesh

Collecting societies are non-profit organisations who manage rights for the owner of the IP and undertake tedious administration work involved, in exchange for a fee. On signing up with a collecting society, the owner of the rights essentially empower the collecting societies, to enforce their rights, issue non-exclusive licences to use their work, collect and distribute royalties, arrange for other collecting societies (for instance, in other countries) to collect their royalties"⁴¹⁵. The main music royalty collecting societies and licensing organisations, which extends their jurisdictions in about a 100 countries including the UK are:

⁴¹⁵ Daniel Nordgård, *The Music Business and Digital Impacts*, (Springer Cham 2018)

1. The Performing Rights Society (PRS for music).
2. Phonographic Performance Limited (PPL).
3. The Mechanical Copyright Protection Society (MCPS, part of PRS for Music).

When a song is published, royalties can be generated from various sources which are collecting by these societies. In effect, PRS collects and distributes royalties to music creators when their music is performed or played in public and pays royalties to members when performed in public (live or recorded), streamed or broadcast on TV and radio. MCPS collected and distributes royalties for licenses it issues, for reproduction in a mechanical format, including CD, audio-visual media or when used online, when music is streamed, downloaded or used in TV, film or radio. For public performance of recorded sound PPL collects and distributes royalties to the owner of the master copyright of the sound recording. Royalty payments have risen since the 1900s globally, according to recent tracking of performing rights revenue, owing to the increased number of broadcasting licenses and abundance of satellite and cable channels. The PRS collected 283.2m pounds in 2003, 242.5 of which were redistributed to its members .⁴¹⁶

Collection from digital streaming services like Spotify, YouTube, Rhapsody etc, can be as negligible as between 0.006 to 0.0084 pounds per play. This need to be considered keeping in mind that the per-play figure is dependant on the number of users the service has.⁴¹⁷ YouTube nevertheless can be useful for artists since it shows the number of views and therefore the general desirability of their work which can be used to gain further work as opposed to Spotify. The only likes of these

⁴¹⁶Ibid

⁴¹⁷Stuart Dredge, "How Much Do Musicians Really Make From Spotify, iTunes And Youtube?" (*the Guardian*, 2015) <<http://www.theguardian.com/technology/2015/apr/03/how-much-musicians-make-spotify-itunes-youtube>> accessed 15 January 2016.

that pay respectable percentage of the profit of sales to the artists is the iTunes store. Other sources from which royalties for public performances for recorded sound can be collected are restaurants, clubs, hotels, radio, television, web series etc.

The first collecting society(The Bangladeshi copyright legislation terms it collecting societies as copyright societies. It is also known as Collective Management Organisation or CMO) in Bangladesh was registered in 2014, under section 41 of the Copyright Act.⁴¹⁸ The Act creates provision for specifications and protocols for the registration of a copyright society. However despite its inauguration in 2014, the Bangladesh Lyricist, Composers and Performers Society (BLCPS), only began the process of registration of artists, labels and publishers in 22nd August 2020.⁴¹⁹ According to BLCPS their goal is to protect the member artistes' intellectual property rights and to collect royalties on their behalf. In a leading English daily of the country, BLCPS claimed that it “has been working since 2014 to preserve the financial and moral interests of the musicians of the country”,⁴²⁰ which is contrary to their pattern of operation. In order for them to have functioned in accordance with the requirement of the Act, they would have had to begun registration of members as soon as they were functional as a collecting society. Their failure to create any physical or digital infra-structure in support of the functioning of the organisation, is reflected in the fact that member registration had begun 6years post the inception of the organisation.

According to the qualitative research which allowed interviews with members of the Bangladesh

⁴¹⁸Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

⁴¹⁹Desk report, ‘BLCPS starts registration to protect artistes' intellectual property rights’ (2020) <<https://www.thedailystar.net/arts-entertainment/news/blcps-starts-registration-protect-artistes-intellectual-property-rights-1949561>> accessed 23 Sep 2020

⁴²⁰ibid

Musical Bands Association (BAMBA), no government audits had been carried out in those 6 years as ought to have been according to s46(1) and (2) which allows for audits, in relation to the payments received from the Government, to be carried out at specified intervals by the Comptroller and Auditor-General, of the accounts, statements and relevant records of the registered copyright society. The Comptroller and Auditor-General in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.⁴²¹ Moreover s(41)(4) creates provisions for the Government to cancel the registration of such society after such inquiry, if it is satisfied that the copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned. Given the passage of such extended period of time between inauguration and successful functioning of the society, it can be argued that governmental intervention might be lacking in the area, remediation of which might lead to better implementation of the copyright instrument. Such circumstances indicate that monitoring and regulating on the government's part is a crucial factor that can act as a motivating factor in maintaining a legitimised structural discipline and order within the music industry.

One of the factors contributing to the inefficacy of BLCPS (Bangladesh Lyricist, Composers and Performers Society) could be the monopolistic authority given to a collecting society under the statute in Bangladesh. S41(3) of the Copyright Act provides that, the Government shall not ordinarily register more than one copyright society to operate in respect of the same class of works. This means that a singular collecting society shall operate in one specific sector (which is the music sector here) and enjoy complete monopoly. The various rights associated with the use of music can be hard to keep track of, especially for individual artists and this is where collecting societies play a

⁴²¹Section 46(3), Copyright Act 2000 (Bangladesh) [pdf of an English translation of the document is attached to the application]

pivotal role. The legislations do not set any statutory rate for royalties or proportionality of each owners share, unlike in the United States, which have a set statutory rate for certain rights (e.g. mechanical rights in downloads, streaming etc) . This allows collecting societies founded by powerful publishing houses to dictate royalty rates, as is the case in the UK where rates are set by PRS and MCPS as demonstrated by Diagram 3 above on License fee.

For Bangladesh to provide legal protection and motivation to musical artists to such extents as required by Berne, it is crucial that the authorities take note of both its neighbour India's and the UK's process of developing collecting their societies and the complications encountered. This research suggests that a monitoring and regulating body is required to ensure initiation and smooth running of BLCPS, which is yet to begin operation. This monitoring body ought to take into account factors like, the amendments and changes in PPL's evolution, as in the case of Stephen Carwardine & Co and how IPRS (Indian PRS) successfully dealt with the various issues regarding administrative, management and corruption.

The leading case on the formation of PPL is Gramophone Company v Stephen Carwardine.⁴²²

Stephen Carwardine & Co, is a coffee shop that has been playing records to entertain their customers without the permission of the copyright owners to play the record in public, according to EMI, then called the Gramophone Company. The judge took this claim into consideration and established a legal principle in support of EMI's claim. EMI and Decca formed Phonographic Performance Ltd (PPL) to carry out this licensing role and opened their first office in London. This led to the expansion of PPL's role to also cover licensing of broadcasters playing recorded music through the Copy-

⁴²²Richard Jones, 'Intellectual Property Reform for the Internet Generation: An Accident Waiting to Happen' (2010) <<https://ejlt.org/index.php/ejlt/article/view/36/54>> accessed 30 March 2020

right Act 1956. Further copyright law changes in 1988 strengthened PPL's licensing position. In 1996 provisions were created for artists with recordings of performances played in public or broadcasted to receive “equitable remuneration”. In addition, it was stated by Maugham J that, “the arrangement of the recording instruments in the building where the record is to be made the building itself, the timing to fit the record, the production of the artistic effect... Combine together to make an artistic record, which is very far from the mere production of a piece of music”.

As part of the EU and by virtue of the European Communities Act 1972, the United Kingdom had to make its laws compatible with that of the EU. European copyright laws have always boasted a generous approach of inclusiveness and protection for the artists keeping up with the fast nearing goal of a digital single market. The Directives published in the Official Journal of the EU on 17 May 2019, mirrors this attitude in their proposal of the three main change:

1. Better choice and access to content online and across borders.
2. Improved copyright rules on research, education and cultural heritage.
3. Achieving a well-functioning marketplace for copyright.

According to the musicians union, royalty protection and licensing has come a long way since the 90's and this was fortunate for the UK as part of the EU, since the UK laws had to be compatible with EU laws. The European laws cover UK artists considering that the majority of copyright laws that provides safeguards to artists are European laws. This means artists in the UK can afford the same standard of protections as long as the UK remains a part of the EU. In 2016 the Collective Right Management (CRM) Directive came into force, the objective of which was to establish common governance, transparency and financial management standards and making sure that the right holders have a say in the management of their rights. This is aligned with the aims of PRS of ensur-

Refusing to give into the collective protests from tech giants like Google, youtube spending millions lobbying against it, the EU passed its Copyright Directive in September 2018 which intends to make the internet a fairer place for performers, strengthening musicians and creators rights in relation to use of their work on digital platforms. When it comes into effect in a few years, it is expected to prevent platforms like YouTube from get away with paying artists minuscule amounts like £0.00054 per stream. The current share of revenue for artists on digital platform is shamefully low:

1. One million streams on YouTube generates as little as £540 for the artist
2. YouTube pays creators a tiny £0.00054p per stream of music
3. 85% of YouTube's visitors come to the site for music.
4. YouTube accounts for 84% of video streaming services
5. At least £2.33bn of YouTube's revenue in 2017 was generated by music in 2017.⁴²⁴

While UK copyright protections are't nearly as strong as these, brexiting would result in UK losing both copyright protections of international standards and opting out of an opportunity to integrate with the rest of the world in a Single Digital Market. This is given that harmonisation of copyright laws is where the world seem to be heading, with music travelling much faster than ever before. Governments appear to easily get influenced by corporate powers and tech companies and risk compromising on the protection of rights of creative professionals. Attributing this as the reason

⁴²³<https://www.prsformusic.com/press/2016/prs-for-music-welcomes-the-implementation-of-the-crm-directive>. <accessed 22.08.2019>

⁴²⁴<https://www.musiciansunion.org.uk/Home/News/2018/Nov/Brexit-and-the-Future-of-Copyright-Protection>

behind their actions, in 2019 the MU joined forces with local MPs and large communities of musicians in lobbying relentlessly to incorporate the EU Copyright Directive into UK domestic laws, so that musicians are protected whether Brexit takes place or not. However the UK Government Minister Chris Skidmore on the 21st January 2020, stated that the UK has no plans to implement the controversial new EU Copyright Directive following the UK's exit from the European Union ("Brexit").⁴²⁵ The EU provides high standards of copyright protections on various platforms and is therefore a reliable authority for developing countries, like Bangladesh, to take inspiration from in building their own copyright protection regime.

Music Royalty In Bangladesh

In the absence of a functional and reliable collecting society, the culture of royalty payments and collection has not developed within the music industry in Bangladesh. The old ways of compensating musicians with agreed amounts via verbal contracts had ceased to work (this will be further analysed in the following volumes with the help of the qualitative data acquired from empirical research). The new single digital market appears far too complicated for Bangladesh to manage, especially without a radical change in how the music business is run. The 2000 legislation dictates in s 45(1) that, royalty must be by the collecting society and provides for an authorised officer to oversee the successful implementation of royalty payments by the collecting society. The 2000 Act states:

S45 . Returns and reports—(1) “Every copyright society shall, within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar, statements of all fees, charges or

⁴²⁵Mayer Brown, ‘The United Kingdom will not implement the European Union Copyright Directive’ (2020) <<https://www.lexology.com/library/detail.aspx?g=9e1a5448-d128-4902-9420-4b-f89a154d59>> accessed 27 Sep 2020

royalties which it proposes to collect for the grant of licenses for the works in respect of which it has authority to grant such licenses and such other returns and statements as may be prescribed”.

(2) “Any officer duly authorised by the Government in this behalf may call for any report or records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it, are being utilised and distributed in accordance with the provisions of this Act”.

While the statute is clear on how the collecting society should be operating with transparency and how authorised monitoring ought to be in place to ensure efficiency, in effect the scenario is entirely dependant on the successful implementation of such legal instructions. In Bangladesh, like many other developing countries, failure of effective implementation of laws have been identified as a key reason behind delayed progress in most legal sectors. Royalty payments can only be made successfully when the collecting society functions with efficiency. According to the cultural history explored in this research, since such payment cultures are not deemed traditionally established practices in the region, effective implementation of such laws ought to be backed by strong government policies that include active regulating and monitoring bodies and disseminate legal awareness information amongst the mass, musician community and stakeholders in the music industry. Without continuous support, investment and motivation from the government, achieving this goal appears to be an increasingly difficult task for the music industry and associating authorities.

While discussing royalty collections and collecting societies of Bangladesh it is important to highlight the perils of introducing a royalty collection scheme in an industry which does not have an organised infra-structure, including the means to collect royalties from various parts of the country outside of the capital, trained officials for administrative duties in the copyright registry office, digital archiving for data on copyright registrations and widespread access to online banking for dissemination of revenue. In reality Bangladesh copyright office has 7000 patent applications, 6000

design applications and 80,503 trademark applications of the 144,706 pending, since 1971 (the year Bangladesh was formed)⁴²⁶. According to doctrinal research, until 2009 no legal firm of the country, on behalf of a client, had applied for international IP protection or royalty services from global organisations. It is estimated that about 2.4 million of the Bangladeshi population reside outside of the country.⁴²⁷ This digit only includes permanent residents. UK for example where Bangladeshi form 0.7% of the total population,⁴²⁸ could be collecting and distributing substantial amount, of royalties for public performances for Bangla music, through PRS, had Bangladeshi artists and labels been registered with PRS or a domestic collecting society working with PRS. In absence of that, all the revenues that could be earned from Bangla music being played in numerous Bengali and south asian restaurants, off licenses, hotels, music venues, radios and Bangla tv channels across UK, is lost. Considering the large population of Bangladeshi diaspora residing in the UK and in other parts of the world, it can be argued that this amount could be substantial.

Gowri⁴²⁹ attempts to demonstrate how a music royalty scheme would fall short of its promise if not implemented with appropriate sensitivities to the relevant domestic conditions and with realistic expectations, in the context of Sri Lanka. The Sri Lankan Performing Rights Society (hereinafter referred to as SLPRS) was initially formed with the financial support of the Government of Sri Lanka and the British Performing Rights Society. According to its founding chairman, its initial

⁴²⁶Khondker BH, Nowshin S (2013) Developing National Intellectual Property Policy for Bangladesh: An Assessment of National Intellectual Property System (Draft). Dhaka: World Intellectual Property Organization (WIPO).

⁴²⁷Ministry of Finance, 'Engagement of Non-resident Bangladeshis in National Development' (2018) <https://erd.portal.gov.bd/sites/default/files/files/erd.portal.gov.bd/page/83ab-b6f9_b264_45f9_92c0_2596b2421dc9/NRB.pdf> accessed 28 Sep 2020

⁴²⁸Office for National Statistics, '2011 Census: Ethnic Group, Local authorities in the UK' (2013) <www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-and-quick-statistics-for-local-authorities-in-the-united-kingdom---part-1/rft-ks201uk.xls>

⁴²⁹Gowri Nanayakkara, 'Promise and Perils of Sri Lankan Performers' Rights: The Royalty Collection in Music' (2017) <<http://webjcli.org/index.php/webjcli/article/view/532/710>> accessed 12th April 2021

task was mostly to collect royalties for foreign works rather than for local works. Gowri's⁴³⁰ academic investigation on royalty schemes addresses an interesting factors in light of royalty collection from Sri Lanka by foreign right holders. There is a gap in the literature in this aspect in the context of Bangladesh which my paper attempt to cover. It triggers questions such as, why did international music companies or collecting societies like the PRS or foreign film productions not pursue for royalty collections for usage of their copyrighted music or other IP in creative mediums in Bangladesh? At least Srilanka appears to have had an infrastructure and tradition for royalty collection, albeit for foreign IP contents. No evidence of any such attempts for collection was found throughout the 80's,90's and 2000's in Bangladesh. My research argues that, legal insistence or pressure of kinds for royalty payment or compensation for infringements like legal suits, could force national legal regimes like Bangladesh, to take heed of the matter and take management of copyright and royalty payments more seriously. This would have initiated a royalty paying culture in Bangladesh that could then expand to cover local music and relevant stakeholders as well. My empirical qualitative interviews⁴³¹ revealed that the consensus amongst artists and labels were that the western creative industry did not give heed to the infringements taking place in the eastern film and music industries because they believed they weren't loosing out on much in terms of revenues. Until digital distribution began, infringement of copyright, appropriation of copyrighted content or failure of royalty payment could hardly be detected in countries from far ends. But now with the growing audience for eastern and asian cinemas and the rise of global music communities, more issues with plagiarism and violations of copyright are being detected more often, because the audience listening to the song which appropriated an original copyrighted song by an established musician, is most likely, familiar with the original copyrighted song and/or the musician. This can all be evidently attributed

⁴³⁰ibid

⁴³¹Interview Participant 5, (Date: 18th feb 2020), Interview participant 7 (Date:19th feb 2020), Interview Participant 1 (Date: 22nd Feb 2020)

to the introduction of Internet which enabled a wide and almost instantaneous dissemination of information and contents. My research argues that if foreign royalty collecting societies or music companies insist on Bangladesh to follow its law and start paying royalties or initiate legal proceedings for unlawful use of the melodies or tunes they own, then it could potentially propel improvement in rights management, implementation and enforcement.

Royalties and Collecting societies : Comparative study with Indian IPR

THE IPRS AND PPL CORRUPTION

The Indian Performing Rights Society (IPRS) was formed in 1969 as a collective of owners of music, composers, lyricists (or authors) and the publishers of music and had been operating as the sole authorised body to issue licences for usage of musical works and literary music within Indian. According to Singh, this autonomous body displayed various inadequacies in operation and mismanagement when powerful film and music producers became members of the IPRS in 1983 and began influencing its operation against the creative community to its own advantage.⁴³² In the mid-1970s, IPRS filed a number of lawsuits against music companies and film producers, in which, as one Indian high court judge asked, “The main question is whether the composers of lyric and music, in fact, have a copyright in the musical works incorporated in the sound track of a cinematograph film”. The unambiguous “work-for-hire” clause of the Act allowed (or forced) the courts to reject the suits without exception⁴³³ given that the legislation back then supported it. Booth⁴³⁴ establishes

⁴³²Singh, R. K, ‘The Status of Phonogram Producers Under Indian Copyright law ‘ (2010) VOL 5; p 429-434

⁴³³Gregory Booth, Copyright Law and the Changing Economic Value of Popular Music in India [2015]

⁴³⁴ibid

that, IPRS were unable to collect public performance revenues as it was composed only of composers and lyricists, who were not the copyright owners. Subsequently, they inducted film producers into the society as they [authors] had assigned the works to the film producers. However that did not resolve the problem since the film producers had, in turn, assigned the rights to the music labels. IPRS's extended effort to gain control of key resources (and revenue streams) through attempts to relocate ownership, first with authors, then with film producers, before accepting the necessity of dealing with the record companies, according to Booth's⁴³⁵ research. In 1994, the IPRS signed a memorandum of understanding with the then Indian Phonographic Industry (IPI) including a number of prominent music companies, admitting the labels as publishers to the IPRS. The agreement stated that the producers would be sharing royalties with the composers and lyricists in accordance with the global praxis, the maximum share proportion of which would be 50/50⁴³⁶. In reality the producers were inserting mandatory clauses into their contracts with composers and lyricists that would force them to sign their rights away, making the producers a 100% owner of all royalties. The Indian film industry, a large part of which is composed of Bollywood (the North Indian, Hindi speaking film industry) has been known to be a gigantic influence in regard to establishing laws, regulations and developing the business culture around creativity, therefore it is of no surprise that the Indian rights management organisation had been faced with the same bias.⁴³⁷

With the arrival of digital platforms and telecom corporations, options for music to be more widely disseminated through internet platforms, as ringtones, through mobile devices, increased drastically. Nevertheless, this did not result in increased revenue for the artists . In the 90's the labels began offering the film producers lump sum amounts upfront in exchange of publishing rights of each al-

⁴³⁵ibid

⁴³⁶ Singh, R. K, 'The Status of Phonogram Producers Under Indian Copyright law ' (2010) VOL 5; p 429-434

⁴³⁷ibid

bum. This can also be attributed to the musical artists' unawareness of their rights over their own work. The labels who already owned large shares of the master rights of sound recordings now owned the publishing rights, which means they owned the music IP in their entirety placing them in a financial and socially powerful position. The lucrative financial deals from the music companies enticed the publishers enough to move out of IPRS and hand over their rights. It was the labels now who signed the MoU with the IPRS for the same right sharing deal with the composer and lyricists only to treat them the same. The music companies or the music producers could therefore use this to their advantage to create an image that seemingly appeared to be operating in alignment with the legal protocols.⁴³⁸ It is important to remember that the lion share of music production in India is associated with film making therefore most artists fell victim of this dangerous culture that had been brewing.⁴³⁹

Shortly after, the IPRS was reportedly taken over by music companies who demanded to only buy music from film producers if they operated in a certain way. "If any lyricist or music director refused to give away his [royalty] rights in perpetuity and unconditionally, he would be ostracised by them," stated Akhtar during an interview.⁴⁴⁰ For pursuing the cause of lyricists and composers, Akhtar was blacklisted by the "Film Federation of India". Many producers who were already engaging in similar unfair activities agreed to the terms. Considering that at the time, Hindi film without music was unthinkable and had historically added immense value to Hindi films, this was considered an easy decision on the producers part.

Lead by Javed Akhtar, the Indian songwriters community had witnessed unprecedented victory since, on the grounds of protection of rights for lyricists and composers as discussed above. How-

⁴³⁸ibid

⁴³⁹The Indian Copyright Act 1957 <<http://www.copyright.gov.in/Documents/CopyrightRules1957.pdf>>

⁴⁴⁰Desk Report, 'A different Tune' (2012) <<https://frontline.thehindu.com/static/html/fl2913/stories/20120713291310000.htm>>

ever as the authors were only acclimating to this new found right, they were unaware of the 100s of millions IPRS and PPL have been laundering. The Enforcement Directorate (ED) of India had registered a case under the Prevention of Money Laundering Act against the IPRS and the Phonographic Performance Limited (PPL) in March 2015 on the basis of criminal complaints and police FIRs alleging "gross irregularities" in its affairs. During the investigation, the ED found that office holders of IPRS had assigned their rights to issue user licenses and collect royalties to PPL on the basis of revenue sharing on per song. "An amount of Rs 13.04 crore was retained by PPL (perhaps fraudulently), which led to non-payment of royalties to members of IPRS. As a result, last year, the ED made an attachment of assets worth Rs 13 crore of PPL, defining it as the proceeds of crime, in the case. The agency had also attached mutual funds worth Rs 70.17 crore of IPRS".⁴⁴¹

"IPRS was temporarily expelled from CISAC (International Confederation of Societies of Authors and Composers) in 2016, after a compliance review by CISAC found serious shortcomings and lack of compliance with CISAC's rules. That decision, taken by CISAC's Board of Directors and General Assembly, has now been reversed following the improvements made in the society's governance. The organisation was welcomed back in January 2019"⁴⁴². Following this prolonged upheaval over the functioning and constitution of IPR, including court battles, in 2018, music composers and lyricists registered with IPRS (Indian PRS) finally received Rs 13 crore in largest royalty payout in the history of Indian music industry.⁴⁴³ The domination of big labels and publishers had led to this

⁴⁴¹[Virendrasingh Ghunawat](https://www.indiatoday.in/india/maharashtra/story/javed-akhtar-indian-performing-right-society-limited-enforcement-directorate-980920-2017-06-04), 'ED may soon close money laundering case filed by Javed Akhtar, others against IPRS', (2017) < <https://www.indiatoday.in/india/maharashtra/story/javed-akhtar-indian-performing-right-society-limited-enforcement-directorate-980920-2017-06-04>> accessed 3July 2020

⁴⁴²Newsroom, 'CISAC announces re-admission of India authors society IPRS' (2019) < <https://www.cisac.org/Newsroom/news-releases/cisac-announces-re-admission-india-authors-society-iprs>>

⁴⁴³[Bella Jaisinghani](https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/music-composers-lyricists-receive-rs-13-crore-in-largest-royalty-payout/articleshow/63886673.cms), 'Music composers, lyricists receive Rs 13 crore in largest royalty payout' (2018) <<https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/music-composers-lyricists-receive-rs-13-crore-in-largest-royalty-payout/articleshow/63886673.cms>>

conundrum. These labels and production houses are in clear conflict of interest since their role as directors of IPRS or PPL requires them to look at the interest of the composers and lyricists on the same platform where their companies interests are involved too. Labels who have been historically taking away the rights of the creatives were handed over the management of the rights of the same. There exists a conflict of interest and a direct oversight by the legal and political authorities without which this would not have been possible.

The 2012 amendment brought changes to Section 2 which imposed more stringent regulations on the fore-grounding of rights management information, in order to protect copyright and license holders. New provisions also sought to ensure that authors and composers would be able to exercise more power in the management of copyright societies⁴⁴⁴, so that royalties collected by those societies would flow through to these individuals⁴⁴⁵.

Nevertheless, artists in Bangladesh are unlikely to see any substantial revenues from contents that are already subjects of contracts signed, until ownership disputes visa-vis commercial music contracts that have piled up over decades, are sorted. For the artists the situation is often Kafkaesque reflecting the ridiculously impossible aspects of modern bureaucracy. In Kafka's stories, many of his protagonists are compelled to go through a web of obstacles in order to achieve their goals, and often the whole ordeal would turn out to be so disorienting and illogical that success becomes pointless. He employs dream logic to explore relationships between systems of arbitrary power and the individuals caught up in them, like in his story "Metamorphosis". The extent of these scenarios so characteristic of Kafka's work, may vary between the systems of developed and developing countries but the underlying moral remains unchanged. For instance, an artists in the UK may receive royalties and have the right to sue for infringement of his work but the amount of royalty earned is

⁴⁴⁴S (33), Copyright(Amendment) Act 2012 (India)

⁴⁴⁵Gregory Booth, Copyright Law and the Changing Economic Value of Popular Music in India [2015]

often negligible to sustain a decent livelihood. More than 50% of their rights will have belonged to the label by virtue of a legal contracts. Therefore it is likely that they may not be able to afford a lawyer to be able to initiate legal suit. This situation is far worse in Bangladesh. Despite a comprehensive legislation which states that any usage of original creative work will require payment of royalties, the country does not have any royalty collecting society or a widespread access to online banking to distribute any royalties collected. This paradoxical scenario is perpetuated further through illusions of corporate philanthropy, labels as lobbyists in law making, lack of education and awareness and the attitude of the government that appear to lobby for economic growth for a few, at the expense of poor living standards for the rest. Such economic and social environment ought to be considered in perceiving implementational issues and analysing the effects of the legislation.

Conclusion

Copyright is a property right that confers valuable economic rights. However, the benefits of the copyright system can be realised only if the rights are understood and suitably managed. In order to implement a royalty scheme it must be clear as to who legally holds the copyright to be receiving the royalties. The management of these rights are achieved via commercial music contracts. The copyright laws do not directly intervene or regulate or detail how the rights protected under the copyright legislation will be shared, distributed or exploited. These issues come within the scope of the laws of commercial music contract and common practices within the music industry of Bangladesh. Interactions between the various provisions of the Act, the culture within the music industry's commercial and revenue sharing practices, including the perception of the nature of ownership within the business lead to complexities in rights sharing, management and distribution that are central to my study in the following volume on commercial music contracts and industry practices.

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The following volume on commercial music contracts will include a detail discussion on how such contracts are used to transfer and assign contracts according to industry practices contributing to further confusion as to the ownership of copyright and the legal recipient of royalties.

Volume 6

Music Contracts and Industry Practices: Songs of Promises and Customs:

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Introduction

The copyright laws, if implemented effectively, might begin to improve the state of affairs for songwriters and performing artists but only if industry practices and cultural norms surrounding commercial music contracts support the operation of such laws and policies. As discussed in the previous volumes, the copyright laws do not directly intervene or regulate or detail how the rights protected under the copyright legislation will be shared, distributed or exploited. The statute does not provide any guidelines as to how the rights and obligations it provides for can be managed and transacted. Through the use of commercial contracts intellectual property rights on the musical contents can be assigned, transferred, controlled, regulated and managed. These issues come within the scope of the laws of contract and common practices in the music industry.

The financial and social power-play, between the songwriters and the label/publisher, perform a vital role when it comes to the various contractual agreements that are required to manifest the “sound conceived” into recordings, that will need to be published. This is where labels and publishers come in. What follows are various copyright contracts that govern the rights and obligations associated with the selling, assigning, transferring and controlling of copyrights of the music contents that need to be recorded and distributed. The age of digitalisation meant that content could now be shared and distributed in new and creative ways and formats, requiring further legal protections and new contracts that cover mechanical rights, synchronisations rights, print rights etc. The two central copyrights that the contracts aim to protect are the “*songwriting copyright*” which is the written composition and the “*sound recording copyright*” which is the recording of that composition.

Commercial Music Contracts

Recording sheet music has been an expensive business until home recording options became available⁴⁴⁶. In the early days, only kings, lords and later aristocratic patrons of the arts and music had the luxury and whimsy to finance, commission and thereby encourage the performing and recording of music. Even in the 21st century, until the technological revolution brought about digitalisation, this was almost impossible to accomplish without a deal with the recording and publishing companies⁴⁴⁷. The deals would grant songwriters funds to hire musicians to perform the composition, access to recording studios, mixing and mastering facilities, arrangements for printing and publishing of the physical copies, etc. This deal is ideally meant to be sealed with a contract between the parties, upon agreeing on the terms and conditions of producing the content, but it was customary in Bangladesh for oral agreements to suffice in the 80s and 90s. Such agreements in the contemporary world are governed by the laws of contract which legitimises the deal and makes them enforceable or challengeable in court if deemed void or invalid according to the relevant legislations of the country.⁴⁴⁸

In most of the western regions, these deals broadly generated two categories of contracts: sound recording and publishing. These contracts facilitate the transfer, assignment or sale of rights over the sound recorded and the means of printing and publishing it, respectively. The above operations generate separate intellectual property rights and could vest on different individuals based on their negotiating power and individual contracts. Putting it simply, what distinguishes the two industries is

⁴⁴⁶Ann Harrison, *Music: The Business* (7th edition, Ebury Publishing 2017)

⁴⁴⁷ Donald S. Passman, *All You Need to Know about the Music Business* (10th edn Simon & Schuster 2019)

⁴⁴⁸Anthony David Morris, *An introduction to recording and music publishing contracts* (London : Arts Publishing International Ltd., 1992)

the content they deal with. While record deals associated with rights over the recording and dissemination of the “record sound”, publishing deals are about the rights enshrined in songwriting, which is more commonly known as “Sheet Music” amongst musicians and includes lyrics, compositions, notations etc. Some musicians are able to find independent sponsors, some opt for crowd funding these days and with the advancement of technology young musicians are able to develop inexpensive home recording studios and record their tracks themselves. However, most commonly, artists find it difficult to secure funding for recording and dissemination, therefore recording contracts are still considered a big deal.

Sound Recording Deal

The agreement of a (sound) Record Deal takes place between a recording artist and a record label, which enables the label to capitalise on the artist’s performance in a sound recording, in return for royalties⁴⁴⁹. The various platforms and formats which facilitate the capitalising include, physical sale of CDs/Vinyl, public performances, broadcasting of work; and the sale of digital products such as downloads and mobile ringtones. If the contract incorporates audio-visual devices then it will go on to cover rights overall performances shown in DualDisc, DVDs and any other devices that turn up with the development of technologies.

The label provides the artists with tools to record and is involved in the production, pressing, distribution, marketing and sometimes merchandising of the track or album. If the artist is able to pull a hard bargain, labels occasionally agree to pay a set share of money from record sales. In exchange, the label typically gets the lifetime IP rights over the sound recording it is disseminating and funding, which according to the UK and Bangladesh, is a duration of 70 years from the date of publication.

⁴⁴⁹Donald S. Passman, *All You Need to Know about the Music Business* (10th edn Simon & Schuster 2019)

Direct Sign deal

Under most exclusive deals (also known as the Direct Sign deal) artists are required to assign their rights to the recording company for life and excluding any other label which translates to the artists not being able to sign or record with any other label without authorisation, for the specified length of time and albums they are legally bound. In terms of the rights over the “recorded sound”, this assignment results in the transfer or ownership for the full life of copyright which in case of the UK and Bangladesh is 50 years from release. The recording companies not only own the released recordings but also any unreleased ones and even if a musician is able to pay back all the recording costs, the label will always own the master, regardless of the fact that the “record” might end up making way more money than it cost to create. The money that the Label pays the artists is simply a loan which the artist pays off from the sale of records and even after the cost is payed off the Label continues to own the masters. “Simply Red” singer Mick Hucknall, famously parted ways with his label Warner Music, after a long relationship which expired in 2000, claiming that the terms of his contract were immoral. He sold 40 million albums globally and in an interview with the BBC he went on to say:

*“The contract was basically immoral. Like many artists, my deal meant I paid for the cost of recording the music. I paid for the marketing. And I didn't get any royalties until those costs had been incurred. But despite this the contract stated that the master recordings still belonged to the record company. "I don't know any other business where you pay for something and then someone else owns it.”*⁴⁵⁰ According to Hucknall’s management, during their partnership, Warner Music made a

⁴⁵⁰BBC News, 'Hucknall attacks music industry' (2003)<<http://news.bbc.co.uk/1/hi/entertainment/2885035.stm>> <accessed 24.-8.2019>

whopping £192 million while Huacknalls royalty amounted to about a £20 million.

The exclusivity even go as far as restrictions on appearing as a guest artist on another artist's record unless the contract contains a "Sideman clause". This is a condition that can be incorporated in a recording contract which accommodates some level of freedom and control for the artists. Sideman Clauses empower artists by giving them the power to continue studio work on the side and get involved in collaborations which can inspire unique creativity, resonance and fame. However, the label drafts most Sideman clauses in a way that grants them some control over these recordings on the side and how the artists' name will appear or not appear, in the credit. Needless to say, having such a clause is highly dependant on the negotiating power of the parties and therefore remain an unlikely experience amongst new artists.

On occasions when artists are able to find a more lucrative deal, or find their agreements with the Label to be unconscionable or inconvenient at any point of the duration of the contract, they find themselves legally bound by terms that do not allow them to terminate the contract, barring exceptional cases of acclaimed musicians like that of Mariah Carey who was able to terminate her long-term contract with the EMI, considering her influence and standing in the global music industry. However, in rare instances, artists are able to secure a "reversion of copyright clause", which basically states that the rights of the master sound recording will return to the artist at a future date so that they do not lose out on the success of the recording during their career. The groundbreaking 2002 deal between Robbie Williams and the British label EMI, which is documented as the biggest British record deal for a solo artist, included such a clause whereby his rights will return to him. This of course an extremely unlikely position to be in for any artist, which is why it is important for the artist to negotiate an end date or a period of duration over which all contractu-

al obligations must be met and settled. Usually when a band or artist manage to bag a record deal, they are roped in for more than just one album. The calculation of the duration begins with an initial fixed period of approximately 12/15 months throughout which the first album shall be recorded, followed by options for the delivery of further albums, with each album having its own fixed period and its specific delivery time. But the Label decides when they choose to begin the recording of each albums allows them to extend the contract if they wish, which could continue indefinitely or terminate it, unlike the artists who will be trapped in the contract whether it is working out for her or not.

In most cases all the artists' manage are a slim 14-18% royalty from the sale of records that the label markets, distributes and sells with no rights over the master recording. In the West, this royalty only begins to flow after the artist has recouped the recording cost, any advances paid and other additional deductions, diminishing the actual rate of royalty even further⁴⁵¹. As far as major labels are concerned, standard deductions include packaging deduction of 20 to 25 percent on CDs, a reduced royalty rate on foreign sales, budget records and record clubs, a reduced royalty on TV-advertised albums, and often no royalty at all on free goods (records given away to retailers and the media). What is left of the artists' share of royalty gets further reduced owing to the practice that producers royalty shall also be payable from the artists' allotment of royalties. A lump sum amount is often advanced to the artist as a loan, to get by while producing the album. Before any royalties can be paid from the sale of the album, this amount is usually subtracted from the royalty payments claims, leaving the artists in a perpetual state of financial dependency that is hard to overcome. This however is not the case for Bangladeshi songwriters, musicians or performers since they are offered no share in revenues or royalties.

⁴⁵¹ Anthony David Morris, *An introduction to recording and music publishing contracts* (London : Arts Publishing International Ltd., 1992)

360 Deal

Commonly known as the 360 deal, this contract enables labels to take a cut of the profit generated from everything the artist does. The 360 deal is a relationship between the artist and the label, which permits the label to be fully involved in all undertakings of the band, or artist including formerly off-limit areas such as merchandise, touring, promotions etc⁴⁵². The astronomical rate of technological expansions and advancements in every field also means that things were ever-changing. Transition from cassettes to mp3s happened quicker than predicted. Both labels and artists had to evolve with the change, incorporating a wider range of platforms, formats, and avenues that they could exploit to thrive and which the law needed to cater to. Aside from fighting piracy, now they had to mitigate losses in millions from physical copies becoming redundant. An extension of traditional contracts that dealt beyond the profits and rights over record sales, sprouted with the dawn of the age of the internet, social media, ringtones, movie soundtracks, endorsements etc. Even if one was able to produce their own music, acquiring further work, developing useful personal contacts, and reaching places that they otherwise might never have been able to, requires external financial help. This deal offered immense potential that would offer for these additional help without which the artists would have to manage every other task themselves, as opposed to focus on making music. Having said that, being bound by a 360 deal means being under complete control of the label. For fledging artists, claiming back creative control or taste in venues or collaborations, or even the way an artist is being presented, could be a daunting and unsuccessful experience. This reflects the current status of the music industry where most of the artists' incomes no longer stem from record

⁴⁵²Anthony David Morris, *An introduction to recording and music publishing contracts* (London : Arts Publishing International Ltd., 1992)

sales but from live performances and ancillary components such as merchandise.⁴⁵³ By expanding the scope of their relationships with artists, labels are shifting their focus from trying to reverse the trend of declining CD sales by participating in more profitable arenas.⁴⁵⁴

At the onset of entering into any such agreement, songwriters who are usually unaware of the bandwidth of complications involved in the contract, do not realise that by agreeing to take the labels money they are also agreeing to a host of other terms and conditions, listed in the contract that the labels never explain or talk about. The long form contracts are written in complicated legal language with bundles of clauses and terms and conditions carefully slotted in the consequences of which are ambiguous. For instance when digital downloads arrived the labels claim of damages in a contract included damages for digital downloads which at first look could appear to do with computer softwares and were left alone by many musicians. This method was also administered to packaging cost which continued with digital downloads where packaging was non-existent. With digital distribution, incurring such physical damages were impossible but the labels kept it as part of their expenses anyway. Here is a typical scenario: When a record label pays an advance of say £250,000, it comes as a loan which the songwriter then uses to record the album, the entire copyright of which will be transferred to the label. Supposed the album sells 500,000 copies at £10 pounds each, yielding £5million. The record label then takes their cut, which is usually an astound-

⁴⁵³Matt Stahl, 'Primitive accumulation, the social common, and the contractual lockdown of recording artists at the threshold of digitalization' (2010) *Emphera Articles*, volume 10(3/4): 337-355, < <http://www.ephemerajournal.org/sites/default/files/10-3stahl.pdf>> accessed 06 Jan 2016 -Unlike the UK the USA have the RIAA – Recording Industry Association of America, which provides considerable support to recording artists. "The rules of contract duration, minimum compensation, and bankruptcy protection attacked by the RIAA help(ed) protect working people from being held under contract by a single employer, guaranteeing them the limited but real right periodically to take advantage of competition between employers for their services or to leave the employment altogether."

⁴⁵⁴Karubian, S. (2009) '360 Deals: An industry reaction to the devaluation of recorded music', *Southern California Interdisciplinary Law Journal*, 18(1): 395-462

ing 85% of the total sales, leaving the songwriter with £750,000. But before any payment can be made to the songwriter the advanced is recouped ($£750,000 - £250,000 = £500,000$), in addition to any other costs such as recording cost (£300,000), half the promotion costs (£75000), half the video cost (£300,000), and tour support (£250,000), which leaves the songwriter in a debt of -£425,000 to the record label. This debt subsequently get carried forward to the next album and so on and so forth.

Host of artists like Chester Bennington (Linkin Park), Brandon Boyd (Incubus), Robbie Williams, and many many more have been fighting against the labels but have seen little change in the attitude of the legislators and judiciary. The courts have refrained from ruling on the unfairness of such practices and legislators have not concerned themselves with formulating laws that do not force the artists to part with their creation for life even after the recoding cost has been recovered. It is unsurprising since the lobbyists and businessmen behind the making of such laws were the big labels and studios with no representation from songwriters well versed in the matter. Therefore having a comprehensive copyright law can prove to be of little help when there is no regulation over the rights exploited. This is true for most countries which include both the uk and Bangladesh. Therefore it is not surprising that dynamics surrounding “bargaining power” remained relatively unchanged throughout the process of this technological and structural shift from traditional to 360 deals⁴⁵⁵. On examination of the 360 deal, it is becoming apparent that the record industry is forcing ‘unconscionable’ conditions by locking artists in contracts that as George Michael put it is akin to “modern day slavery”.

⁴⁵⁵ibid

In light of discussions above, it is quite unambiguous that getting out of a contract following the typical avenues is generally impossible for an artist whereas the circumstances are not the same for the label, owing to their position of financial disequilibrium in this relationship. The label can extend the length of a contract indefinitely sometimes, according to their convenience, without the artist being able to break free and use that time to get involved in other project. However as explored above, sometimes an artist is able to renegotiate or terminate a contract or declare it invalid depending on the extend of fame and control they have because that allows them to hold a higher bargaining position than the Label for once and use it to their advantage. Reason for why an artist may want to get out of an agreement could range from unsatisfactory or harsh terms over creative control, content to terms that are not beneficial for the artists share of rights over their own creations, therefore it is important to forge an agreement that cater to these needs, albeit most labels may not agree to comply with such terms making it harder for the artists to bag deals. However labels can find themselves in a breach of contract, artists are entitled to damages that covers losses experienced, including damages for unpaid payment amounts, royalty losses, loss of business opportunities, damages caused by copyright infringement, and other losses. According to precedent damages paid must be quantifiable in order for the court to approve them and often the court resorts to specific performances forcing the Label to perform the task needed. Not all breaches result in setting the contract aside so assessing and working out the appropriate damages and including them in the draft, appears to be an intelligent approach. Regardless to mention that most artists are blissfully unaware of the legal nitty gritty, neither can they afford lawyers to look over their contracts or for advice. Therefore when they are finally on the brink of signing a record deal, they are mostly entering it with ignorant excitement and woefully unprepared.

Naturally when it comes to a fault or breach on the artists part, there are mechanism for damages in place. When an artists fails to meet a deadline, or refuses to abide by the labels control of their creativity or fails to meet any obligations, they are bound to pay damages to cover the recording companies lost profits, loss of business opportunities, and other damages. This might come from the artists future profits or remuneration or it may come in the form of specific performance.

Publishing Deal

The bundle of rights associated with songwriting are known as music publishing rights⁴⁵⁶. The rights associated with “recorded sound” is separate from the rights over the original composition or lyrics that originates out of sheet music. Sheet music⁴⁵⁷ can be in the forms of notations, symbols, chords, handwritten manuscripts of music etc, the rights of which always vests on the author until they assign or sell it. This produces sheet music and therefore the songwriting copyrights, which are protected under copyright laws and is fully vested in the original songwriter⁴⁵⁸. These are however rights that are not defined by statute but are rather terms acknowledged by the music industry. How these rights are distributed and the percentage of ownership determined are also based in practice as opposed to law, just like that of the recording industry. The entire business is based on the freedom of contract and almost no regulation or interference by law is observed in this field, unless major disputes originate.

⁴⁵⁶Anthony David Morris, *An introduction to recording and music publishing contracts* (London : Arts Publishing International Ltd., 1992)

⁴⁵⁷Intellectual Property Office, ‘Copyright Notice: printed music’ (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554033/Copy-right_Note_Printed_Music.pdf <accessed 18.07.2019>

⁴⁵⁸Anthony David Morris, *An introduction to recording and music publishing contracts* (London : Arts Publishing International Ltd., 1992)

When the original author is able to retain their rights over sheet music, it allows them to control their publishing rights dictating the kind of musical arrangement that can be made out of it, the kind of performer the author is willing to lend it to, the platforms in which it shall be published etc. The entire bundle of rights derived from publishing the music in any format remain with the author until she decides to enter into a publishing contract. With the decline in consumption of physical copies, the focus if the publishing industry has shifted to digital distribution on line platforms. This method of publication can position artists in a place of control where they can get away with not printing any physical copies and can rely on self publishing by opting to offer their songs to streaming and downloading services such as iTunes, amazon music, Spotify etc in exchange of revenues. Collecting royalties from an author's or performer's work being used around the world, could also be managed without a publisher due to the incredible services provided by the global collecting society PRS and other such collecting societies.

As soon as an author or performer registers with PRS⁴⁵⁹ global (which includes PPL dealing with performer's rights and mechanical rights), they are ensured that PRS is obligated to keep a track of where the artist's songs are being used in order to collect distribute royalties. It is an insurmountable job for a musician to keep track of where their work is being used and to what extent, let alone find a way to collect the royalties. Established over a century ago, PRS has been operating in over a 100 countries since therefore its access to royalty collection and the way it functions has evolved into an effective and crucial instrument in collective right management. Apart from live performances and radio play, PRS pays out are for TV , cinema and online usages such as streaming services and issue licences to users which allows them to use their members' work in exchange of rev-

⁴⁵⁹<https://www.prsformusic.com/what-we-do> <accessed 4.09.2019>

venues. Being registered with them enables musicians to focus on the creative aspects as opposed to the business side of things. However there is much more to music publishing that can help take an artist reach their potential, that an individual artist cannot accomplish alone. The difficulty lies in landing such a deal.

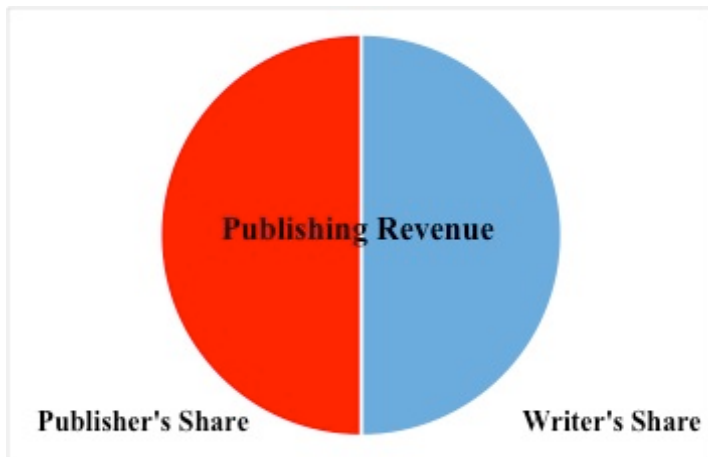
Aside from aiding in royalty collection in the absence of a collecting society like PRS or in collaboration with one, a publishing company can dispense Reproduction (Mechanical) licenses (for music distributed or recorded in physical and/or digital form by another artist), Public Performance licenses (for music broadcast on radio, live venues and/or other public places), Synchronisation licenses (for music used in film, television, commercials, etc.) and Folio licenses (for music published in written form as lyrics or sheet music)⁴⁶⁰. The work of a musician needs to reach as many audience as possible for her to be able to generate enough revenues and further work. The music publisher can assist in accounting, marketing and promoting of the songs amongst all potential users, assist record labels in their publicity of records, discover new uses for the recorded sound, deal with possible infringements or piracy, connect collaborators and other interested creative persons in other creative platforms such as film, television etc. An artist with a good bargaining skill could potentially get the publisher to co-produce music videos as well, which have become a must to be able to climb the top music charts or reach a wider audience in recent times.

By entering into such an agreement an artist effectively grants the publishing company either partial copyright to the song, a percentage of revenue generated from the usage of the song or a full transfer of copyright of the song which is not practiced often anymore. The practice within the music publishing industry offers a more generous share and control over rights to the artists. For every

⁴⁶⁰<https://www.gov.uk/licence-to-play-live-or-recorded-music> <accessed 01.09.2019>

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track/song the ownership of the original author and the revenue for publishing is divided equally into a “writer’s share” and a “publisher’s share”, respectively. Commonly but not always, the split tend to be a 50/50, but it could also be less in which case the lesser amount is assigned for the publisher.



PIE CHART SHOWS TOTAL PUBLISHING REVENUE.

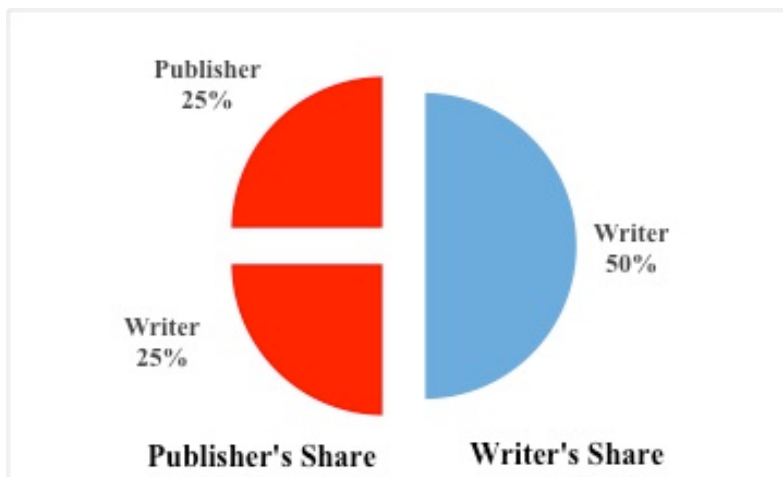
The rights are originally vested fully on the author or authors of the songs which include lyrics and melody. For the fixed period over time over which the contract prevails, the author forsakes the enjoyment of 50% of their share to the publisher but the rights revert back after the period expires unlike the rights in a recording contract. This allows the artist to regain full control over their content and re-evaluate their approaches and decisions according to the changes in taste, technology, evolution in music and the need for music in new formats and platforms. The publisher subsequently takes on the role of licensing them, keeping track of their usage and see to it that payments are being made for the valid usage and licensing. The scope of the contract may include the nature and content of compositions involved, the rights in terms of the works that are being traded, what is go-

ing to constitute “delivery” by writer, the territory which the publisher will cover, etc. all of the above is generally achieved in collaboration with the publisher’s local royalty collection agency, which for the UK and most of the world, often turns out to be PRS.

There are three main publishing contracts in practice besides other publishing agreements with fewer commitments.

Co-Publishing Agreement:

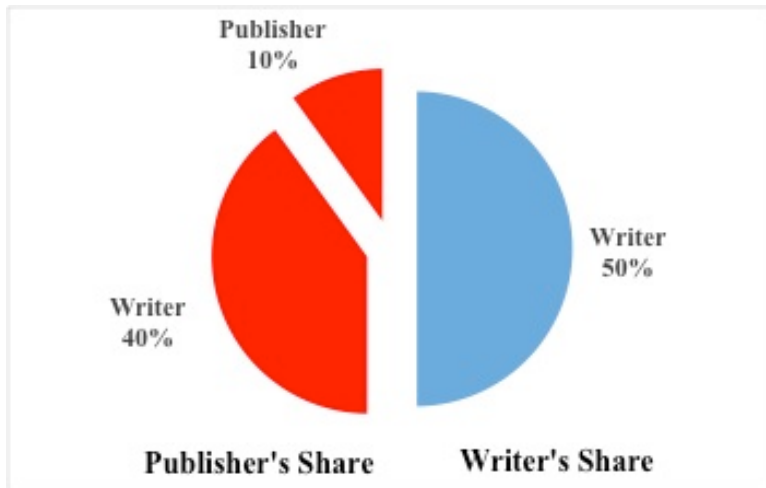
This is the most common type of publishing agreement practiced in the industry where co-ownership of the rights take place between the songwriter and the publisher for a fixed period of time, which is often longer than other publishing agreements. In a standard 50/50 split co-publishing deal, the author retains a 100% of the songwriters share of rights, assigning the publisher's share to the publisher in full without taking a cut. Alternately in a 75/25 split, only half of the publishers share go to the publisher, as the writer gets to keep a 100% of their share in addition to 50% of the publisher’s remaining share which amounts to 75% of the total publishing revenue. The writer/co-publisher receives 75% of the income, when royalties are paid, leaving the publisher with an earning of 25% of the income. Unsurprisingly such an agreement can only be reached by artists with a much stronger footing in the industry and a stronger position to negotiate. The net publishers share is the gross income which is divided between the administration fee, songwriters royalty and expenses. Direct expenses include copyright registration fees, demo recording costs, collection costs, and lead sheets.



PIE CHART: CO PUBLISHING AGREEMENT

Publishing Administration Agreement

This form of agreement is difficult to secure and is often available only to the most accomplished songwriters since they do not have to part with the ownership of their work at all. In such cases the songwriter tends to self-publish their music (when they are accomplished they are often in a position to afford to record and publish their works themselves), and decide to team up with an administrator or a co-publisher by licensing their music to the publisher in exchange for a commission of 10%-20%. The publisher in return handles all aspects of accounting and business management for the agreed period over a fixed territory. Artists who work with multiple publishers or want to publish work created with co-authors often tend to opt for this type of agreements.



PIE CHART: ADMINISTRATION AGREEMENT

Exclusive Songwriter Agreement/ Buy-out Agreement

An ESWA contract typically involves an exclusive agreement between the songwriter and the publisher whereby the songwriter assigns all of the publisher's share of the income to the publishing company. This means that any song written during the period of the contract will belong exclusively to the publisher and will be subject to the contract. Writer at the top of their game usually lands such deals where they are paid an advance against future royalties, on a weekly, monthly or quarterly basis, because the publisher is often confident that they can recoup their investment. A steady income of this sort is a rare for musicians. - (need to elaborate . Still bit confused about this one- do the publisher own any copyright? Why would a successful writer want to do this?)

Other publishing agreements such as single song agreement, purchase agreement etc exist to cater to specific needs in publishing however most contracts as discussed above are based on the parties

position and power of negotiation, industry practise and their share in revenues are based in practice as opposed to being set, regulated or monitored by law.

Music Industry Practices

Despite having a comprehensive piece of legislation on copyright and laws of contract that echos the approach of most western countries like the UK, Bangladesh, home to Bangla music, barely experiences the benefits of these laws and policies. Albeit having statutory provisions for royalty payment, most broadcasting entities such as TV, radio, films, do not practice paying royalties for every play whether it's for their sheet music or recorded tracks. In a land where most musicians are woefully unaware of their IP rights, it ends up being a much harder fight when one is not quite sure of what exactly one is fighting for or against. The concept of copyright is still relatively new and how this is associated with recording and publishing contracts is not clear to them either according to my qualitative data.

Before The Copyright Act 2000 came into effect, labels and artists based their transactions on lump sum amounts and one off payments for the recording and publishing of music. In fact the recording and publishing companies have always operated as one which meant a much higher degree of control over the art and artist. Having the “freedom of contract” rule by their side, much like the rest of the world, the labels outrank the artists in privilege, power and the capacity to fight back which reflects in every step of the transactions between these parties and the laws that protect those exchanges.

As explained above, a recording contract deals with and owns, only the sound recording right that

the label has paid for, whereas a publisher partially owns “sheet music” or only assists in promoting it (and may be the recorded tracks too). But it is acknowledged that there is a clear distinction between the contents and rights of each agreement and that most importantly, both agreements must pay royalties to the artists. In an interview⁴⁶¹ with one of the biggest music labels of Bangladesh, their correspondent revealed that they act as both a recording and a publishing house and offer services as needed. It was found that in practice the music labels and publishers in Bangladesh have developed a standard norm of owning the record for life and paying songwriters a lump sum without royalty. On a lot of occasions they even include the sheet music of the recorded songs within the scope of their ownership with no rights to re-record in the next 60 years, leave the songwriters/artists only the rights of live performances and tv appearances. The labels keep the entire portion of the copyright and royalties earned from online usage, streaming services and any other sources. Even when the 2000 Act took effect the labels did not change their ways of functioning and a handful of artists cognisant of the situation have been fighting ever since. As digitalisation rose, revenues from streaming services became a new source of income, labels carefully included terms that covered rights over all digital platforms into their contract without the knowledge of the artists who were still unaware of the revenues they could be earning from songs being streamed on platforms like youtube or Spotify. This term or clause including digital rights was not a part of the contract, until the internet came into existence.

Before home studios or home recordings became affordable, like most artists around the world, Bangla musicians had to solely resort to the record labels for their services, equipments, facilities, capital and reach for recording, publishing and distribution of music. This meant printing and publishing of the physical copies of the songs that they recorded at the labels’ studios and having the

⁴⁶¹Interview Participant (Dhaka 16, 19.7.2019)

label use their connections to distribute the cassettes, cd's or vinyls. Despite the absence of digital streaming or mp3's the sale of records back in the 80s and 90s were at its peak allowing the big artists to charge huge advances and also claim share of profit. Verbal contracts were the norm and successful artists and bands like Miles, LRB, and ARK even took payments in the forms of cars and apartments according to an interview by a manager from the big label Shongeeta. Rockstars with massive following like James charged as much as 50lakh in the 90's and got paid in full, indicating the kind of revenue that the labels were able to generate when people bought tapes or CDs⁴⁶².

With the dawn in globalisation and the digitalisation physical copies of music almost became obsolete and inspite of the many other formats and platforms where music could be found the revenues had declined radically in Bangladesh⁴⁶³. Online banking, use of debit/credit cards, online purchases have only become a thing of the present for a few developed cities in Bangladesh in the last 4/5 years. Therefore the culture of purchasing tunes online, individually or as an album is still foreign to the mass. Because of a fall of sale in physical copies, the labels and recording studios suffered major losses. Technological advancement brought in increased unauthorised downloads and the business deteriorated even further. Recording expenses inflated and became less and less cost effective. The labels became incapable of earning the kind of revenue they did in the past and began creating a draconian norm of rights sharing where they keep it all. However development in tech also meant that now computers were a household machine and setting up a home studio and acquiring recording equipment slowly became affordable. This freed artists everywhere to a large extent where they had a chance, for the first time, to be able to retain the copyrights of their own recorded work. Albeit the contractual practices amongst labels in Bangladesh, an artist approaching the labels

⁴⁶²Interview Participant 9, 13, 12, 28 (Dhaka 2020)

⁴⁶³Maqsoodul Haque, *History of Bangladesh Rock: The Legacy of Azam Khan* (Bookish Publication 2020)

having already recorded their songs, have a much stronger ground to negotiate profit share and ask for a service from the label much like that of a publisher, without having to share sound recording rights at all.

At the onset of digital revolution, there appeared to be a radical change in audience, with a plethora of international music flooding into the Bangladeshi music scene. It created a new school of musicians and the old titans of music were struggling to keep up. They refused to comply with the new rules of the labels and shuddered at the new fee they were being offered. They were habituated to certain treatments and way of making music and it was difficult to evolve. With a low cost of production and the internet to help distribute music without a middle man, it was no longer an impossible dream to produce music and initiate one's own musical career.

However, with no culture of royalty payments and no collecting societies operating in Bangladesh, technology could only take the artists so far. As discussed above a collecting society, especially a global one has reach and connections and the means to collect revenues from multiple platforms and distribute them along with issuing licenses to use their members' work, for other creators. Had it existed in Bangladesh, it might have also contributed in reforming the royalty paying culture and pressurising non-paying customers to comply with the help of law. Individual artists are often reluctant to take a legal course in the fear that they will not be able to bear the financial burden or even the knowledge to go about it. But a big collecting societies will have both the means and the capital to either draw legal attention or leverage it to obtain the royalties due. The ability to generate income from royalty collection globally would put the artist in a much better footing, even if one only considers the power in the number of population Bangladesh has and the number that lives abroad. Here is a likely scenario:

A large number of Bengali diaspora residing in various parts of the world, owns businesses such as restaurants, cafe's, venues, where they play old Bangla music recorded in Bangladesh. These businesses do not ever have to pay royalties for playing these tracks because none of these musicians are registered with a collecting society, neither are the labels and it is most likely that they are completely unaware of the sheer loss of royalty they are incurring globally. There are no collecting societies in Bangladesh and it is impossible for artists to trace every usage of their song but even if that was not the case, the artists would still lose out on their revenue since the record labels would grab all the return according to the unconscionable contracts they signed, according to which, all the rights and royalties belong to them.

The Laws of Contract in theory and in Practice

The Contract Act 1872⁴⁶⁴ is the prevailing legislation in Bangladesh that governs the contractual obligation associated with the recording and publishing agreements discussed above. It lays down the guidelines and regulations within which the contracts must be drafted to be deemed binding between the parties. Mirroring the view of most laws regarding contractual matter around the world, “freedom of contract” has been the corner stone of the Bangladeshi laws of contract. The doctrine of freedom of contract grants any individual the right to freely enter into a private or public contract and choose any terms and conditions they may agree upon, without the interference of the government.

However, it can provide little protection where there is lack of freedom of contract because it has been syndicated by labels, venues and festivals who decide the amount to be paid and tend to set the

⁴⁶⁴http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=26 <accessed 05.06.2018>

rate very low. There is indeed no freedom of contract but an illusion that both parties are autonomous. The parties in fact, stand on unequal bargaining grounds giving rise to disputes over, unconscionable bargains, undue influence, unfair terms⁴⁶⁵ in agreements such as distribution and publishing agreements, management agreements, recording deals, so on and so forth. The concept of the free consent of the parties became the very tool to institute the sanctity of Standard form contracts, which are a common feature of commercial relationships, generally favourable to the party with the superior bargaining power.⁴⁶⁶

Freedom of Contract

The doctrine of freedom of contract allows individuals or groups in a transaction to freely choose or agree to any lawful terms and conditions that will govern their relationship. Commonly the courts refrain from interfering with a bargain or reshaping its terms. As a result a party entering into a contract willingly shall be bound regardless of whether he subsequently finds the terms unacceptable or has commercial reasons to set it aside.⁴⁶⁷ This is of course subject to government restrictions and principles of European Contract Law, which involves requirement of good faith, fair dealing and mandatory rules.

Discussions on freedom of contract typically raise two questions: when is an agreement freely entered into and when, if ever, should courts refuse to enforce a freely made contract?⁴⁶⁸ Principally parties are free to negotiate the terms of the contract before entering into it but the mere absence of coercion does not guarantee true autonomy of the party unless certain conditions are satisfied such

⁴⁶⁵Unfair Contract Terms Act 1977 (as amended)

⁴⁶⁶Atiyah, P.S. (1979) *The Rise and Fall of Freedom of Contract*. Oxford: Oxford University Press.

⁴⁶⁷ Angelo, A. H., Ellinger, *Unconscionable Contracts: A Comparative Study of the Approaches in England, France, Germany, and the United States (1991-1992)* 14 *Loy. L.A. Int'l & Comp. L.J.* 455

⁴⁶⁸ Stephen A. Smith, *Future Freedom and Freedom of Contract* (1996) 59 *Mod. L. Rev.* 167, p186

as an adequate range of alternative options, an appropriate mental state, etc.

In the case of George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd⁴⁶⁹, Lord Denning MR compared "freedom of contract" with oppression of the weak and drew attention to the issue of standard contracts and terms and conditions in small prints, which exploited the weaker parties poor bargaining position. The concept of freedom of contract projects nobility in theory but in practice there appears to be little good faith and bleak fair play in favour of the "little man" who is more often subjected to undue influence, unconscionable terms, economic or emotional compulsion and non-disclosure of material fact. Artists historically have been unwillingly entering into agreements that were inconvenient, unprofitable, unconscionable and contained unfair terms because they simply did not have other options and required the support of a label and its corporate connections that they hoped would lift their careers and enhance their distributions and promotions, unwittingly getting trapped in contracts that was later almost impossible to set aside.

According to the Bangladeshi law, consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake. Section 14 of the Bangladeshi Contract Act 1872⁴⁷⁰ states that 'consent' is said to be free when it is not caused by-

- A. coercion, as defined in section 15, or
- B. undue influence, as defined in section 16, or
- C. fraud, as defined in section 17, or
- D. misrepresentation, as defined in section 18, or

⁴⁶⁹ [1982] EWCA Civ 5 [1983] 2 AC 803

⁴⁷⁰The Contract Act 1872 (Bangladesh) < <http://bdlaws.minlaw.gov.bd/act-details-26.html> > accessed 16th august 2020

Standard Form Contracts and Exemption clauses:

Also displaying the characteristics that contribute in the withering of the freedom of the parties are standard form contracts. According to the classical law of contract the parties are assumed to be bargaining freely considering that they are in the best position to know of their own interests, as a result the question of any investigation on the relative strength of their negotiation by the court is thwarted by the fact that any inequality is itself a matter for the market to rectify⁴⁷¹. The concept of the free consent of the parties became the very tool to institute the sanctity of Standard form contracts, which are a common feature of commercial relationships. These are pre-printed contracts that are drawn up by one party, including a set of terms, conditions and clauses, which are generally favourable to the party with the superior bargaining power. The chief advantages being low costs due to the evading of the formalities of individual negotiation for each contract and therefore increased certainties. Standard form contracts allow the drafters to include exemption clauses that permit them to escape liabilities or obligations to, for instance, paying or limiting compensations that they would otherwise be bound by. Abdicating responsibilities for their promises through exemption clauses in standard contract also provides them with the discretion to exercise extremely far-reaching powers before which, small businesses or creators (like musicians) remain powerless.

Courts have over the years upheld oppressive standard term contracts where parties have foolishly entered into such contract without reading or understanding the terms or simply because of the lack

⁴⁷¹Atiyah, P.S. 'The Rise and Fall of Freedom of Contract' (1979) Oxford University Press.

of the opportunity to negotiate because of poor leverage⁴⁷². Judges have consistently observed that the parties unable to comprehend the terms of a contract freely made did not negate their free consent. While these contracts are not illegal per se there exists a very real possibility of unconscionability, therefore in the event of any ambiguity the law has made room for resolution through ‘contra proferentum rule’. Parties involved in a music contract are often faced with terms or clauses which are construed loosely so as to create room for the party with stronger bargaining position to carry out conducts or dictate transactions which are mostly contrary to the artist’s preference. It could involve manipulating their style of work, interfering with creative developments or freedom, commercialising contents against the artists consent etc. These are circumstances when doctrine of Contra Proferentum rule is initiated, thwarting the advantages fashioned by the ambiguity, in respect of its application, where the drafter tends to rely on it. The rule commands that such clauses will be construed against the party who is relying on it and in favour of the other along with a general inclination of the courts to interpret the contract against the interest of the party who drafted it.

Lord Denning’s decision in the case of Lloyds Bank Ltd v Bundy⁴⁷³ attempts to construe a general concept of inequality of bargaining power flowing from cases of ‘unconscionable bargains’ where the majority of the Court of Appeal took a different view and decided on the grounds of undue influence.

The question was whether the contract leading to the repossession of the house by Lloyds Bank, involving the charge and guarantee, was voidable due to iniquitous pressure. The general rule is that transaction stands, as ‘no bargain will be upset which is the result of the ordinary interplay of

⁴⁷²*L’Estrange v F. Graucob Ltd* [1934] 2 KB 394, *Galbraith v Michenall Estates Ltd* [1965] 2 O.B. 473,479 (1964)

⁴⁷³[1975] QB 326

forces'. However where there is a substantial disequilibrium in the position of the parties forming the background of the formation of the contract, with terms vastly unfair or properties being transferred for considerations which are grossly inadequate, courts could provide relief setting the contract aside. This is in addition to "when his (their) bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other." Here the farmer was without the support of independent advice and he had placed himself in the hands of the bank. Lord Denning's concept tend to suggest that courts will provide relief on the grounds of disequilibrium of the positions of the parties as opposed to the abuse of that position, inspite of the fact that it is evident from the judgement of the rest of the court, that a remedy will not arise merely out of inequality but an additional burden of 'undue influence' need to be discharged (Cartwright J., 1991)⁴⁷⁴. Lord Scarman disapproved strongly of this general concept of setting a contract aside due to public policy on the basis of unfair use of the dominant bargaining position of a party in the Privy council case of Pao On v Lau Yiu Long⁴⁷⁵. He stressed on the fact that holding a contract void under these circumstances would only be reasonable on the grounds of fraud, mistake or duress and not public policy. However in most cases relating to music contracts parties fall in this exact loophole where commonly contracts are not in fact entered into through fraud or duress but in a state of substantial disequilibrium with no alternate but to give in with the hope of future renegotiation if and when the position of the parties change.

Nevertheless the case of A Shroeder Music Publishing Co Ltd v Macaulay⁴⁷⁶ may provide for a scope of a principle which could monitor the fairness of bargains in the light of their content (as

⁴⁷⁴Ibid

⁴⁷⁵*Pao On v Lau Yiu Long* [1980] AC 614

⁴⁷⁶[1974] 3 All ER 616

discussed in later in the paper). The courts have in subsequent cases exhibited the necessity to reduce adherence to restrictive standard form contracts and move towards a more individual and customised approach towards contractual relationship specially in music contracts which are very much unlike other forms of mass contracts (like standards forms that are entered into when one opt for a monthly mobile contract or when one accepts the terms on their phone while updating software, where there is less room and more inconveniences to negotiate. Such mass contracts choose standardisations which save time and money and increases certainties)⁴⁷⁷. The same principle could be found in the test of reasonableness of an exclusion clause set out in schedule 2 of the Unfair Contract Term Act 1977, which includes a ‘reference to the strength of the bargaining position of the parties relative to each other’.

Unequal Bargaining Position and Restraint of Trade:

Musicians seeking to contract with a record label or entering into a contract with the owners of live performance venues or festivals, have little power to negotiate the terms or payment amounts unless they are already successful and hold the upper hand that can dictate the terms of the contract fairly. Commonly the contracts they are offered are standard term contracts, which may include restraint of trade, which are designed to prevent competition or unfair terms, with little room to make changes and the weaker party can either accept it or leave.

The courts generally refrain from interfering with bargains between the artists and the labels or management unless it involves fraud, duress or unconscionability but the doctrine of restraint of trade appears to be an exception. There seems to be a slim line between the doctrine of restraint of

⁴⁷⁷Steve Greenfield and Guy Osborn, ‘Unchained Melody: Restraint of Trade and Music Contracts’ (1992) [13 Business Law Review, Issue 10, pp. 223–224](#)

trade and undue influence both of which act as tools to safeguard artists entering into an unconscionable contract due to their poor bargaining position.

In order to determine whether a restriction is an unenforceable restriction of trade, the courts apply the Nordenfelt test⁴⁷⁸, which is subject to two factors. “The contract must (1) be in restraint as the term is used in ordinary parlance and, if it is, the court must then consider (2) whether there is some reason to exclude the contract from the application of the doctrine”⁴⁷⁹. The Nordenfelt test will only be applied if the contract passes this two-stage test. The test provides that

“a restriction will only be enforceable if such a restriction is both reasonable between the parties and does not offend public policy”.

In the case of Schroeder⁴⁸⁰ relating to a standard term publishing contract providing for exclusive services for a period of five years, signed by the songwriters, the contract period was extended to 10 years with the publishers holding rights to terminate the contract on one month’s notice and providing no equivalent options for the songwriters. Furthermore, the publishers also reserved the rights to assign the agreement whereas the songwriters were held bound by the terms which only provided such provisions for the songwriters subject to the permission of the publishers. Such restraint of trade was challenged by the songwriter on the grounds of public policy and was claimed to be void. The two factors considered by the courts were the length of the contract and the exclusive nature which lead to the conclusion that the agreement was unduly restrictive, contrary to public policy and was therefore void. The issue was revisited in the case of ‘ZTT Records Ltd and another v Holly Johnson’⁴⁸¹ where the agreement reflected restrictive provisions and a duration of seven to eight years, during which the company would retain rights over full assignment of all copyright,

⁴⁷⁸*Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd* [1894] AC 535

⁴⁷⁹*Esso Petroleum Co Ltd v Mardon* [1976] [EWCA Civ 4](#)

⁴⁸⁰*Schroeder* (n 15)

⁴⁸¹[1993] EMLR 61

thwarting all performances of the band's own work which remained subject to the company's approval. The agreement was held void based on the reasoning of the previous case. The courts emphasized on the fact that the burden was on the defendant to prove that the length of the agreement and the restrictions were not draconian considering that such contract could be deemed reasonable had the duration been shorter.

Lord Humphries followed the reasoning of Lord Reid in *Esso Petroleum*⁴⁸², in the case of (*The Stone Roses case*) "*Silverstone v Mountfield and others, Zomba Music Publishers v Mountfield and others*"⁴⁸³, where the plaintiffs were publishers and record labels, who claimed that their agreements were enforceable despite being aware of the restrictive nature of the contract they created.

"If an artist is effectively able to be prevented from reaching the public over a prolonged period I find it unrealistic to say that this is not a contract in restraint of trade."⁴⁸⁴

The restrictions imposed on the bands were extensive, to the point where they were prevented from performing where there was a possibility of recording and future release, within the prescribed territory which covered the entire world. The way the contract was formed also meant that Zomba was not obligated to release any of their material and the contractual period could technically be indefinite⁴⁸⁵. The artists were young, inexperienced and unknown who had little room to negotiate and had thus entered into a contract, which had draconian effects and could be carried out in an 'oppressive manner', considering that new bands require the support of a label and its distribution and publishing services to be able to thrive. Being offered with the opportunity to sign with a major label is

⁴⁸²*Esso* (n 18)

⁴⁸³*Silverstone v Mountfield and others, Zomba Music Publishers v Mountfield and others*[1993] EMLR 152

⁴⁸⁴*The Stone Roses case* (n 22), Lord Humphries

⁴⁸⁵*ibid* (n 16)

much like finding the Holy Grail and this is exactly what the labels tend to exploit.

The controversial case of Panayiotou and others v Sony Music Entertainment (UK) Ltd⁴⁸⁶, famously known as the George Michael case, displays several examples of limitations and constraints that artists are faced with and if the likes of George Michael fails to pave the path to a remedy for general musicians, by setting precedent to resort to, then it provides for a difficult time for performers everywhere. George Michael had claimed that the exclusive recording agreement between him and Sony was void or unenforceable on the grounds of unreasonable restraint of trade. Here the artist had the chance to renegotiate his agreement in 1988 after the initial agreement in 1984 and the bargain was clearly at a stage of his career where exceptionally, the inferior position of the party had changed, empowering him to renegotiate at his own terms with not only independent advice at his disposal but the legal advice of specialist lawyers. However in taking this view it appears that Parker J has based his decisions primarily on remuneration and commercial success, disregarding the issue of sterility and public policy formulated in *Schroeder*. This was one of the contributory factors on the grounds of which the artist's claim failed. However, the case displays a draconian scenario of the vital control of creative output by the labels, by exercising their ability to interfere and therefore suffocate artistic development on the grounds of protecting and enhancing commercial appeal. The following is a typical clause of such nature:

“Each master recording made by you shall be subjected to our reasonable approval as being commercially and technically satisfactory for the manufacture of records and tapes therefrom and you shall at our request repeat any performance until master recording acceptable to us as aforesaid are obtained. Instrumental recordings and recordings other than in a recording studio will not be

⁴⁸⁶*Panayiotou and others v Sony Music Entertainment (UK) Ltd* [1994] ChD 142

*acceptable unless we have previously agreed to the contrary*⁴⁸⁷.

This potentially meant that in effect he was prevented from opting to change directions or alter his musical style to reflect his current perceptions or passion which could be rejected by Sony according to their delivery commitments on the grounds of “quality”, although their actual reasons would commonly be derived from sales considerations and its effects on investment. The terms of the 1988 agreement were held to be justified and fair on the grounds that it was necessary for protecting the legitimate interests of Sony and stated that it was unlikely that Sony would exercise their power not to release or reject the artist’s records and that recognising such risks would be a “distortion of commercial reality”.

The courts distinguished the Stone Roses case⁴⁸⁸ with the George Michael case⁴⁸⁹ on the grounds that the latter was a renowned and experienced performer with specialist legal services at his disposal and decided mainly on public interest upholding genuine compromises, unlike the former which made the agreement in the Stone Rose case more unreasonable and subsequently the contract was set aside⁴⁹⁰. This resonates with the discussions of Lord Diplock in ‘Schroeder’ displaying increased efforts by the courts to protect the weak and create somewhat of a balance. The courts attitude portrays their elevated awareness towards the limited extent and nature of a creative artists’ career and their keenness in finding an alternative, for instance by discouraging long term restrictive terms and inclining more towards terms capable of severance. However although these cases have pushed the

⁴⁸⁷Greenfield S. and Osborn G. (2002), ‘Remote control. Legal censorship of the creative process’, in M. Cloonan and R. Garofalo (eds), *Policing Pop*, Philadelphia: Temple University Press, 65-78 (73)

⁴⁸⁸*The Stone Roses case* (n 21)

⁴⁸⁹*Panayiotou and others v Sony Music Entertainment (UK) Ltd.* [1994] ChD 142

⁴⁹⁰*Macaulay v Schroeder Music Publishing Co Ltd* [1974] 1 WLR 1308; *Zang Tumb Tuum Records Ltd v Johnson* [1993] E.M.L.R. 61 (26 July 1989)- An interesting comparison can be drawn with Californian law which prohibits personal service contracts from going beyond seven years (*Music Business International*, Vol II No 2)

envelope in the evolution of the restraint of trade doctrine beyond restrictive publishing agreements in Schroeder, the long-term effects are yet to be fully realised and remain uncertain.

Undue Influence

Songwriters and performers face further hurdles where legal interventions can provide relief through the doctrine of undue influence. The unequal positions of the parties generate a situation where the party with superior position can exploit and manipulate the superiority of their position in the pre-contractual stage to take unfair advantage given that artists in most cases have their careers at stake with no alternative choices. The career of a musician or artists in any creative field is unlike any other occupation considering it involves not simply the utilisation of what one has learned in school or during work but the creation of something completely new or engaging in the evolution of an existing work which contributes to music in general. It is an unpredictable and ever-changing business where it is almost impossible to determine what kind of work will take off to make millions and what would embark on a downward spiral. Therefore, musicians hold a truly vulnerable position at different stages of their careers until they attain fame and financial success and they are prepared to sacrifice extensively in order to land a lucrative recording and distribution deal although they almost always have to settle for much less. This creates room for unfair exploitation. Although this might not go as far as economic duress since mostly the attitude of the labels and venues reveal a “take it or leave it” approach, it creates a widely accepted pressure on the artists who are afraid to lose their one chance to shine and end up giving in to whatever terms they are offered, however oppressive or unfair.

The doctrine of undue influence is based on the concept of taking of advantage of a commercial relationship through improper pressure not amounting to duress although the precise basis of the in-

intervention of the court is debatable and is dependent on the facts of each case⁴⁹¹. The House of Lords in Royal Bank of Scotland v Etridge [No.2]⁴⁹² stressed on the fact that regards should be had on the circumstances and facts of each cases and that undue influence can be found in many different forms like coercion, domination, victimisation and other unacceptable forms of persuasion⁴⁹³. The case of Hammond v Osborn⁴⁹⁴ talks about the fact that the courts tend to concentrate more on the complainant rather than on the intention of the alleged influencer. The main question is whether the eventual outcome is a result of taking advantage of the relationship between the parties. Amongst the two classification of undue influence, that is actual and presumed influence, the later appears to be more relevant in this discussion considering that actual undue influence involve the types of pressure or threats that equates with that of duress. A “manifest disadvantage” is required to prove liability in case of presumed undue influence⁴⁹⁵.

The Unfair Contract Terms Act 1977 can provide relief to musicians when they are in a position to pursue law suits. Artists and labels can be deemed as operating through a business relationship and in course of business according to analysis that can be drawn from the definitions provided by various cases⁴⁹⁶ for the purpose of s1 (3) of the Unfair Contract Terms 1977.

“The primary meaning of all these words, "business", trade, profession and vocation, is an occupation by which a person earns a living... Some people, however, carry on activities which are clearly "business" but which have little to do with ordinary business or trade: thus a man may be a profes-

⁴⁹¹Jack Beatson and Daniel Friedman, *Good Faith and Fault in Contract law*, (publication date 1997,OUP)

⁴⁹²[2001] [UKHL 44](#)

⁴⁹³Ewan Mckendrick, *Contract law*, (5th edition 2003) Palgrave

⁴⁹⁴[2002] EWCA Civ 885, [2002] WTLR 1125

⁴⁹⁵*National Westminster Bank plc v Morgan* [1985] [UKHL 2](#)

⁴⁹⁶*Customs & Excise Commissioners v Fisher* [1981] 2 All ER 147

*sional sportsman or make a business of his hobby, or make a trade of domestic hospitality*⁴⁹⁷”.

Therefore artists could be essentially categorised under this definition as businesses which could provide them with relief under the act.

Bangladesh does not currently have any specific acts on unfair terms to regulate contractual engagements⁴⁹⁸. However the Contract Act 1872 has provisions for contracts to be set aside on the grounds of undue influence under chapter 2 of the act. It also defines undue influence in section 16. According to section 16 (1), “ A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other”. This fits the situation between the parties within the music industry where the labels evidently hold dominance over the musicians financially. According to section 16 (2)(a) another situation that can constitute undue influence is where one party holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other . This matches the kind of relationship the musicians and music labels shared in the past, where the always labels held a position of authority since finding access to recording studios and proper equipments to mix and master the music was very hard, expensive and scarce. By the time home recording became affordable and accessible, thousands of contracts have been signed over decades.

According to the laws of contract, a contract can be deemed voidable if

⁴⁹⁷Stuart (n 37)

⁴⁹⁸Abir Mahmud Khan, Avishek Barman, Md. Hasib Nur Sultan, ‘The Regulation of Unfair Contract Terms in Bangladesh’ (2021) <https://www.researchgate.net/publication/350055598_The_Regulation_of_Unfair_Contract_Terms_in_Bangladesh> accessed 14 Feb 2023

1. One or both parties has not disclosed a material fact.
2. The contract includes misrepresentation, errors, or fraudulent statements
3. The contract was signed under duress or undue influence
4. One or both parties could not legally enter into a contract.

The 1872 Act provides the power to set aside contracts that can be proved to have been induced by undue influence. Section 19A of the Contract Act 1872 states that, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.

Conclusion

The commercial contracts through which all the music IP rights are being transacted and managed depend entirely on the norms or commercial practices of the music industry. The entire music industry is in turn dictated by the bargaining power and privileges possessed by individual stakeholders, the regulation of which is beyond the scope of law. Such complex equations amongst the stakeholders stem from the complicated cultural and historical context. The following volume takes into account the contextual background of Bangladesh, studies on its copyright laws and commercial music contracts and combines it with the qualitative data that I have gathered through months of

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fieldwork in Bangladesh. I used semi-structured qualitative interviews to gather information understand issues and fill in the gaps where information was missing. I have applied the Theory of Emptiness, to explain, perceive and interpret the data acquired.

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Introduction

This volume concentrates on the data acquired through empirical qualitative research over 2 years of my field research in Bangladesh. The semi structured interviews have first been presented as found, following which I categorised and sub categorised them thematically through my interpretation and analysis. The theories of legal transplant and functionalism provided a practical and useful starting point to organise my research in preparation of my fieldwork. It played a crucial role in the formulation of questions for the semi-structured qualitative interviews and begin arranging my qualitative data using NVIVO software to analyse my empirical data. This compound theoretical lens have been applied in carrying out an initial analysis of data

Thematic Analysis: through the lens of Legal transplant and Functionalism

Most of the factors that emerged from doctrinal and qualitative research and when seen from the vantage point of legal transplant, appear to be rooted in unawareness . The uninformed and ineffective implementation of laws perceived through functionalism can also be categorised under the broader umbrella of unawareness. The nodes in the pie chart bellow support the doctrinal findings of this research and identifies other broad factors that act as barriers to enjoyment of revenues through copyrights as well as developing an effective and thriving music industry in Bangladesh. *All of these point to a larger common theme of a shadow factor that seems present behind all the above nodes.* All the nodes are indications of a newly developing legal and commercial framework that is radically different from the tradition in which music have been created, performed and distributed in the region for the last 1000 years .

A historical context that has not been taken into account in detail. It also indicates how the ‘un-awareness’ factor or ignorance amongst the stakeholders in the music industry exists as a common undertone woven through all other factors, playing a pivotal role in creating the current disorganised and inefficient industry model in Bangladesh. It can be argued that, this along with the lack of a functionally productive, legal and commercial infra-structure of the music industry is rooted in the socio-cultural history that its people and the govt evolved in. The region and subsequently the country Bangladesh, witnessed evolution in many sectors including the music industry which had to essentially build itself up from scratch and seems to be in need of reinventing itself according to the participants that I interviewed, who are considered to be veteran musical personalities. In the early days, since music was only practiced in the courts of kings or Mughal as commissioned musicians or as traditional folks songs none of which involved the concept of ownership of their IP, building a music industry governed by a concept such as copyright had proven to be unsuccessful according to the data. The pie chart below in figure 1, displays categorisation of qualitative data in themes in the earlier stages of the data analysis process, applying the theories of “Legal Transplant” and “Functionalism” to interpret and analyse the interview data. To be able to make sense of the themes identified, I turned to the theory of emptiness, as the use of Legal transplant and Functionalism did not suffice. I have selected two of the above themes to explain this:

a. **Implementation** seen through legal transplant, generates issues relating to the poor infra-structure of the industry but does not reveal why it is so, why the current law proves to be ineffective and how deep the issue runs. How can artists claim royalties and make a living off their music careers if the very concept of commercialising music is contrary to practices amongst the general mass of the region. This is the question that arises as the data is analysed from the vantage of the Theory of

Emptiness. Legal transplant or functionalism identifies that a collecting society is required in the industry and that its absence is making the music business as a whole, less profitable and effective. It also ropes in the factor of 'unawareness' as a crucial collaborator in explaining the many failures in erecting a decent infra structure and transparent functioning of the IP regime. The uninformed and ineffective implementation of laws perceived through functionalism is directly linked to the element of unawareness. It appears from the data, that the lack of knowledge and awareness regarding the benefits (benefits for both the creative and commercial community of the music industry) of an effective copyright system, acts as a demotivating factor in focusing on the key elements, that may help explain why legal transplant seemed to have failed to integrate into the domestic law of Bangladesh. My argument is that these key elements lead to functional failure and generate commercial industry practices that defeat the purpose of copyright laws to create opportunities for musicians to be able to monetise their work and create a living . In identifying the specific key elements, it is first essential to find the roots of unawareness that is undetachable from most factors that render copyright laws in Bangladesh ineffective and unhelpful.

The root of unawareness is hard to explain by exploring these key elements in the light of legal transplant and functionalism alone, because the landscape against which this is set is a multiversal Bangladesh, with multiple versions of the country existing within one. Legal transplant and Functionalism may elucidate towards why the broad umbrella of Unawareness can cause inefficiency in the music copyright regime, in one of the realities of Bangladesh but in order to discover the key elements affecting all the fragmented realities of the country it is crucial to discover the roots of unawareness in all the sectors.

Implementation and infringement, two of the key parts of an IP legal regime are also inter-linked

like the many crucial nuts and bolts that make up the complex machinery that is the IP copyright regime. Without the proper functioning of one the key parts, the machine cannot run without a hitch, in its entirety. One of the many difficulties that musicians, film makers, streaming platforms or anyone who is willing to use a song for any commercial purpose is to find the right copyright owners of the various components of the song. In the absence of a list of who owns which right and to what extent artists are either not credited at all or are credited wrongly or fail to receive revenues in the form of royalties . Musician participants in the interviews revealed that it is hard to find users of their IP who are willing to share their revenues and pay royalties to begin with and if anyone is willing, then power of negotiation always remains with them given the existing practice in the business of non-payment of royalties or non-sharing of rights and revenues.

Heated discourse on social medias about the ownership of songs, lyrics and composition in Bangladesh in recent times, indicates that the concept of copyright is beginning to unfold across general mass but with poor archiving and lack of knowledge in this field, it is being hard to find true ownership of songs now. multiple claims of ownership are being brought in relation to the same song with insufficient proof to establish original ownership. Old songs which are now being used in contemporary contents and gaining popularities are reviving claims on ownership because suddenly the song made a lot of money, drawing attention of the mass. when trial by social media reaches a height where the authorities are bound to take notice or get involved. “This same label has put up my 1994 album on YouTube , I have not received a single penny, then who is getting the money?”; “ My song was used in the film and became such a big hit, how come the label is only getting the money?”; “That is not a “Radharomon” song, but a traditional Sylhet wedding song. Why should he

get credit for our local village songs!”⁴⁹⁹. In almost all such instances it was eventually discovered that the composer or lyricist who were making claims, didn't in fact own the rights over their work because they had signed them over unknowingly.

b. **Unfair Music Contract:** Issues surrounding ‘unfair contracts’ largely indicate difficulties from the point of view of the artists who unwillingly had to sign off all their rights. However the theory of emptiness allows insight into how this should be expected in an industry such as this and why despite owning all copyrights for the songs, the labels and producers fail to make full use of the copyright laws. Emptiness as a lens through which to understand the data revealed that, labels or producer of music refrain from claiming royalties from international collecting societies, national or int. radios or broadcasting organisations. The interviews hint at why they act this way, while further analysis of the data explains the context and psychology behind their behavioural pattern - “ We were too excited to have managed a record deal. We didn’t even look through the contracts because, we were just grateful that our music was going to get recorded and released. It felt like at that point this was the only way and we didn’t understand contracts either”; “ I knew I needed the labels to record and I had heard of big rockstars in the 90’s make big money through labels but never knew that they had also signed away all their rights. We are all on the same boat now, but at least artists in the 90’s received big one off payments and expensive gifts ⁵⁰⁰. It shows that in a land where verbal or oral contracts were a general norm in the music business, songwriters and performers paid less attention to the many different terms of the contract when written contracts were introduced. These include terms and conditions such as the main subject of transaction, share of revenues, time period and duration within which the contract will be deemed valid, the extent and scope of ownership of

⁴⁹⁹Interview Participant 20, 28, 34, 19 (Dhaka 2021, 2022)

⁵⁰⁰Participant18 (Dhaka 2020), Participant 22 (Dhaka 2020)

various rights like sound recording rights, publishing rights, song writer's right, etc.

It resulted in thousands of songwriters and performers signing music contracts that transferred the entire ownership of the music IP from the songwriters to the labels. The contracts did not include any provisions for royalties or share of revenues for songwriters or performers of recorded music like vocalists receiving royalties for performers rights. Artists were never aware of how important the other terms and conditions in a contract could be, since they were not accustomed to contractual transactions until the 2000's.

According to my research, all academic investigations addressed statutory and implementational problems in light of copyright protection for music artists but my collected data, supported by the doctrinal investigation suggests not only the need for changed industry practices but a set of copyright laws that unambiguously enable songwriters, composers and performers to own rights over their creation to a certain extent and enjoy subsequent revenues through royalties. When freedom of contract can allow labels to take away a 100% of the copyright of a given IP, protection from copyright laws cease to be useful for musicians. This is where the socio-cultural context comes into play since it can be identified as an influencing factor in creating and perpetuating the current commercial industry practices within the music industry of Bangladesh. If the socio-cultural and historical context of the country is the element of emptiness of Atisa's Theory of Emptiness, then taking that into account would enable a more fully realised and defined image of the complexities in developing an efficient and sustainable copyright protection for musicians in Bangladesh.

The combination of doctrinal and qualitative studies in this research identified two broad overarching themes that affect the copyright and commercial interests of the Bangladeshi musicians :

1. Dissonance between the objective of Copyright laws and its outcome

2. Impact of creating and implementing laws and normative commercial practices without taking the historical and socio-cultural context into account.

— Historical and socio-cultural context of Bangladesh

— Normative commercial and legal practices within the music industry

What is the objective/goal of copyright law? Berne dictates that copyright law will provide music authors with “the means to control how their works are used, by whom, and on what term”⁵⁰¹. In other words, one of its principle goals is to create opportunities for musicians to be able to monetise their work and create a living. According to the empirical data this purpose is not fulfilled through the machinery of copyright law in Bangladesh. The general consensus amongst the participants on the underlying reasons point towards the state of the infra-structure of the music industry and all supporting industries. Supporting industries include banking, telecommunications and film. These are some components that contribute in the making of the shadow or hidden factor that occupy the gaps discussed in this research; the gaps that in practice renders the current copyright system ineffective in a region like Bangladesh. When interpreted through the lens of Emptiness, the fundamental question that needs to be asked is: *what is the current concept of copyright law empty of?* But can this be answered without having a firm understanding of the identity of the region this copyright law is being construed for and implemented in? The nature and identity of Bangladesh will determine the needs and requirement of its population.

Multiversal Bangladesh : A quest for Identity

The variant and multiversal existence of the nation of Bengal and its population, appears to be

⁵⁰¹Berne Convention 1886 <<https://www.wipo.int/treaties/en/ip/berne/#:~:text=The%20Berne%20Convention%2C%20adopted%20in,whom%2C%20and%20on%20what%20terms.>> accessed 8 Match 2020

united by a central theme behind its years of evolution: a common quest for identity. As a region, Bengal has had multiple rulers, hailing from varied ethnic and religious faith, the written evidence of which can be traced backed to the 11th century⁵⁰². This meant that the region struggled to settle down and develop a centred perception around its own identity given that the nature of its reality kept changing. As the ownership of the region shifted over the centuries from the Buddhist rulers (Pala Dynasty) to the Hindu (Sen Dynasty) and then to the Muslims (Mughal Empire) and so on and so forth⁵⁰³, it is not surprising that Bengal and its population is faced with an identity crisis in the 21st century. The fragmented state of the country today, which allows for the multiversal analogy to be made, seems to be rooted in this quest for identity and control. The idea of struggling with identity goes hand in hand with the concept of multiverse where there exists a number of versions of a world that is created as a result of a fragmentation of the identity of the original world. Each fragment existing within its own universe while also coming into contact with other universes created by other fragments. Each Bangladesh divided by class, sex, race, religion and time, co-existing in a container like oil and water. Across all areas of civic life, each Bangladesh is governed by different rules of existence and defined by the strength each of these sections possess in the current socio-cultural and economic environment. The laws created are all homogenised but affects the population in these universes in different ways, given their conflicting needs and positioning . For instance, most of the country's population still lives in a time with no internet, cable TV, access to world news and therefore their values, philosophies, priorities and the entire perspective of life is vastly different from those living in the few big cities like Dhaka and Chittagong. Meanwhile lives in these cities are competing with the global standard of fast pace living, discourse, demands and perspectives, as if they live in the future while the former dwell in the past, separated by not time

⁵⁰²See the Volume 4 of this thesis

⁵⁰³See Volume 4 of this thesis, Sub-heading : Historical background of Bangladesh : Colonialism and The Partition of Bengal

per se but economic disparity, political strategies, religious and racial bias. The wide range of musician participants, their passion and determination for music and the way their music connects across multiversal Bangladesh, points to an interesting phenomena that makes musicians a unique section of the population. The thing about music and musicians is that, they tend to transcend class, religion, sex, race and similar divides. This phenomenon of transcendence through music, provides a unique tool that has the ability to connect and impact the population across the multiversal existence of Bangladesh. If music has such transcending force and nature, shouldn't the laws, regulations, policies and enforcement in practice also possess such qualities that its safeguard and support should transcend divides?

These fragmented realities, or multiverses allowed the region to turn its allegorical identity crisis into literal wars, unrests, genocides and enmity over the centuries, resulting into the present unstable and confused state of Bangladesh⁵⁰⁴. The empirical and doctrinal data of this research, when seen through the lens of Emptiness, reveals a state of confusion amongst legislators, policy makers and stake holders of the music industry to the point where it feels like the common inquiry for all sectors, is the question of identity that is able to provide some certainty and decisiveness, with which they can operate authentically. My investigation supports that, over and over Bengal has wrestled with profound uncertainties pertaining to its identity like : who am I today? what do I want to be? Am I bound to repeat the choices that were made thus far, or can I change my path, if so what could it look like? Following are a few examples of situations that reveal cases of identity crisis over the years, in the governing of the country in general and in the context of copyright piracy : The country's law prohibits purchase dissemination and purchase of pirated books and music yet a

⁵⁰⁴Nurul Kabir, *BIRTH OF BANGLADESH: The Politics of History and the History of Politics* (Samhati Prokashan 2022); Willem Van Schendel, *A History of Bangladesh* (1st edn Cambridge University Press 2009)

huge book market called “Neel Khet” thrives at the heart of the capital selling pirated copies of education books and literary work of fiction and non-fiction by foreign authors. This copyright law (Copyright law 2000) law has been inherited from Bangladesh’s colonial ancestor, the UK, and has been a part of the region’s legal system for almost 200 years now, being passed down and adopted domestically even after the divide of India, Pakistan and Bangladesh. My argument is that this practice of piracy that operates without interference from the government is allowed since they are aware of the gap in the market in respect of inadequate educational books that are domestically published, but are not ready to tackle the situation yet. Domestically published books would make the books highly affordable and eliminate piracy from this sector. The government prohibits parking in the streets and issues fines to vehicles in breach but provides no general parking areas for cars. The country has launched a satellite⁵⁰⁵ into space but it cannot provide its citizens with uninterrupted supplies of gas, electricity and clean breathable air⁵⁰⁶.

Is Bangladesh a secular or an Islamic country with limitations on the kind of music that can be practiced and experienced? Is Bangladesh a country where access to copyright protection and benefits of copyright safeguards are available to all or only to a certain section? Is Bangladesh a country that believes is preserving its musical cultural heritage and support the tradition of its heartland population in creating its governing laws and regulations? This is the population which practices two of the three prime genres of music, traditional folk music and Baul music, both of which are not

⁵⁰⁵ Bangabandhu Satellite -1, Bangladesh’s first Satellite <https://satellites.pro/Bangladesh_map> accessed Feb 8 2023

⁵⁰⁶Desk Report, ‘Dhaka again ranks world's most polluted city’ *The Daily Star* (Dhaka, 5 March 2022)<<https://www.thedailystar.net/environment/pollution/air-pollution/news/dhaka-again-ranks-worlds-most-polluted-city-2976026>>accessed Feb 8 2023;

Press release, ‘High Air Pollution Level is Creating Physical and Mental Health Hazards in Bangladesh’ World Bank’ (2022)<<https://www.worldbank.org/en/news/press-release/2022/12/03/high-air-pollution-level-is-creating-physical-and-mental-health-hazards-in-bangladesh-world-bank>> accessed Feb 8 2023

covered by copyright laws and falls under the category of TCE or traditional cultural expression. Is Bangladesh the coming together of a population that can finally identify and own its roots enabling decolonisation of minds? My thesis dictates that the key to how we approach musicians' rights and for Bangladeshi music to thrive and be preserved, lies in the identity of Bangladesh and what it wants to be. Addressing identity crisis from various vantage points could raise questions of redefining identity, or burying or reviving old aspects of it or reasons for losing or evading its identity or reconciling with its inherent identity in the face of changing realities. It is crucial for the region to address these questions and confront its alternate identities over the years and in the present, to be able to resolve and identify what is at the root of the nation, choose what it wants to be and own the realised sense of self as Bangladesh and Bangladeshis'. I argue that this identity crisis contributes in the dissonance that exists between the objective of Copyright laws and its final outcome, as mentioned above.

A common narrative put forward by the musicians and labels was that, it is always difficult to resolve who we are with who we think we should be. These two personalities always appear to be at war. The labels claim they know about the copyright obligations and rules but they do not end up sharing the rights with the songwriters; musicians want to monetise their music but signs away all their rights. However I draw from Aristotle's take on this, which states "Virtues are formed in man by his doing the actions," or as writer Will Durant interpreted it, "We are what we repeatedly do", what we eventually end up choosing or doing, though social and personal conditioning ⁵⁰⁷. Analyses of the behavioural psychology by Harvard behaviourist B. F. Skinner defines "conditioning" as a well-known approach to inducing behaviour change. He argued that "behaviour modification should mimic the evolutionary process, in which naturally occurring behaviours are 'selected' for

⁵⁰⁷Will Durant, *The Story of Aristotle's Philosophy*; 39 (Legare Street Press 2021)

success by environmental conditions”. My research identifies behaviours on governments part that shows poor enforcement of sanctions, poor example of compliance on the laws and regulations (allowing the sale of pirated books and CDs), and no recognition of the inefficacies present. Such behaviour sets example for the population as to how to behave and operate as a sensible citizen. He suggests that, “The division of learning is to us, . . . what the division of labor was to our grandparents and great-grandparents . . . In our time the division of learning emerges from the economic sphere as a new principle of social order and reflects the primacy of learning, information, and knowledge in today’s quest for effective life. And just as Durkheim warned his society a century ago, today our societies are threatened as the division of learning drifts into pathology and injustice at the hands of the unprecedented asymmetries of knowledge and power that surveillance capitalism has achieved.” Drawing from this logic, I argue that by using this knowledge and power created by surveillance capitalism, a population can be taught what copyright laws implicate and conditioned to respect and comply with the laws and regulations available. Informing and raising awareness amongst the population through, stricter enforcement and setting examples of the government itself complying with the laws, are tools that can be used to modify behaviours of the mass. I argue, that the repeated use of these tools would enable behavioural modification of the current mindset, to change the long standing organically developed habits and ideas that have dictated the understanding of the mass in this region regarding ownership of music, payment of royalties and the commercialisation of IP, as explained in Volume 4 of this thesis.

Looking at the data through the lens of legal transplant and functionalism provided a somewhat limited understanding of the Bangladeshi music scene, which led me to search further for a new philosophy that can explain the data better . The Data gathered provided for a more nuanced picture than the set questions I began with, therefore I introduced the theory of Emptiness in the theory chapter.

The teachings of mindfulness in Buddhism and the Islam of Sufism are philosophies that I live by and in digging deep I found the answer to my limitations in perception in the concept of the Void or Emptiness described in Sufism and predominantly in Buddhism. I now propose to show my use and application of the theory of emptiness that these combined philosophies offer to decode the richness and nuance the narratives present along with the cultural, behavioural and sociological context of the region .

Theory of Emptiness

The theory of Emptiness guides the research analysis by providing an insight into its concept of ‘self’ or identity. According to the theory of emptiness, Buddha’s stance is that, “man is empty of self” which Thich naht Hahn, the zen master interpreted as man is made of non-man elements therefore he is empty of self. Man is not made of man like a book is not made of books but of papers made from trees, ink, and strings or glue to hold it together. None of these are books itself⁵⁰⁸. His Buddhist school of philosophy states that the nature of existence is empty and that man does not have a separate existence.. Everything is empty of itself, in other words there is no separate existence of self or rather all things inter-be or are inter-connected or exist as interdependent on each other. The self cannot not exist separate from the elements that it is composed of , according to the core teachings of Buddha. In light of that, it is argued that, if there is no separate self, then to find one’s ‘sense of self’ or ‘identity’, one is required to find all the ‘non-self’ elements that makes the ‘self’ . Man is made of a combination of its ancestral elements like human ancestors but it is also

⁵⁰⁸Thich Naht Hanh, *The Miracle of Mindfulness* (First Published 1991, Rider Publication 2008)

made of ‘non-man’ elements including animal ancestors and vegetable ancestors ⁵⁰⁹. Master Hahn interprets Buddha’s concept of Emptiness and suggests that everything must ‘inter-be’ in order to exist. He uses the term “inter-be” to explain the state of interdependency that is inevitable for anything to exist or without which nothing can exist⁵¹⁰. Therefore when ‘something’ is empty of self it means it is full of a combination of other things on which the existence of this ‘something’ is reliant.

By this rationale my research endeavours to discover the composition of the general identity and musical identity of Bangladesh and identify what it is “empty of”. In other words, I am trying to discover the composition of the reality which makes the music copyright regime of Bangladesh through the application of “emptiness”. When interpreted through the lens of Emptiness, the fundamental question that needs to be asked is: *what is the current concept of copyright law empty of?* The musical identity and temperament of the region can be divided into three school of approach, tradition of music patronage, traditional folk music and music of the Baul sect. Therefore a combination of these three schools in addition to their psychological, philosophical and socio-political context, form the complete identity of the present music copyright regime of Bangladesh which the copyright law must help protect, preserve and navigate through, in order to fulfil its goals.

Linking Data to Emptiness: Empirical Data from law makers and legislators of Bangladesh reveal, how they perceive the copyright regime : whats lacking and what needs to be changed. It shows that

⁵⁰⁹ibid

⁵¹⁰Thich Nath Hahn, 'The Heart Sutra: the Fullness of Emptiness' (2022) <<https://www.lionsroar.com/the-fullness-of-emptiness/>> accessed Feb 9 2023

Thich Nan Hahn, *Peace Is Every Step: The Path of Mindfulness in Everyday Life* (Rider Publication 1991)

they can see the provisions of the legislation, the intellectual property rights that is being generated when someone creates IP and they see that laws have been drafted according to international conventions and following the UK legislation. If the copyright regime was made of only those elements then amending these accordingly would theoretically solve any inefficiency in the system. However that is not the case. there also exists elements that impact the efficient functionality of the copyright system that are not being noticed and therefore remains unseen. The theory of Emptiness allows us to identify these unseen elements or components and realise how copyright regime have been adversely impacted, by not taking such elements into account in creating and amending the system. The pie chart in figure 2 bellow display qualitative datas gathered through semi-structured interviews, sorted into themes or categories, identified through the application of the “Theory of Emptiness”. The chart lists the many unseen components that make up the music copyright regime, apart from the legal provisions.

The music copyright regime is empty of itself ; according to Emptiness, in reality it is not made of music or copyright law alone but of the creators and performers of music and of the businessmen who trade in music and the audiences who consume that music and so on and so forth as listed in the pie chart in figure 3. The regime is composed of all the components that figure 3 identify, but these components do not appear to have been taken into consideration in the construction of the music copyright regime of Bangladesh. Perceiving music copyright regime simply as the combined tool of legal and commercial components used to protect music, runs the risk of ignoring the musicians making the music, their commercial stakes in the matter, the mindset of the musicians and stakeholders involved in the creation of music, the complex music industry equations these stakeholders share, the poor infra-structure within which music publication, music consumption and revenue collection is carried out and disregarding the impact of unawareness rooted at the core- all

of which come together create the essence of this regime. It is crucial that all the factors are considered as a whole. Only then the music copyright regime of Bangladesh can finally be seen in its entirety. Reading the data through Emptiness produces a different result than that achieved earlier since it allows the data to be seen and read in light of the socio-political and socio-economic context and the sociological history of Bangladesh as a whole. Through this process the data reveals the problem in essence and helps identify crucial components from the data that is interpreted with the essence in mind. The theory also indicates that looking at each components individually would without their connection to the other is futile since it will only provide one with an incomplete and inaccurate perception.

“There is such a thing in faith as not being able to see the forest for the trees. The totality of things is far greater and deeper than the sum of its component parts. Individual rules need to be read in the light of the whole. And the whole is concealed in the essence.”

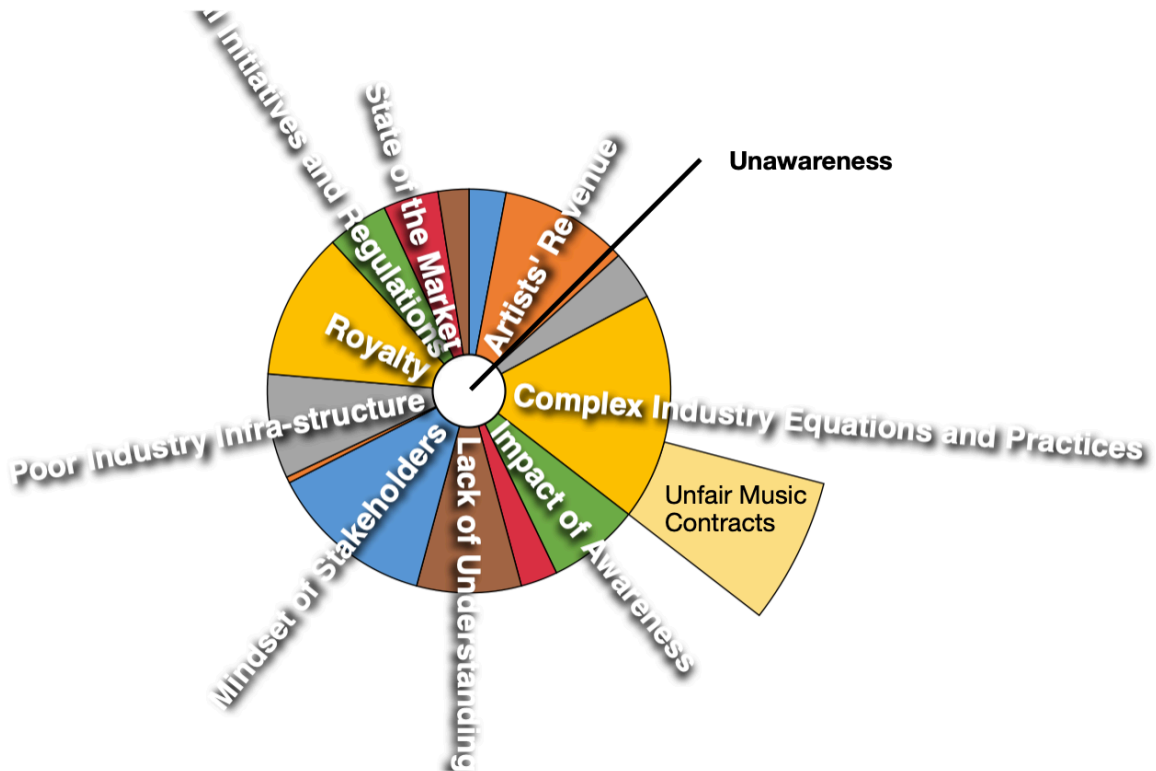
Keeping in mind the example of the book by Master Hahn, I tried to identify from the data, factors that impact, benefit, influence, or functionally relate to the effective operation of the music copyright regime in Bangladesh. This enabled me to identify that the class included all the *stakeholder of the music industry* including the *songwriters and performer* who create and manifest the music, *labels, publishers, and distributors* who fund and disseminate the music include *online platforms, users and consumers* of the music content like audiences, other content creators and multinationals involved like telecoms (for ringtones, call waiting tones, etc). *Contracts* and *industry norms* dictate how the rights surrounding the creation, performance and distribution of music would be shared

which means these components external to copyright statute and policies determine fundamental rules and directly impact the lives of music authors and producers. The complex equation that these agreements create is dependant on the already *complicated dynamics shared by the stakeholders* and has a huge impact on how music authors and performers get remunerated or benefited from the music that they create. *Absence of a collecting society* to collect and distribute royalties and *a poor online banking system*, also emerged as crucial components that impact the uninterrupted collection of royalties and consumers ability to purchase music instead of contributing to music piracy and illegal downloads. Finally, the root cause behind all the above factors appeared to be the sheer factor of “*unawareness*” amongst all stakeholders of the business and lawmakers alike.

The law makers appeared to have ignored the sociological and historical context of the region in the creation of the Copyright Act 2000 and its policies, remaining unaware of the landscape and mindset that Bangladesh requires to execute copyright laws of any sort. Likewise, the songwriters and performers were unaware of the rights they each had and the means to use them wisely. In their interviews for the thesis, labels and distributors also admitted to be unaware of the rights and obligations they had, despite the fact that they did not fail to take complete advantage of the unawareness of the songwriters in obtaining all their rights for themselves. I used the lens of emptiness to identify factors or components that functionally or directly impact, influence, benefit, or relate to the effective operation of the music copyright regime. Therefore according to Emptiness these are also components that the regime is composed of. Hence, how these components react to each other and what makes them thrive, affects the smooth running of music copyright regime of Bangladesh.

Data unveils that, legal support through copyright law and implementation of these laws and policies alone cannot help the music copyright regime to operate effectively, unless all the factors

mentioned in the figure 2 are also considered in terms of how they impact, benefit, influence or functionally relate to the effective operation of copyright law. Each of these individual components must refer to the original goal of the music copyright regime in finding its compass of efficacy in their individual operation. Only then can the efficacy of the whole system improve as each individual component is reliant on the other and the whole system is reliant of the smooth running of individual components that make the whole. If we refer to Master Hahn's example of the book and how it is made of things that are not "books" but are materials like paper, strings, ink and glue. For the book to be an effective one, it would primarily need a great writer and secondarily it would need good quality material to make the book last, good ink for better legibility and printing, good quality paper to print on, so on and so forth. If the music copyright regime can be compared to the "book", then the factors in the pie chart would be required to function with great efficiency like the materials that make the book, for the system to achieve its potential effectiveness.

HIERARCHY CHART USING THEORY OF EMPTINESS (FIGURE 2)**Mapping Data Through the lens of Emptiness**

In mapping the data through the lens of Emptiness, I organised the components found in figure 2 under 6 broad categories as shown in the pie chart in figure 3. The figure present results of the data as categories and sub-categories with brief descriptions of each categories and how they are connected. The section will not include interpretation but a straight forward account of the results from the perspective of the participants in my study, as they were presented.

The list below details how the various components of obstacles and agents of disruption that render the music copyright regime ineffective. They were discovered by applying the theoretical lens of emptiness. The pie chart in figure 3, illustrates the six major components that influence the smooth running of the music copyright regime of Bangladesh according to the hierarchy of influence each component have on the regime.

1.MINDSET OF STAKEHOLDERS AND CONSUMERS

2.COMPLEX INDUSTRY EQUATIONS

3.AMENDMENT OF LAWS/INTRODUCING NEW LAWS

4.CHALLENGING LEGAL PATH

5.POOR INDUSTRY INFRASTRUCTURE

6.STATE OF THE MARKET

Categories Identified

The *mindset of stakeholders* concerns the established set of attitude or approach of the relevant stakeholders including songwriters, performers, labels, publishers, broadcasters, as well as the audience who consumes music and provides IP its economic value. Understanding how these groups think and perceive the creation, production and consumption of music is crucial in accessing the approaches they have taken in furthering their causes and needs ; how they have impacted the industry from various directions and how the music industry and its legalities impacted them.

The relevant stakeholder of the industry, mentioned above, share a *complicated equation*. With no knowledge regarding who legally owns which share of an IP, deals that did not reflect the true intentions of the parties were made, mostly in the 90's, generating thousands of contracts which are in dispute over ownership, at present. Fuelled by unawareness the transactions of revenue shares between the parties have been disorganised and disproportionately shared since the inception of the industry post liberation war, which created complex dynamic and understanding amongst the stakeholders in the industry like musicians, labels, publishers and broadcaster. Labels own all rights and often also acts as publishers and claim royalties from broadcasters and other users who either refuse to pay royalties or is confused as to who to pay, owing to the number of long-standing disputes over ownership of copyright.

Poor industry infra-structure refers to the state of the music industry including its lack of relevant organisations that are meant to provide a seamless process of commercial transactions typically enjoyed by the musicians in music industries globally. Bangladesh does not have a collecting society responsible for collecting royalties and distributing them amongst the relevant copyright owners or an organisation like UK's Musician Union (MU) which can unite musicians to fight for their needs and grievances.

The market here concerns the commercial space within which the buying, selling and consumption of music is taking place. Under the current market conditions consumers can only buy physical CDs from physical stores and buy tickets for live music festivals. Only 3% internet users in Bangladesh are internet banking customers⁵¹¹. The rest of the population is assumed to be purchasing physical

⁵¹¹Farad Hossain, 'Only 3% Internet users are Internet banking customers' The Business standard (Dhaka, 9th May 2021) <<https://www.tbsnews.net/economy/banking/only-3-internet-users-are-internet-banking-customers-244042>> accessed 31 Jan 2023

CD's or opting for pirated downloads from the internet since they cannot buy tunes from amazon, iTunes, Spotify, or local platforms without e-banking or alternate paying services like PayPal. This state of the market is also a major reason why musicians are unable to receive or collect revenue for their music being played or used abroad or use services like YouTube which requires a debit card

This category deals with the various areas where *legal amendments or new laws* are required within the music IP regime. The commerce and creativity of the music industry is governed and regulated by copyright and commercial laws therefore it is directly responsible for the protection, regulation, preservation, and motivation of the music industry and its stakeholders. Legal amendments are generally connected to issues regarding situations where the current laws and policies are falling short in fulfilling the needs of the demographic for which it was created

Challenging legal path, has been identified as a separate category since it presents a journey that is different from simply having the apt laws and policies in the aspect of copyright laws. This journey includes the difficulties faced by musicians in pursuing legal recourse because of its lengthy, intimidating and tedious nature. Moreover it involves struggles and complexities that comes with fighting standard term commercial music contracts in court, to determine who the owner of a copyright is and how revenues should be shared.

Connection between categories

All the themes from the hierarchy chart in figure 2 have been analysed through the lens of Emptiness and organised as sub-categories under 6 major categories, with a single factor connecting all the categories explicitly. Other than the common sub-category of “unawareness”, the categories are

also interconnected and inter-dependant in a number of ways. The mindset of the stakeholders in the music industry and amongst consumers of music, is directly contributing to the development and running of this complex industry equation and the poor infra structure of the music regime. The current legal provisions in copyright law and challenging legal paths for musicians to address grievances is also responsible in perpetuating a poor infra structure where the practice and system for royalty payment and collection is still almost non-existent. This in turn is connected to the disputes over ownership of IPs, where either it is not clear who legally owns the IP or there seems to be confusion over the validity and sanctity of the contracts that settle ownership. This fundamentally contributes in sustaining a poor intra structure and causes further complications in the dynamics within the music industry both in terms of copyright ownership and commercial interests. The commerce and creativity of the music industry is governed and regulated by copyright and commercial laws which makes it perpetually tethered to the ingenuity and economy of the music industry.

Analysis, Discussion and Interpretation

Unawareness

It is important to begin with an example to be able to better comprehend the analysis and discussion that will follow. This is an example of the extent to which the mass population of Bangladesh understand the concept of commercialising music through ownership or performance, demonstrating the impact of unawareness in the context of the copyright regime. Considering that “unawareness” is the core and underlying factor that appears to be undeniably entangled with every category dis-

covered in this research, beginning with an example demonstrating the depth of unawareness, seems apt. Coke studio 2022 Bangla is part of a prestigious south asian music show that focuses on the artists of a particular region like India, Pakistan, Bengal. During its production process it was decided that authentic rural singers and musicians would be brought in to play the music of their particular villages or banks of rivers or professions such as cattle herding, boat rowing and snake charming⁵¹². So for one of the songs the production representatives had to go to Shirajgonj⁵¹³ to find authentic ‘nouka baich’⁵¹⁴ singers who work as ‘borga chashis’ or farmers, who work as seasonal harvesters under seasonal contracts. When they were offered to come to the capital city of Dhaka and perform their songs in exchange of remuneration, they refused because they could not bring themselves to believe that money was being offered to be paid for them to sing. It could not be explained to them that one could get paid to sing. The agency ‘Grey Dhaka’, that was hired by Coke to produce the show in Bangladesh, had to send representatives multiple times over a period of time to explain and convince them and bring them to Dhaka for rehearsals and recording. They could not be contacted online or convinced over the phone. The performers were paid in advance for their performances and compensated for the missed days of harvesting work, in order for them to agree to come to the city and perform⁵¹⁵.

The instance described above reflects how deeply entrenched ‘unawareness’ is in the region and how that could hinder opportunities for the farmers to have a parallel career and livelihood through

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Participant 33, (Dhaka, 22nd Sep 2022)

⁵¹³Shirajgonj is a largely rural district in the northern region of Bangladesh. < https://en.wikipedia.org/wiki/Sirajganj_District>

⁵¹⁴ Nouka Baich is a traditional dragon boat-style paddling sport in Bangladesh. When these boatmen paddle they sing songs to generate strength and inspire each other. These songs are known as a separate categories of songs called “Nouka Baich songs”.

⁵¹⁵ Participant 33, (Dhaka, 22nd Sep 2022)

music. They were completely unaware of the worth their skills possess as “nouka baich” singers, which is a traditional folk music genre that may slowly fade away if not practiced and preserved. In a way it can be argued that in order to preserve such tradition folk music, Bangladesh’s music community needs these musicians as much as they need the music community to make a living and keep this music alive. However the deep rooted unawareness hinders such endeavours. The statistics in figure 2 which positions “unawareness” at the core of the pie chart, illustrates how the factor of ‘unawareness’ or ignorance amongst the stakeholders in the music industry, exist at the core and as a common undertone, woven through all other factors, playing a pivotal role in creating the current disorganised and inefficient music industry regime in Bangladesh. The empirical data suggested that this impact of unawareness is in fact, rooted in the socio-cultural history in which its population and government evolved in. The region and subsequently the country Bangladesh, witnessed evolution in many sectors including the music industry, which had to essentially build itself up from scratch and appears to be in need of reinventing itself again. Music was only practiced in the courts of kings or Mughal as commissioned musicians or as spiritual baul music or as traditional folk songs, none of which involved the concept of ownership of their IP (for details on the historical context and evolution of music in the region, see Volume 4 of the thesis). Therefore introducing and building a music industry that is governed by a western and alien concept to Bangladeshis such as copyright, had proven to be widely unsuccessful according to my empirical qualitative data.

In attempting to arrive at the root of each categories listed above, the research identified the impact of unawareness to be a continuing presence, starting with the very ‘mindset’ of the stakeholders of the music industry, the audience who consume the music and the legal and non-legal authorities who may be involved in the legislating and regulating of the creation, distribution and performance of music in Bangladesh. As an interpretivist researcher I focused on understanding and finding the layers of social meaning and context that underpin social behaviour and practices of the stakeholders, which in turn produce and reproduce structural relations within the music business over time.⁵¹⁶

99 percent of the musicians I interviewed in Bangladesh , appeared clueless about the rights they had over their IP (music) which they had signed over in totality to the labels. A lot of them only recently discovered that they had no rights over the revenues their songs were making and that they had no right over the future albums they were going to create whether that in physical format or digital, which includes plays per song, on the internet. According to the data, it was the 90’s when the music industry had only begun to expand beyond films, post the liberation war of Bangladesh. Until then music recorded were largely part of commissioned work for the films where the producers owned all rights and the musicians were merely session performers. Independent music practice and band culture saw a surge in the 90’s but recording was expensive and fewer labels available to offer the service. The passion for music and the desire to make music had far surpassed the need for making profit or concerns over any sort of intellectual property rights that were being constantly generated. The socio-political and socio-economic state of the country that was still recovering from the aftermath of the liberation war, said to have contributed largely to this rise in creative expressions of all kinds and creators desperate to produce and record music, plays, films and novels. I have interviewed a number of participants who have been a part of the music industry at the time,

⁵¹⁶Lisa Webley, [The Oxford Handbook of Empirical Legal Research](#) (2010)

whose narratives dictate that, all agreements entered into, by artists and labels were oral and based on faith in personal relationships. The expensive means of recording music and the scarcity of recording studios in the country meant that songwriters and performers had no option but to resort to the existing record labels and ask for their support. The negotiation power of the labels were therefore too high and artists had to settle for whatever they were being offered. Such a situation enabled the developing of a certain set of practices amongst the stakeholders in the music business with passion and inequality at its foundation. From analysing the interviews as an interpretivist researcher, the landscape sounded like one where writers, composers and performers were collaborating with a main goal of making and performing music for the love of it and to an audience that is made up of a large section of population desperately in need of emotional and psychological recovery and nourishment. Consequently, even the oral agreements did not include much details regarding the share of rights, share of revenues, copyright, the length, intent and scope of agreement or oral contract. Their understanding of the machineries that run a music industries seemed unsound with a tunnel vision towards creating, recording and performing music.

The record labels and publishers seized the opportunity with whatever knowledge they had, on ownership of intellectual property via copyright. They managed to get the musicians to sign commercial music contracts that transferred all present and future ownership of copyright over their lyrics, compositions and arrangements in exchange of providing recording and publishing facilities. As a direct repercussion of their ignorance regarding agreements and desperation amongst musicians at the time to get their music out, they agreed to sign such contracts wildly unaware of what they were losing out on. Such was the atmosphere and the behavioural mindset within which the inequitable equation between creativity, commerce and subsequently copyright, pertaining to music, was born in Bangladesh. A clear consensus amongst all participants was that the complex equation

between stakeholders in the business that the artists, producers, distributors and publishers experience appeared to be in the making since the late 80's and 90's. As the number of musicians who could showcase their music online grew, with the development of internet use, so did the music industry. However analyses of qualitative data shows that the industry did not experience much commercial gain owing to the transaction in its market with physical records of music being slowly being redundant and options of purchasing music becoming dependant on the use of internet and internet banking.

Disputes over ownership and share of revenues mostly began to surface post mid 2000's when the use of internet in music streaming and distribution began to take over physical production and distribution of CDs.⁵¹⁷ This was also a time when telecommunication multi-national companies like Grameen phone (Telenor) and Airtel began using music as marketing tool to increase and sustain subscribers. These telecoms would offer popular tracks as ringtones and call waiting tones which required them to acquire such tracks from their rightful owners. Regarding commercial transactions in the online streaming platforms front, the problem surfaced in a different way. For contents to be uploaded on platforms like YouTube, ownership of IP is not required to be verified, shifting the burden of catching infringement on the authentic owner of the IP to bring the issue forward and make claims in case of disputes over ownership. When a song began to gain popularity exceeding a certain number of viewing, it also began earning revenues based on the number of people who viewed the song. This is the structure of the online music business and suddenly all the songs that were old and had stopped being sold as CDs re-emerged online with a new life span. The musicians who had received a sizeable lump sum based on their popularity in exchange of signing away all IP rights over their music, suddenly found a new audience and their existing live audiences expanded.

⁵¹⁷Daniel Nordgård, *The Music Business and Digital Impacts*, (Springer Cham 2018)

They quickly realised that live music was the only remaining way in which they were making money through songs and that they were receiving no shares of revenue from any of the online streaming or sales of their tracks, despite having views in the millions. Considering the whopping population of 169.4 million⁵¹⁸, it is not surprising that when a song resonates with the population, it has the capability to generate an enormous number of views following a sizeable revenue.

Western labels did not pay heed to eastern infringements until the access of information across globe became instantaneous through the widespread use of the internet. Their ignorant approach in monitoring the infringement and collection of royalties from eastern regions like India and Bangladesh from a time before the widespread use of the internet enabled practices of ignoring copyright laws and piracy in these regions and Bangladesh in particular. “Mil gaya hum ko saathi” is a famous Hindi song from a Indian film in 1977 that credits Majrooh Sultanpuri and Rahul Dev Burman as songwriters however the first two lines of the songs are a direct replica of the intro melody of ABBA’s super-hit track Mamma Mia. *Jab Koi Baat Bigad Jaye*, a famous Hindi track from a 1991 commercial film is a duplicate of the melody of the timeless song *Five Hundred Miles* by Peter, Paul and Mary⁵¹⁹. There exists numerous accounts of such wrongful use of IP which went unnoticed owing to the lack of the technologies and means to detect such unlawful activities. This created a practice in the region, amongst users and consumers of music IP, of ignoring the concept of copyrighted IP with no repercussions from the governing authorities. The research also makes informed deduction about the factors that motivate or drive the inclinations or aversions towards certain laws, regulations and policies, by assessing and comparing the government laws and policies of the

⁵¹⁸The World Bank Data, Population Total, Bangladesh (2021)<<https://data.worldbank.org/indicator/SP.-POP.TOTL?locations=BD>> accessed 7th Feb 2023

⁵¹⁹Rita Chopra, ‘20 Famous Hindi Songs That You Might Not Know Are Heavily "Inspired" From Existing Music’, (2021) <20 Famous Hindi Songs That You Might Not Know Are Heavily "Inspired" From Existing Music> accessed 31Jan 2023

countries under scrutiny in this thesis (Bangladesh, India, Pakistan, UK) . It suggests that attention is only paid when the issue/policy is a reflection of wealth and power. The motivations behind most of these politically charged judicial and legislative instruments and policies are fuelled by capitalism and control of power. What my research underlines is that it is based on a philosophy that refuses to value the human side of the story and focuses on commercial and economic gains. It is only possible by blinding oneself to the fact that paying less attention to music copyright and royalty distribution means actual people losing their livelihood and the art that flows through them.

Groomed to operate in such an environment the Bangladeshi musicians appeared to be disinclined to fight for their rights to royalty, copyright or an organised music industry except for the occasional attempts by a handful of individual musicians. I applied Interpretative Phenomenological Analysis (IPA) to read the qualitative data keeping in mind the tone, use of words and body language of the participants. The analysis revealed frustration amongst the songwriters and performing artists that were quite evident. I deduced from their previous actions and their attitude while expressing themselves, that they do not intend to pursue any legal actions or claims against the labels who had wrongfully taken away all their IP rights. They deemed the process too demotivating, tedious, fruitless and humiliating. Their narratives elicit hope, that they may finally see some revenues from their own creations and transact as they will , now that they are no longer dependant on the labels like before. They seemed to have arrived at the stage where they felt like they could rely on no one but themselves, as they have experienced financial exploitations by record labels, throughout their professional journey. They admit that a certain extent of privilege is required for this journey to be self sufficient like having access to home recording equipment and online banking.

In their interviews these participants stated that, they tried to initiate proceedings to stop infringe-

ment, create a collecting society, and fight for royalty payments from broadcasters and telecom companies. When songwriters took legal routes to claim royalties or revenues, they had to settle or lose out of court with no cases reaching trial. In course of their legal dispute they learned that, they do not in fact own any rights over their creations because the contractual papers were evidence that they agreed to such terms and conditions when they entered into recording. Therefore receiving royalties was out of the question. They claimed that the organisations and companies they were fighting against had a far superior negotiating power in comparison, where musicians had no option but to settle if they were going to get anything out of their claims financially. These songwriters admitted that at the time they signed the contracts they did not pay attention to the terms and conditions. Therefore whatever amount the labels were offering them to settle out of court was enough to stop them from taking the case to trial. In asking the labels why they decided to pay the musicians anything at all, if they had not wronged them and if they operated according to legal requirements, they provided rationals relating to their respect and admiration towards the musicians and their music. The labels insinuated that they wanted to honour their personal relationships with these musicians and their talent. My thesis is that, if that were the case then the labels could have done that by not taking away every right the songwriters had over their creations. From the vantage of an interpretivist researcher it appears that they do not want to rattle the current industry practices where they are in control, by having their contracts critically and legally scrutinised due to legal claims by any musicians. It appears that, it is easier for them to give the musicians the impression that, legally they have signed away everything therefore there is nothing that they can do but the labels are kind enough to still pay them a little something though they are not bound to by law. By law of commercial contract, they own all the rights already. Why else would they want to settle out of court, if not to avoid any unwanted inspection of the thousands of standard commercial music contracts that can be deemed voidable.

However one of the crucial apprehensions shared by all musicians who understand the digital distribution was that of the royalty rate that is earned through streaming of each songs. “For the first time in history, music is no longer monetised by selling something--it's monetised by how many times listeners stream a song. And that completely changes the ecosystem of the business”⁵²⁰ which is why, it is crucial that these rates are carefully set by a legitimate and fair authority keeping in mind the protection of songwriters and producers alike. All participants who were songwriters, claimed that the rates per song in every online streaming platforms including iTunes and YouTube are negligible and unconscionable. Spotify does not pay artist royalties according to a per-play or per-stream rate; the royalty payments that artists receive might vary according to differences in how their music is streamed or the agreements they have with labels or distributors⁵²¹.

As discussed on earlier chapters, these rates are not determined by the statutes but are either determined by the government like in the USA⁵²² or by organisation like in the UK. In the UK the royalty rates and the manner in which they are calculated and paid out differ from service to service and are not regulated by the government. The lead singer of a band sarcastically stated in this regard, “ We got thousands of streams but the total isn’t enough to buy even a single meal for the band. If we sold thousands of CDs back in the days, do you think we would be worrying about buying meals?”⁵²³ This brings me to the understanding that setting a more conscionable royalty rate can bring substantial changes in the livelihood of artists and songwriters and highly contribute in demo-

⁵²⁰Donald S. Passman, *All You Need to Know about the Music Business* (10th edn Simon & Schuster 2019)

⁵²¹Spotify for Artists, ‘Royalties’ (No Date) <<https://artists.spotify.com/en/help/article/royalties>>

⁵²²Indie Music Academy, ‘Music Royalties Explained: The Ultimate Guide for 2023’ (2023) <Music Royalties Explained: The Ultimate Guide for 2023>

⁵²³Participant 24 (Dhaka 2021)

cratising musicians. From a subjective interpretivist approach I argue that labels were less concerned about royalty rates since losses at their end appeared manageable. They also appeared to be disinclined to raise conversations on royalty rates and payments since that would trigger pressure on their own practice of non-payment of royalties.

Legal proceedings are expensive, complex and time consuming which most musicians cannot afford. It could bankrupt them entirely leaving the labels hardly affected. Moreover the extent of songwriters' unawareness on the subjects of protection of IP and commercial contracts, contribute heavily on why they find legal recourses intimidating on top of other difficulties pertaining to the legal process. It can be argued that such an attitude of the musicians helped the labels to continue their business practices. According to my qualitative data, none of the music labels in Bangladesh have been sued on the basis of the principles of unfair contracts.

Bangladesh does not currently have any specific acts on unfair terms to regulate contractual engagements⁵²⁴. However the Contract Act 1872⁵²⁵ has provisions for contracts to be set aside on the grounds of undue influence under chapter 2 of the act. It also defines undue influence in section 16. According to section 16 (1), "A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other". This fits the situation between the parties within the music industry where the labels evidently hold dominance over the musicians financially. According to section 16 (2)(a) another situation that can constitute

⁵²⁴Abir Mahmud Khan, Avishek Barman, Md. Hasib Nur Sultan, 'The Regulation of Unfair Contract Terms in Bangladesh' (2021) <https://www.researchgate.net/publication/350055598_The_Regulation_of_Unfair_Contract_Terms_in_Bangladesh> accessed 14 Feb 2023

⁵²⁵Contract Act 1872 (Bangladesh) <<http://bdlaws.minlaw.gov.bd/act-details-26.html>> accessed 14 Feb 2023

undue influence is where one party holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other . This matches the kind of relationship the musicians and music labels shared in the past, where the always labels held a position of authority since finding access to recording studios and proper equipments to mix and master the music was very hard, expensive and scarce. Data reveals that, by the time home recording became affordable and accessible, thousands of contracts have already been signed over decades .

Inspection of the many standard commercial music contracts prepared by the labels and signed by the musicians, acquired through interviews, informed my understanding as to why the musicians decided to settle and not take their cases to trial. The contracts revealed that the songwriters agreed to transfer all of their intellectual property rights over composition, lyrics, arrangement, sound recording, publishing, mechanical and synchronisation, for as long as law permits, in every format and digital platform that exists and will exist, including any other format of platform that might come into practice in the future. In paper it tells the story of an agreement where songwriters are selling all their rights in exchange of a one time payment but in reality it is the story of how the labels compelled the songwriters to sign away every right they had over their music IP without offering any option for future royalty sharing or rights sharing in exchange. The contracts they had signed unwittingly and without any knowledge on intellectual property rights could be deemed voidable but as they remain unchallenged they continue to provide the labels with revenues that the musician are theoretically losing out on. Kate Bush, who wrote, produced and owns a 100% of the songwriting, publishing and licensing rights to "Running Up That Hill," has earned around \$1 million a week for two weeks from a song she released in 1985, after its appearance in *Stranger Things* 2022. It turned out to be a monumental hit and she had to share her revenues with no one but herself as the sole owner of copyright for the intellectual properties that she created in creating the song

Running up the that Hill. She earned 2.3 million in total⁵²⁶. This is something that a Bangladeshi songwriter performer is highly unlikely to experience unless things change.

A veteran musician who participated in the qualitative interview sounded broken and defeated as she described how only recently she saw her music being used in a television series of which she was fully unaware. She said she was shocked that she received no royalty or a letter from the producers, asking for her permission. Upon inspecting her contract from the 90's, it was clear that she, like others, had signed away all her rights without realising what she was doing. She stated the following, "To your question of why I signed such a contract, I have no clear answer. I guess I was young and an offer from HMV, their Dum Dum studios, that image of Nipper the dog in front of the big horn of the gramophone, all of that had a special meaning for me. I could not understand the details of the contract and did not know what I was getting into for life and beyond, but I checked their royalty rates and insisted they would have to pay me as much as they were paying other singer-songwriters (they were trying to give me less). I also insisted on having my own music arranger and would not let them push their choice on me. V. Balsara ji came and stood by us when we were recording. I felt victorious. So, small battles won, yes, but I was also losing a big one, which was beyond my control"⁵²⁷.

Another songwriter/ singer admitted to feeling frustrated and demotivated in regard to pursuing legal battles. He described the process of fighting for his rights and royalties to be tiresome and inefficient, emphasising on his take that the laws do not reflect the needs of the artists but only that of

⁵²⁶Aimee Picchi, 'Singer Kate Bush earned \$2.3 million after "Stranger Things" popularized "Running Up That Hill"' *CBS News* (New York, 1 July 2022) <<https://www.cbsnews.com/news/kate-bush-stranger-things-running-up-that-hill-earning-millions/>> accessed 9th Nov 2022)

⁵²⁷ Participant 29, (Online Interview 18th Aug 2021)

commerce. He says, “ two record labels own most of my albums and they take all my royalties of all the revenues they receive from the songs I created that are being used by telecoms and played on YouTube and other digital platforms. I resent going to them and to beg for my rights , so I dont bother. I did as much as I could in the earlier days, but I didn’t have a large network. But no more. No one wants to go through the motions of that journey again”.

As discussed in earlier volumes, laws of IP ownership in most jurisdictions including Bangladesh, eventually empower the investor of capital in totality with no protective provisions set aside for the creators and performers of IP that are non-transferrable. Initially the creator of the IP holds ownership over it but it is soon transferred, mostly entirely, to the record labels or film producers in exchange for the recording and distributing facilities they provide or opportunities for playback singing in films, which are commissioned work. The copyright laws in most jurisdictions allow for these rights to be transferred on the ground of freedom of contract and automatically turns the producers of any IP, into the owners of the same, making legal battles even more difficult for artists.

The knowledge that the songwriters do not have ownership of copyright which is required to receive royalties had two major repercussions amongst songwriters and musicians. First, it demotivated them to push for a collecting society since they were not going to receive royalties anyway. The law was not able to help them fight for royalties since they were ignorant themselves when they entered into the legal contracts. Second, songwriter musicians began to realise that advancement of technology had created the opportunity for them to have access to affordable home recording set up which would free them from engaging with any recording labels or sharing their intellectual property rights. The widespread use of internet also meant that publishing music individually was also possible since consumption of music was shifting to digital platforms anyway.

The *state of the market* is also a major reason why musicians are unable to receive or collect revenue for their music that are being played or used abroad or use services like YouTube which requires a debit or credit card. Only 3% internet users in Bangladesh are internet banking customers⁵²⁸ which is a remarkably low percentage compared to LDCs of similar state. Table-3 of the article shows that in recent years, most of the banks have begun to offer e-banking services⁵²⁹, but the number of internet users using online banking is significantly low. Table 8 of the research identifies the reasons behind why this is the case, “Majority of the non-interested respondents (55.74%) addressed that they have no clear idea about the security system in e-banking. At the same time, some respondents (19.67%) found as “Lack of Technological knowledge” for their reason for not choosing this service. The combination of “Security Issue and Lack of Technological Knowledge” has 9.84% response...”⁵³⁰. The table also highlights the unreliable speed of internet services throughout the country as one of the reasons why banking through internet is still not deemed preferable or convenient.

Collecting societies globally use online banking to distribute the shares of revenues collected. This translates to a remarkably low numbers of musicians who would have access so such revenue distribution services considering the insignificant percentage of e-banking users in total in Bangladesh. This also means that other than these musicians who have online banking, no one else will be able

⁵²⁸Farad Hossain, ‘Only 3% Internet users are Internet banking customers’ The Business standard (Dhaka, 9th May 2021) <<https://www.tbsnews.net/economy/banking/only-3-internet-users-are-internet-banking-customers-244042>> accessed 31 Jan 2023

⁵²⁹Fardin Khan, Md. Shahnur Azad Chowdhury, Anamul Haque, Sultana Akter & Syed Muhammad Hasib Ahsan, “E-Banking Adoption in Bangladesh; Present Status and Customer Satisfaction: An Evaluation” (2021) Pg 04

⁵³⁰Fardin Khan, Md. Shahnur Azad Chowdhury, Anamul Haque, Sultana Akter & Syed Muhammad Hasib Ahsan, “E-Banking Adoption in Bangladesh; Present Status and Customer Satisfaction: An Evaluation” (2021) Pg 07

to collect revenues from the global market by themselves since no local collecting society exists.

The collecting society would have been able to collect revenues from worldwide and distributed them amongst national musicians. Online banking and its extensive usage for revenue distribution globally also suggests that this is a convenient and reliable method of transaction between the parties. It may also insinuate that other methods of transaction such as payments with cheques through postal services, depositing cheques or cash into individual party's bank accounts, is time consuming and unsuitable, given the tedious and labour-focused nature of these methods.

Conclusion

In sum this volume analyses and interprets the qualitative data acquired, maps them through the lens of “emptiness”, organises the information according to categories, explains the connection between the categories and subcategories and ends with critical analyses and discussion of the qualitative data in relationship to the context discovered in doctrinal studies. The theory of emptiness enabled a perception that explain the construction of the Bangladeshi music copyright regime. It generated 6 broad categories which explains various agents of disruption and obstacles that suggests the need for evolution in this sector. The analysis also suggests that thrusting a foreign law upon without taking contextual background of the people and region into account, can have major adverse consequences. The reflection of these consequences emerge in the many absences of provisions and in the presence of agents of disruptions, responsible for the inefficacies pertaining to implementation and enforcement of copyright laws and policies.

The six major factors discussed above dictated my analysis in constituting the 6 major findings discussed in the following volume which is the final chapter of this thesis. It discusses the findings in detail and offers suitable recommendations.

Volume 8

Findings and Recommendations: Songs of knowledge and Wisdom

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Introduction

In devising recommendations, I applied my theoretical understanding of Emptiness, to deliberate on the legal and non legal responses and amendments required to bridge the Dissonance between the objective of Copyright laws and its final repercussions/outcomes.

While copyright essentially is an economic right it also has a purpose to promote culture and knowledge. Thus both advantages and disadvantages of bringing all musical creations and creative rights under legal protection must be accounted for including how that might affect the aspect of promotion of the culture and knowledge in a region that exercised free flowing of IP for centuries and relied on traditional knowledge for a way of creation⁵³¹. I would like to argue through this research that if the concept of *copyright is considered to be a spectrum* not limited to the specific set of rules governed by Berne but ranging across a continuum displaying the varying extent of protection afforded by copyright law, it can essentially help identify where Bangladesh stands on the spectrum. The extent of protection would then range from, complete protection for individual artists to no protection for individual artists or rather a nature of safeguard that offer recognition of the community or collective from which the art originated, as suggested by the Berne guidelines. This would situate , ‘complete ownership under the full protection of copyright’ on one end of the spectrum and ‘free flowing traditional cultural expressions’ with no ownership of rights, on the other end.

Findings

The process and approach of music making has changed

⁵³¹See Volume 2 of this thesis, Theoretical framework, pg 16,17

The current copyright law is only useful as a concept of the old world. A world before internet, access to home recording and digital distribution and digital commercial transactions. The conditions of music recoding has evolved to the point where the process and approach of making music have transformed from being record label dependant to being self-reliant and having affordable access to home recording as well as internet distribution . This changes the entire economic and power dynamics between songwriters and record labels/publishers since the labels can no longer insist on keeping all IP rights for themselves based on them providing recording studio services. The songwriters would no longer have to depend on any recording studio to record, mix and master their songs which would enable them to retain all their rights over their creations. Therefore when these songwriters produce music and are able to distribute it through online platforms like iTunes, amazon music, YouTube etc, they would finally be able to enjoy influx of income against all the rights that were generated through the creation of the music IP. They would also be better positioned to negotiate for a better deal if they require to approach any distributor or advertising company to promote and publish their work far and wide. This way they may only have to share publishing rights with distributors while fully retaining sound recording rights along with a share of the publishing right.

Lack of Proper infra-structure

In the context of this research , a proper infrastructure would primarily entail having an operational royalty collecting society and access to online banking for all. Bangladesh does not have a collecting society that is operational, yet. A collecting society would collect and distribute royalties to all right holders and issue appropriate license to users of music IP. Obtaining mechanical or sync licenses are difficult at present, since there isn't one single organisation or person who deals with

licensing. Users of music IP are required to find various agents who would help them find the owner of the IP they need and arrange for a license to be issued so they can use the IP legally. The license fee that is paid also Varys from person to person, in the absence of any set license rate. A collecting society enable users of music IP to obtain licenses from one organisation without hassle.

Bangladesh has only seen digitalisation in the last decade⁵³². It still struggles to provide uninterrupted supply of electricity for all and in the long process of installing all basic equipments that would enable the smooth access of electricity, internet and internet based banking. Only 3% internet users in Bangladesh are internet banking customers⁵³³. This means that most of the population do not have legal means to purchase or sell music online. This also indicates why piracy has been rampant in the country. Access to online banking for all that would enable easy collection and distribution of revenues these royalties and license fees.

Royalties and Revenue Share: Streaming Royalties and Digital Sale

Royalties are generated when copyrighted works are performed, recorded, played or streamed in public. This includes radio stations, television, bars, restaurants, clubs, live concerts, music streaming services, and anywhere else the music plays in public. “Streaming has become the dominant mechanism for music consumption”⁵³⁴. However this mechanism also favour labels and is not be-

⁵³²Monzur Hossain, Digital Transformation and Economic Development in Bangladesh: Rethinking Digitalization Strategies for Leapfrogging(1st edn Palgrave Macmillan 2022)

⁵³³Farad Hossain, ‘Only 3% Internet users are Internet banking customers’ The Business standard (Dhaka, 9th May 2021) <<https://www.tbsnews.net/economy/banking/only-3-internet-users-are-internet-banking-customers-244042>> accessed 31 Jan 2023

⁵³⁴Musicians Union, ‘Music Streaming Royalties’ (2022)<<https://musiciansunion.org.uk/working-performing/recording-and-broadcasting/musician-royalties-from-recordings/music-streaming-royalties>> accessed 23rd Dec 2020

neficial for songwriters, posing similar royalty sharing issues due to contracts signed. Streaming platforms distribute royalties according to the share of rights displayed by the contracts signed by all parties. For instance, music streamed on Spotify earns two types of royalties: recording royalties and publishing royalties⁵³⁵. Songwriters who have signed away all their writes would earn nothing from streaming since they no longer retain any rights over their creations. Bangladeshi musician songwriter participants from the UK mentioned that they were able to retain their publishing rights since the contracts in the UK are not and “draconian” as those of Bangladesh. These songwriters would be able to claim the publishing royalties from streaming services.

However there is a further problem that emerged in my findings. In MU’s opinion and evidenced by the state of affairs, “record companies have unanimously decided that each stream should be categorised as a sale, which boosts their profits.” At the moment, this allows record labels and publishers to take the lion's share of revenue. When a stream is treated as a sale, the artist only receives between 18% and 30% of royalties (in the UK). If each stream were to be considered a licence, artists would be given closer to 50% of the royalties for a song”⁵³⁶, since licensing comes under publishing rights. If the musicians in Bangladesh are able to retain both recording and publishing rights owing to the new approach of music making, they would be able to keep the entirety of the royalties that the streaming platforms would offer.

This brings me to the next issue in line pertaining to streaming royalties. There are no laws or regulations that can monitor or dictate how the streams should be treated and what the royalty shares

⁵³⁵Spotify for Artists, ‘Royalties’ () <<https://artists.spotify.com/en/help/article/royalties>> accessed 18th Jan 2023

⁵³⁶Musicians Union, ‘Music Streaming Royalties’ (2022)<<https://musiciansunion.org.uk/working-performing/recording-and-broadcasting/musician-royalties-from-recordings/music-streaming-royalties>> accessed 23rd Dec 2020

should be like anywhere outside of the United States. The rates per stream is set at alarmingly low amount, compared to the rate of a song per sale. According Sound Charts research team, in 2019, Spotify paid the artists \$0,0032 per stream, Apple Music got the average rate of \$0,0056, Google Play Music landed a \$0,0055 payout rate. As interview participants mentioned, these amounts are so insignificant that it matters not whether they have managed to retain all their IP rights (recording and publishing rights) since such streaming royalty rates puts the songwriters and artists back to the position where they have no control over the rates set for their creations. “Streaming royalties are based on the number of times a track is played, and artists whose work is streamed the most receive a larger portion of a service’s overall revenue. This means that if a user pays a subscription fee, that money isn’t directly distributed solely to the artists they listen to, but is rather paid out across all artists whose work is streamed by users of that service. In this way, streaming royalties differ significantly from digital downloads. The royalty rates and the manner in which they are calculated and paid out differ from service to service”⁵³⁷.

Dissonance between music IP Law and its Impact

One of the key findings that surface very quickly is that of dissonance between the intention with which music copyright laws were legislated and the final impact of it on its stakeholder. This research clearly portrays that the intention of safeguard with which copyright laws and policies were made is not reflected on the kind of impact it has had on musicians, labels, publishers, consumers, or other commercial stakeholders. On the contrary, it shows that on the ground level, there is a huge disparity between the intention and the final outcome. Laws are created to reflect the need of the

⁵³⁷Musicians Union, ‘Music Streaming Royalties’ (2022)<<https://musiciansunion.org.uk/working-performing/recording-and-broadcasting/musician-royalties-from-recordings/music-streaming-royalties>>

people not the other way round. In alignment with that thought, I find that music IP laws must be amended or reformed keeping in mind the unique domestic culture through which music is created and practiced. This includes the case of legislating on : Traditional cultural expressions like traditional folk songs or baul songs, reforming commissioned work, regulating royalty rates, monitoring operation of domestic collecting society, introducing structured out of court settlement provisions.

Another factor that contributes in this dissonance is the way statutes lay out revenue distribution and the absence of any legal interference in setting up a minimum standard rate per stream. The statute does not direct how per stream should be treated, as a “sale” or as “licence” as discussed in detail above. Section 35 of the Copyright Act 2000 defines performers rights as the following :

“ Where any performer appears or engages in any performance, he shall have a special right known as the “performer’s right” in relation to such performance”⁵³⁸. There is no reference to any pecuniary compensation associated to performers’ rights in the 2000 act. This translates to curtailed revenue for artists who perform traditional or baul songs where most of the original authors or songwriters are either dead or untraceable and all the publishing rights have become unplayable.

Moreover, vocalists or singers who are performing and arranging a folk or baul song, do not have any neighbouring rights either since like the United States, Bangladesh is not a signatory to the Rome Convention 1961 either. Neighbouring rights recognise the rights of recording artists like vocalists who give voice to the composition by songwriters that is manifested through the singing skills of the vocal artists. This particular right offers recording artists rights and royalties for compensating them for the public performance of their recordings⁵³⁹. “Rome Convention recognizes the neighbouring rights for airplay on radio stations in the signatory countries — but only to recording

⁵³⁸Copyright Act 2000 (Bangladesh), section 35

⁵³⁹Rome Convention 1961

artists that are residents of one of those countries”⁵⁴⁰ Therefore performers in Bangladesh also miss out on royalties that would have been payable for compensating them for the public performance of their recordings. In countries where neighbouring rights are not recognised which are most countries outside the European Union, only songwriters hold rights and receives royalties but not recording artists. This means that the large section of musicians who practice folk and baul music lose out on the largest share of royalties including publishing royalties and neighbouring royalties leaving them only with the sound recording royalties. Eventually these artists do not receive sound recording royalties either in Bangladesh since the culture of royalty payment and distribution is almost non existence in the country as discussed in detail earlier.

This class of musicians who are recording artists also includes those who are involved with commissioned works where artists are invited to come and sing a song on commission and as a session music player. In this case these artists are paid with a one-off payment and they hold no further rights over their contribution in the commissioned work as provided by the 2000 Act. Films, television contents, adverts etc. tend to use vocalists on commissioned work who never see any royalty whether their songs make millions or go unnoticed.

Challenging Legal Path

One of my main findings regarding access to legal recourse for musicians, suggest that they find taking the legal path to be so challenging that they are averse to it. The commercial contracts they

⁵⁴⁰Sound Charts Team, ‘Radio Royalties: How Do Radio Stations Pay Artists?’ (2020) <<https://soundcharts.com/blog/radio-royalties#why-songwriters-are-paid-instead-of-artists>> accessed 14th March 2023

signed makes them fearful about challenging them. The lack of specialised legal counsels in this field and the lengthy and expensive court process also acts as serious deterrents to musicians.

Moreover, legal fights against labels and corporations always pose to be more threatening to independent artists simple because of the sheer imbalance in the economic and social power that each party holds. According to my qualitative data, most suits initiated by musicians against labels, or radio broadcasting companies never reached trial. According to the musicians involved in such cases, they were strong armed by the big lawyers of the labels and corporations to settle out of court with minimum compensation. As a result the issues never got resolved and no legal precedent was set. This only promoted the norm and impression that legal recourses for musicians are difficult and that they would require a hefty amount to back themselves with lawyers and drag a case in court for a long period of time, to be able to see any legal outcome. However all participants agreed that they do not have the financial resources to sustain a legal fight like this, where the outcome could go either way and they might lose out on more than they bargained for. Most of these musicians had arrived at this junction owing to their unawareness on the subject of music copyright law and commercial contracts. The fact that they do not know much on the subject appeared to make them generally more apprehensive regarding taking the legal path.

Finally harmonisation of laws in the music copyright laws sector is imperative since, it is no longer a national issue but one that spans all nations that produce, practice and consume music. Music from one country is constantly being licensed and consumed from all over the world on digital platforms that have very few boundaries. Companies based on one end of the world, dictating royalty rates on their platform, can directly impact musicians and producers residing all over the world, since the music content can be accessed from anywhere now, owing to the world wide web.

My research finds that, “unawareness” regarding the rights and obligations surrounding copyright and commercial contracts, is deep rooted and habitual amongst all stakeholders in the industry, all consumers and users in Bangladesh. My research holds “unawareness” as one of the fundamental reason behind issues within the legislation, construction and signing of commercial music contracts, the various infringements, poor implementation, inadequate enforcement and the entire mindset of stakeholders contributing in the complex equation between these parties. The empirical data suggested that this impact of unawareness is in fact , rooted in the socio-cultural history in which its population and government evolved in The statistic in figure 2 of Volume 7, indicates how “unawareness” festers at the core of the of the issues at hand and runs as a common causal undertone affecting all factors and stakeholders involved.

Recommendations

My recommendations include technological protection to democratise music copyright, protection proposals for Traditional Cultural Expressions like traditional folk songs or baul songs, reforming commissioned work, regulating streaming royalty rates, instituting a collecting society as well as a body for monitoring and regulating the operation of the same, introducing structured out of court settlement provisions to help avoid litigations.

1. Implement Royalty Payments and Institute Collecting Society

One of my fundamental yet initial findings was that, implementing policies that would ensure and encourage a music industry culture where royalty paying becomes a norm is crucial. Granted that

this practice is not what the region is accustomed to traditionally but this particular evolution is imperative for musicians to survive financially. For any radical change to be established, statutory and policy intervention can be an effective method. Strict laws and policies legislated to ensure that music royalties are paid could be a useful intervention from the highest authority of the land. However, as discussed in this research earlier, Bangladesh still does not have a collecting society that operates in the country collecting and distributing royalties. According to research, a few attempts have been made but despite the fact that the copyright law was enacted in 2000, no collecting society could yet be established. I suggest that a regulating and monitoring body is needed to ensure the implementation and enforcement of these laws and policies without which this scene will see no change. Such a body would also be able to supervise the proper introduction and development of a collecting society in Bangladesh avoiding further delays and make sure that the operation of the organisation in collecting and distributing royalties, is transparent and efficient. The monitoring and regulating body can also provide a constant check and balance for the collecting society so that it can avoid corruption within the collecting society like that of the Indian PRS⁵⁴¹. However, the most important factor that needs to be present to achieve the operation of a collecting society is widespread access to internet/online banking.

⁵⁴¹ [Virendrasingh Ghunawat](https://www.indiatoday.in/india/maharashtra/story/javed-akhtar-indian-performing-right-society-limited-enforcement-directorate-980920-2017-06-04), 'ED may soon close money laundering case filed by Javed Akhtar, others against IPRS', (2017) < <https://www.indiatoday.in/india/maharashtra/story/javed-akhtar-indian-performing-right-society-limited-enforcement-directorate-980920-2017-06-04> > accessed 3 July 2020

2. How blockchain can democratise music IP

A blockchain is a standardised database⁵⁴² that can create and store collections of digital music files coupled with a smart contract detailing the rights to the music and its owners. The owners of the music IP would be paid instantly using blockchain platforms, providing consumers with the same facilities that paid music streaming offers now⁵⁴³ except, artists wouldn't have to rely on publishers or collecting societies for their royalties to be claimed and collected. The technology would allow a direct and transparent transaction between the artist and the consumer based on ownership of rights shared according to the ownership certificates that will be generated on digitally registering the IP and getting certified, since blockchain can also be used to catalog and store original works.

Data revealed that there are no adequate means for authors to catalog their works and copyright ownership can be hard to prove given the complex situation with the standard contracts⁵⁴⁴. It can also be difficult for authors to monitor the usage of their work and stop infringements. In their interviews, licensors in the business, emphasised on issues regarding finding the authentic owners of the music IP to obtain licence from. They claimed that often artists claim that permission must be sought from them but contractual evidence would reveal that the ownership in question, in fact rests with the record label entirely and not the artists. There appears to be a lot of confusion for third parties trying to ascertain from whom to seek a license. Unless issues between labels and artists surrounding the countless commercial music contracts are resolved, the confusion pertaining to owner-

⁵⁴² Laurent Bach, Rémy Guichardaz, Eric Schenk, 'Blockchain and NFT technologies: the future of the music industry ?' (2022) <<https://cnmlab.fr/en/short-wave/blockchain-and-nft-technologies-the-future-of-the-music-industry/>> accessed on 2nd March 2023

⁵⁴³ Karla Lant, 'How Blockchain is Disrupting the Music Industry' (2016) <<https://futurism.com/how-blockchain-is-disrupting-the-music-industry>> accessed 2nd March 2021

⁵⁴⁴ See Volume 6 and Volume 7 of the thesis

ship of those IP's will remain.

However blockchain can change the circumstances completely for creators of IP now and enable them to have direct control over the management of their IP going forward. “With blockchain, copyrights need not be registered and can come into existence automatically upon the creation of original qualifying work. Blockchain and smart contracts can be used for licensing IP works by reducing the cost of transactions and creating a direct link between authors/inventors and users. A smart contract is a computer program code that can facilitate, execute, and enforce a contract by itself. The contractual terms are pre-programmed, which reduces the administrative burden and cost. Using smart contracts, IP licenses can be self-executing upon the use of a work”⁵⁴⁵. For consumers of music, adoption of blockchain technology would change almost nothing, except that the ability to file share and steal copyrights would basically be eliminated. For artists, though, the difference would be profound⁵⁴⁶: not only would they have agency over the commerce of their creation, they would also be able to promote their own music and offer special rewards for buyers like extra downloads or rights. They would not require collecting societies, publishers, or protection from piracy either. However, this can only be achieved once contractual issues creating disputes regarding ownership of IP are sorted to conclusively determine ownership so that there can be a registered and verified copyright list of ownership of IPs associating with music.

3. Music Streaming Royalty Rates Need to Change

⁵⁴⁵Miriam Stankovich, ‘Is Intellectual Property Ready for Blockchain?’ (2021) <<https://dai-global-digital.com/is-intellectual-property-ready-for-blockchain.html>> accessed 3rd March 2023

⁵⁴⁶Laurent Bach, Rémy Guichardaz, Eric Schenk, ‘Blockchain and NFT technologies: the future of the music industry ?’(2022) <<https://cnmlab.fr/en/short-wave/blockchain-and-nft-technologies-the-future-of-the-music-industry/>> accessed on 2nd March 2023

“Music streaming now accounts for over 80% of UK music consumption. In June 2021 the UK witnessed its first week when audio streams topped the 3 billion mark, according to [figures released by the BPI](#)”⁵⁴⁷. This is where the present and the future of music business lies, with sale of physical copies of recorded music being almost redundant barring luxurious purchase for collections in the form of Las and Vinyls. Understanding and securing royalties for artists using music streaming services is therefore, more important now than ever if musicians are to survive based on their music career. This is also true for the Bangladeshi music business and the artists. Attention must be paid to the state of royalty payment and royalty rates along with starting initiatives like the Musicians Union(MU) in the UK, who is leading the Fix Streaming Campaign ⁵⁴⁸, in an effort to make streaming work better for musicians. MU claimed that record labels, streaming platforms and other internet giants have exploited musicians and songwriters without rewarding them fairly for too long, so they felt the need to interfere. The law is not at all involved in protecting the songwriters in terms of offering any ballpark figures or examples of what would be a conscionable percentage of share in rights between the songwriter and the record label. Bangladesh desperately requires either a government intervention or an authoritative organisation like the MU to interfere in an effort create a more equitable and fair norm and standard or revenue share for the musicians who create the music in the first place.

⁵⁴⁷ Musicians Union, ‘Music Streaming Royalties’ (2022)<<https://musiciansunion.org.uk/working-performing/recording-and-broadcasting/musician-royalties-from-recordings/music-streaming-royalties>> accessed 11March 2023 ;

BPI, ‘2021 in Music: More artists succeed as streaming drives music growth, fuelled by record label investment’ (2021) <<https://www.bpi.co.uk/news-analysis/2021-in-music-more-artists-succeed-as-streaming-drives-music-growth-fuelled-by-record-label-investment/>>

⁵⁴⁸Musicians’ Union, ‘Its time to fix streaming and keep music alive’ (<<https://musiciansunion.org.uk/campaigns/fix-streaming-and-keep-music-alive>> accessed 10 March 2023

4. Reform distribution of Revenue share

Much like the streaming royalties, attention must be paid to reforming distribution of revenue share between the various stakeholders, both in terms of statutory amendments and amendments in commercial practice. I would like to suggest that this could be done by changing the proportion in which rights are shared between songwriters, record labels and recording artists, for the two different categories of music created in Bangladesh : music covered by copyright law and Traditional Cultural Expressions (folk and baul music) that operate outside the protection of copyright laws. Redistributing the share of rights in favour of the recording artists in cases of music under TCE, would bring a significant change in the revenues received by traditional folk and baul musicians. This redesign of revenue share would enable musicians under TCE to collect a larger share by taking from the publishing rights and adding to the recording rights. This in no way means that money is being taken away from anyone who has been associated with publishing rights. When a song generates revenue for a single sale or stream, the revenue is divided between sound recording royalties and publishing royalties. In terms of music under TCE where publishing rights are non payable, where does this money go? According to my suggestion, this is the amount that can drawn from or shared with the recording artists or singers who cover traditional or folk song under TCE. Earning revenue through royalty payments is of course completely dependant on the sustainable improvement of the royalty paying and distributing culture.

Further more, statutory impositions regarding TCE could additionally also include recognising or crediting regions , communities and authors of origin, whenever they become traceable. The WIPO Report for Norway suggested some interesting guidelines for the protection of TCE in this regard. In answering, “Who should benefit from such protection or who hold the rights to the TCEs?”, the WIPO suggests that the beneficiaries should be the custodians (the bearers of the tradition) of the

particular TCE; ie the collective groups - the indigenous peoples, or local communities - that has maintained, used and developed the expressions and which still continue to do so. Local customs may provide guidance when identifying the appropriate custodians and their representatives”⁵⁴⁹. This would prevent misappropriation of domestic traditional knowledge and maintain conservation of the traditional knowledge or expression in question. For instance, Baul music originated from Bangladesh and the most celebrated baul in history, Fakir Lalon Shah⁵⁵⁰, hails from the region Kushtia . It is intertwined with the cultural and religious history of the region and rooted in the mysticism and spiritualism of Bengal. In 2005, the Baul tradition of Bangladesh was included in the list of Masterpieces of the Oral and Intangible Heritage of Humanity by UNESCO ⁵⁵¹. In light of the Norway proposal on WIPO⁵⁵² guidelines, Baul music which is evidently a valuable traditional knowledge (TK) that needs to be conserved and the identity of which should be strictly attached to it. I would like to suggest taking inspiration from the essence of the Norway WIPO guideline which proposes acknowledging and crediting traditional knowledge regardless of where and how the TCE is being consumed or practiced. Because of the current concept of copyright law, TCE or TK may not be legally protected but I argue that it nevertheless legally deserves credit to sustain the conservation of traditional knowledge or expressions and offer the respect these traditions deserve.

⁵⁴⁹WIPO, ‘NORWAY Traditional Cultural Expressions/Expressions of Folklore: <https://www.wipo.int/export/sites/www/tk/en/igc/docs/norway_tce.pdf> accessed 14th March 2023

⁵⁵⁰Partha Shil , ‘THE RELEVANCE OF HUMANISTIC PHILOSOPHY OF LALON FAKIR IN PRESENT ERA’, (2021) <<https://scholarworks.calstate.edu/concern/publications/r781wn47h?locale=en>> accessed 15 March 2022 ;

Maqsoodul Haque, ‘Introduction to the Book: Bauliana: Worshipping the Great God in Man - Fakir Lalon Shah and the Baul Movement of Bangladesh’ (2017)<https://www.academia.edu/35274757/Introduction_to_the_Book_Bauliana_Worshipping_the_Great_God_in_Man_-_Fakir_Lalon_Shah_and_the_Baul_Movement_of_Bangladesh_2017> accessed 13th march 2023

⁵⁵¹[Masterpieces of the Oral and Intangible Heritage of Humanity](#). UNESCO. 25 September 2005

⁵⁵²WIPO, ‘NORWAY Traditional Cultural Expressions/Expressions of Folklore: <https://www.wipo.int/export/sites/www/tk/en/igc/docs/norway_tce.pdf> accessed 14th March 2023

Finally, it is crucial that Bangladesh become signatory to the Rome Convention 1961 and recognise neighbouring rights of recording artists so that they can be compensated for the public performance of their recordings. This would crucially contribute in the total revenue made by artists under TCE and commissioned artists, who at present receive no royalties for their contribution barring one off payments. This means no matter how popular an artist's songs are, it does not translate to improved financial conditions for that artists but for the producers of films who commissions the recording of songs or for the record label where the artist possibly recorded the song, unless the artist managed to record it themselves.

Acknowledging rights of recording artists would have had a staggering financial impact on artists like Alka Yagnik who holds the record for the most streamed singer globally with 15.3 billion streams in 2022, which accounts for nearly 42 million per day⁵⁵³. Alka Yagnik is a veteran playback singer of the Indian film industry who sang thousands of songs for films, as commissioned work in exchange of one off payments but no share in royalties. Her record is prestigious in terms of the accolades and fame but does not translate to financial gain and power.

5. Setting Music License Fees according to Categories of Licensees

What makes copyright unhelpful to artists and to the music economy?

If copyright law makes it difficult or impossible for independent artists or educational institutions to cover copyrighted songs because of exorbitant license fees, then that makes the law counter-productive. Copyright law mustn't create a structure of protection which hinders the flow of creativity

⁵⁵³San Atwal, 'Bollywood singer Alka Yagnik is the most listened to artist on YouTube' (2023) <<https://www.guinnessworldrecords.com/news/2023/1/bollywood-singer-alka-yagnik-is-the-most-listened-to-artist-on-youtube-733768>> accessed 11th Feb 2023

for the music community in general. A recent incident encountered by one of the musician participants, exemplifies this problem. Saregama one of the biggest music labels of India is notorious for setting exorbitant fees for licensing music they own even for research or educational purposes (see Volume 5 of this thesis, pages 31-33). Volume 5 of this thesis also discusses how such high license fees can often result in many iconic songs getting lost in time, since the license fees are too high for independent film makers, musician, or content creators to pay. Only when these songs are picked by big film studios or other well funded visual medias, can such fees be afforded and therefore such songs can resurface. In attempting to cover a famous song by the legendary musician S D Burman of Tripura India, a participant mentioned her struggle in acquiring permission from Saregama for the use of the song for a educational exhibition in the UK. The song would not have been commercially used or monetised on any platform. She exchanged a number of emails with two personnels from SAREGAMA but they refused to provide any permission stating, “..as discussed with her, unfortunately we won’t be able to issue the FOC”(free of charge?). The songwriter singer, stated and I quote, “ *The price they quoted seems much more in line with using the original song itself, in SD’ Burman’s voice... The PRS told me you don't need to ask for permission and just need to get a licence (which isn't very expensive)*”. She could not cover the song since she never successfully managed to acquire the permission from SAREGAMA INDIA who owned all the rights to that song. When asked, why didn't she just pay PRS and acquire the license, she replied, she was afraid she did not know about legal loopholes and she and the project runner did not want to face further trouble regarding a single song.

The “Inside Government Team” of the UK, defines policy as a statement of the government’s position, intent or action”⁵⁵⁴. Legislations that are relatively fixed tools require compatible, complementary and flexible policies to give effect to the intent and position that the government holds on particular subjects through a decided set of guidelines to achieve the rational outcome of the law. My thesis demonstrates how Bangladesh can be a prime example of a jurisdiction where existing laws have had ineffective outcomes in the absence of appropriate policies to ensure effective implementation and enforcement. In order to be effective, the rules devised under legal frameworks for copyright protection and management must firstly, be fully implemented or put into practice through policies which reflect the intention of the laws such as instituting a body to maintaining audits and oversee whether a collecting society has been established as prescribed, that it runs efficiently and with transparency, that there is a convenient transaction method for all stakeholders like online banking to make collection and distribution is possible without much difficulty, support educational institutions who are attempting to raise awareness on music copyright and music commercial contracts, set up more live performance venues, and subsidise the music industry where possible by introducing art council funds, paid music tours sending Bangladeshi musicians abroad to perform and promote Bangladeshi music heritage so that it expands the music market for Bangladeshi musicians and music companies globally.

Secondly, in order for the laws and rules to be effective they must be capable of being enforced, in other words where the laws are not followed, they can be required to be followed through enforcement mechanisms. For Bangladesh these mechanisms includes IP Enforcement agencies: the DPDT,

⁵⁵⁴Janet Hughes, ‘Explaining government policy on GOV.UK’ (2012) < <https://gds.blog.gov.uk/2012/11/13/explaining-gov-policy-gov-uk/>> accessed 17th March 2023

the Copyright Office, Mobile Courts, Rapid Action Battalion (RAB) and the local police⁵⁵⁵, as discussed in earlier chapters in detail. administered by two separate ministries. The two offices responsible for IP matters include these two ministries are: the Department of Patents, Designs and Trade Marks (DPDT) under the Ministry of Industries (MOI) and the Copyright Office is under the Ministry of Cultural Affairs (MOCA). The DPDT is a quasi-judicial body and the Registrar of the department acts as tribunal. However according to my qualitative research there is only evidence that the above bodies did not manage to enforce the implementation of steps to institute an operational or functional collecting society since the introduction of copyright laws in 2000 or resolve contractual disputes regarding ownership of IP or manage to considerably disrupt piracy or force any organisation or individual to comply with the legal requirement to pay royalties to copyright owners.

Booth's⁵⁵⁶ research suggests that favourable economic reform policies can be an important ally in building a strong IP regime and protecting artists' interest. In his research, he refers to Corbridge and Harris who argued that, "There is a strong case for believing that the economy of India was reshaped, if not entirely reinvented, by the programme of economic reforms that was put into place by Narasimha Rao and by his Finance Minister Manmohan Singh". Singh had also acted as Finance Minister under prime ministership of Rajiv Gandhi (1944–91), whose early efforts at economic liberalisation, specifically the relaxation of the electronic import policy in 1984 and an abolition (beginning in 1986) of the excise tax that had crippled the major music companies, began to have an impact on the music industry. As a result, by the end of the 1980s, audio cassettes came to com-

⁵⁵⁵Arif Ahmed, 'Enforcement of Intellectual Property Rights (Iprs) in Bangladesh: An Appraisal' (2016) < <https://www.iosrjournals.org/iosr-jhss/papers/Vol. 21 Issue4/Version-3/D0214033740.pdf>> accessed 18th March 2019

⁵⁵⁶Gregory Booth, 'Copyright Law and the Changing Economic Value of Popular Music in India' [2015]

pletely dominate the market. In 1989, according to O. P. Malik, “Indians spent 400 crore on recorded music” (The Times of India, 5 December, 1990), a 700 percent increase in music sales between 1982–89. Such an increase in economic revenue would invariably draw attention of the national legislators and policy makers to invest in regulating and facilitating the industry which is what happened in India. It motivated subsequent amendments for commissioned songwriters. This demonstrates how favourable government policies can boost commerce and how commerce in turn dictates and motivates most decisions on legislative and policy making which in turn can impact the rise and fall of commerce in a given market. It is a cycle that needs to be initiated for Bangladesh to witness similar changes and experience similar financial and cultural rewards as experienced by India in the description above.

The 2013 WIPO report by Khondker and Nowshin⁵⁵⁷, suggests that, since 2000 the ICT (Information and Communication Technology) sector of Bangladesh has evolved considerably owing to favourable policies by the government and the country’s recent membership with the above conventions and treaties. For instance, government policies allowed large investments by telecom and digital multinationals like Telenor (known as Grameen Phone or GP in Bangladesh) to invest heavily in the country. As a result affordable mobile phones with talk times and internet access were soon accessible to the mass which boosted e-commerce.

Corporate multinationals such as Coca Cola and telecoms such as Telenor have now expanded into entities in Bangladesh that act as some of the largest distributors and users of music in recent time. Some of the examples include, ringtones, music distributed through subscriptions of mobile phone

⁵⁵⁷ B Khondker & S Nowshin, ‘AN ASSESSMENT OF NATIONAL INTELLECTUAL PROPERTY SYSTEM : DEVELOPING NATIONAL INTELLECTUAL PROPERTY POLICY FOR BANGLADESH’ (2013) (https://dpdt.portal.gov.bd/sites/default/files/files/dpdt.portal.gov.bd/notices/5c4a8a90_d825_46f9_8cc8_3505e47e0053/IP%20Policy.KS.pdf) <accessed 11.01.2020>

operators like Grameen Phone Music, Coke Studio music⁵⁵⁸ etc. My research suggests that the government ought to enforce policies that encourage corporate philanthropy to contribute as the patrons of today. I propose that, an effective way to build the infra structure of the music industry would be by offering tax cuts conditional on considerable investments into the arts and music. This could be done implementing government policies that encourage corporations to engage in philanthropy through corporate tax reduction. Corporate funding already contributes to some of the biggest festivals and concerts held in Bangladesh and worldwide. The idea is to expand on their existing path of investment into the arts which would be beneficial for both parties. The corporations would benefit through tax reduction and exclusive marketing opportunities and the music community would benefit from having a number of live shows, state of the art live music performance venues and theatres for large scale musical and theatre performances and government programs that fund musicians to tour and perform abroad so they have opportunities to take part in competitions and international festivals that could otherwise be expensive or out of reach for individual musicians. This way Bangladeshi music can be spread and heard worldwide creating further opportunities for musicians at home and creating a larger market for them to tap into.

6. Alternative Dispute Resolution

A general consensus amongst musician participants of my interview was that their unawareness on the subject of music copyright law and commercial contracts, had made their journey of making, transacting and protecting music unnecessarily complex and difficult. They appeared generally more apprehensive regarding taking the legal path. Therefore one of my suggestions would involve

⁵⁵⁸‘Coke Studio Bangla’, *Wikipedia* (2023) <[https://en.wikipedia.org/w/index.php?title=Coke_Studio_Bangla_\(season_1\)&oldid=1146257146](https://en.wikipedia.org/w/index.php?title=Coke_Studio_Bangla_(season_1)&oldid=1146257146)> accessed 15 April 2023.

initiating awareness on the subject through university courses, regular workshops held for all musicians and free online courses in Bangla language. My theses is that, the more aware they become on the subjects, the less apprehensive they will be which will eventually generate enough confidence for them to avoid entering unfair contracts or fight to protect their IP rights.

Regardless, the legal path remain lengthy and expensive therefore I would like to suggest a form of alternate dispute resolution for those who would prefer to avoid litigation altogether. This would require a capable ADR panel with members specialised on the subjects of copyright laws, the commercial music contracts, the music business and the landscape in which all these subjects are operating. This may facilitate swift, equitable and practical resolutions for the issues discussed throughout this thesis. It may also reduce cost and time for all parties and prove more efficient than legal proceedings.

7. Awareness is Key

Finally my research finds that, developing awareness regarding the rights and obligations surrounding copyright and commercial contracts is at the core of it all. My suggestion therefore firstly includes the introduction of basic curriculums on protecting IP as mandatory part of any educational course that involves creating intellectual property like music composition, creative writing, architecture, film making, and fashion designing. Incorporating educational curriculum on protecting copyright of all sorts would be an effective way of raising awareness at large and across fields. This would ensure that the current and following generations of creators are fully aware of the rights and obligations surrounding not only the IPs created in their fields but are also respectful of the rights and obligations surrounding music copyright. This would create a culture of awareness that would

benefit music IP holders along with others.

Secondly, I suggest that free and public workshops on protecting intellectual properties should be held online and offline on a regular basis. It should be open to everyone interested. These workshops should be available online for those who might have to travel from far to reach a physical venue to attend any of these workshops . Bangladesh had its first workshop on digital music copy-right in 2019⁵⁵⁹.

Original Contribution:

By connecting and rearranging analysed information into a narrative, through the theoretical lens of Emptiness, I have created a new perception backed by extensive qualitative data that I have collected over two years of field work in Bangladesh, creating new knowledge in this field. According to Socrates, a philosopher aims to understand and perceive the various levels and dimensions of reality⁵⁶⁰. Through my research I have crafted a new way to perceive the multiversal realities in which protection of music copyright laws operate and introduced recommendations using the same theoretical lens with which both the problem and the solutions are being perceived.

This has been achieved by applying the Buddhist theory of Emptiness to identify the true nature of reality or realities in which music is made, performed, transacted and attempted be protected. My

⁵⁵⁹Rummana Foisal Nafiu, 'Bangladesh's first digital music copyright workshop ends' *Dhaka Tribune* (Dhaka, 25th March 2019)

⁵⁶⁰ A. Ferguson, ' Plato's Simile of Light. Part II. The Allegory of the Cave' (1992) <[https://www.semanticscholar.org/paper/Plato's-Simile-of-Light-\(continued\).-Part-II.-The-Ferguson/be84b-f0161ab521928568f0a3ca3fb66a20eed48](https://www.semanticscholar.org/paper/Plato's-Simile-of-Light-(continued).-Part-II.-The-Ferguson/be84b-f0161ab521928568f0a3ca3fb66a20eed48)> accessed 13th March 2023

original contribution is this new way to perceive from a fresh vantage point and understand why the transplanted copyright law remains ineffective in Bangladesh and a set of robust qualitative data gathered from all major classes of stakeholders involved in the music business, which has never been attempted before. The new vantage point that I create is not only composed of the knowledge developed through a new theoretical lens but also contains my individual perception. I believe that my perception of the world is largely driven by my considerable experiences both in the fields of legal academia and music, a combination that is uniquely useful in researching about law and music. The absence of qualitative data collected from Bangladeshi musicians, labels, publishers, broadcasters and distributors is another gap in current academic knowledge that I fill through my research, in my attempt to meaningfully extend the boundary of human knowledge. The semi structured nature of the interview through which the qualitative data was obtained offered a wide range of data which has not been acquired before.

Research Conclusion

In answering the research question, “The Music Copyright regime in Multiversal Bangladesh: A gainful succession or a system seeking evolution?”, I have combined doctrinal and empirical findings, new theoretical perception and my own insights owing to my dual experience as a lawyer and a musician, to access and determine the state of efficacy of the Bangladeshi music copyright regime. As contribution to the field, my research applies the theory of emptiness to perceive the true nature of reality in which the music copyright regime of Bangladesh exists, so that the full scope and extent of the issues that are being empirically investigated, could be examined. My core finding is that the Bangladeshi music copyright regime is a system that is in need of evolution.

I considered two main factors in accessing the music copyright regime. The copyright legislation and the commercial music contracts through which these rights are managed. My research discovered that thousands of commercial music contracts that have begun to raise disputes, have been signed by songwriters unwittingly giving away all their rights. Sorting these disputes would have led to a clean start for the stakeholders and consumers of music IPs would be clear as to who to make the royalty payments out to according to their share of ownership over a particular music IP. However, it is practically impossible to retrospectively sort IP ownership disputes of such large quantities. My research finds that the Bangladeshi music copyright regime is at the precipice of a new era, skipping the previous era that the west experienced in terms of music making and publishing. In this new era, the musicians are bypassing the record labels and publishing houses and producing their own music to be able to publish through the internet. The middle man (labels/publishers) who has been guarding the space between musicians and their music making, can finally be avoided but only if the regime improve its infra-structure and support this change by instituting a collecting society, providing wide access to online banking, creating new venues for live performance, subsidising the music industry and establishing a regulating and monitoring body to oversee implementation and enforcement. Additionally, my research suggests that the copyright act requires reforms as to how ownership of music IP is defined and provides guidelines as to how TCE can be protected and promoted. In support of my doctrinal and qualitative research I conclude that the music IP regime of Bangladesh requires the above reforms both legally and socio-culturally in order to undergo the evolution it needs, to provide songwriters and musicians with adequate support to thrive.

Through this research, I created new knowledge that explains the failures and inefficacies of the music copyright regime in Bangladesh and suggests reforms. The thesis creates a strong ground of

academic knowledge on which future researchers of music and law can build. The knowledge created would be crucial for law and policy makers to create sustainable implementational guidelines to contribute to the evolution of the music IP regime. The qualitative section of this research on Bangladeshi music copyright regime is the first of its kind, that offers the narrative and perspective that is needed to deliberate on essential reforms. The significance and implication of my study is that, my findings will provide useful, reliable and verified information to law and policy makers and academics which they do not have access to yet, by filling in the gaps identified in this field of academic knowledge.

I acknowledge that my research on “Bangladeshi music copyright law and its inefficiencies” covers the qualitative aspect of the investigation and there remains a several areas on this subject still unexplored. A quantitative research on this subject is yet to be undertaken. There is no quantitative data on how much royalty is actually paid and how much royalty is being lost. This could be connected to another data based study that could calculate the number of contracts in which all rights are owned by the labels and the number where songwriters share some or all of the copyright ownership. It would create a state of transparency through which the extent of revenue that is being lost due to various reasons discussed in my thesis, could be determined. A deep dive into how broadcasters and other users of music get away with not paying any royalties could be another area to explore.

The End

Glossary

IP	Intellectual Property
IPR	Intellectual Property Right
TCE	Traditional Cultural Expression
TK	Traditional Knowledge
WIPO	World Intellectual Property Organisation
MU	Musicians' Union
IPRS	Indian Performing Rights Society
Songwriters	Composer, Lyricist, Artist
TRIPS	Trade Related Aspects of Intellectual Property Right

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