

NEWSLETTER

2024' Chapter 6

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MOBILE MONEY – Reshaping the
Financial Inclusion in **Bangladesh**

MOBILE MONEY – Reshaping the Financial Inclusion in Bangladesh

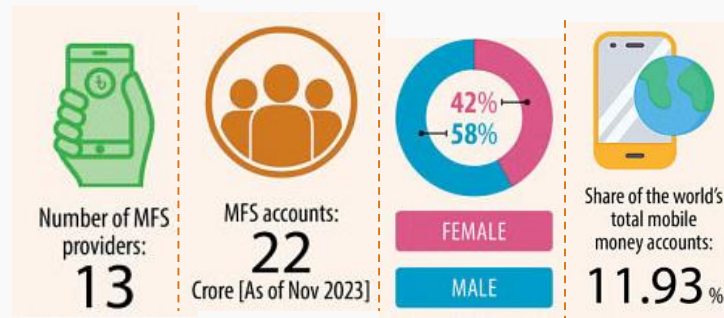
In recent years, Bangladesh has seen tremendous growth in digitalization, which is gradually changing the shape of the country's socioeconomic parameters and propelling it into the digital age. The industry has evolved into a one-stop solution for all kinds of transactions, from sending and receiving money to paying utility, transit, education, medical, and retail expenditures. This invention has boosted financial inclusion.

As a key driver, the Mobile Financial Services (MFS) operators are helping to develop Bangladesh into a digital economy. It has successfully brought a substantial number of previously unbanked poor populations into the formal banking system. These populations, residing in both rural and urban areas, were long denied access to traditional banking services.

In 2012, Dutch Bangla Bank Limited pioneered mobile banking services in the country, marking the beginning of a decade-long journey. The central bank also started issuing licenses for MFS to boost the financial inclusion of all.

Currently, 10 banks and 3 subsidiary companies are providing MFS as an alternative payment channel. The MFS providers include Rocket, bKash, MYCash, Islami Bank mCash, Trust Axiata pay (tap), FSIBL FirstPay SureCash, Upay, OK Wallet, Rupali Bank SureCash, TeleCash, Islamic Wallet, Meghna Pay, and Nagad.

The launch of Bangladesh's first National Financial Inclusion Strategy 2021-2026 is a major step towards achieving financial inclusion for all.



As per the latest insights from a2i, the multinational digital organization founded by the Government of Bangladesh, financial inclusion has risen from 31 percent to 50 percent. As of November 2023, the MFS accounts stood at 22 crores with 13 MFS providers in Bangladesh, a country with a population of 17 crores, as many individuals maintain multiple MFS accounts.

However, this MFS account was 8.43 crores in 2019, an increase of 160 percent over the four years, according to Bangladesh Bank. Rural people, including a significant number of women, have played a pivotal role in driving the growth of MFS. The government's decision to distribute cash through MFS as part of its social safety net programs and stimulus packages broadens the scope of the formal financial system to include more unbanked people. The use of MFS in the education sector has expanded during the pandemic, ranging from salary disbursement to college admission and tuition costs. The number of remittances received through MFS has grown during the past four years. Bangladesh has launched its first instantaneous cross-border remittance service powered by block-chain technology.

In recent times, MFS providers are working with financiers (Banks, NBFIs, and MFIs) to provide loans, insurance services, and innovative savings schemes. Some pilot initiatives have already been implemented and they have generated mostly promising results.

The Legal Implications of Artificial Intelligence: Challenging Current Legal Frameworks



Artificial Intelligence (AI) is at the forefront of technological innovation, revolutionizing industries from healthcare to finance. However, the rise of AI presents significant challenges to existing legal frameworks. This article explores the legal implications of AI, focusing on issues of intellectual property, privacy and liability.

Intellectual Property

AI challenges traditional intellectual property (IP) laws, particularly in areas of authorship and ownership. Current copyright laws require human authorship, creating ambiguity around AI-generated works. Questions arise about whether such works can be copyrighted and who would hold the rights—the AI's developer, the user, or the AI itself? Additionally, the role of AI in creating artistic works, music, and other content necessitates new models for licensing and royalties. Determining how revenues should be distributed when AI plays a significant role in the creative process remains an open question.

Furthermore, AI's contributions to innovation raise the issue of whether inventions created by AI can be patented. The existing patent system does not recognize AI as an inventor, posing significant legal hurdles. AI systems depend on vast amounts of data for training. Issues of data ownership and the legality of using proprietary or sensitive information for training purposes are critical.

Privacy

AI's ability to process large volumes of personal data poses substantial privacy concerns, necessitating adaptations in privacy laws. AI systems often collect data without explicit user consent, challenging traditional concepts of informed consent. Legal frameworks must ensure that users are adequately informed about data collection practices and have the option to opt-out. While laws like the general data protection regulation (GDPR) enacted by the EU advocate for data minimization, as AI's effectiveness often relies on extensive data.

Striking a balance between the need for data and privacy protections is crucial. AI-powered surveillance systems enable extensive tracking and profiling, raising concerns about civil liberties and potential government overreach. Legal safeguards against unwarranted surveillance must be strengthened to protect individual rights. AI systems can perpetuate biases present in their training data, leading to discriminatory outcomes. Addressing the accountability of AI systems in mitigating bias and ensuring fair practices is a significant legal challenge.

Liability

The introduction of AI systems with a high degree of autonomy indeed complicates traditional notions of liability in several ways. In traditional systems, liability is typically clear. If a product malfunctions, the manufacturer is held accountable. However, AI systems, especially those capable of learning and evolving, can operate in ways not explicitly programmed by their developers. This diffusion of responsibility means multiple parties could be held liable, including Developers who created the AI algorithms, Data Providers who supplied the training data, Manufacturers who produced the physical components housing the AI, Operators who use or maintain the AI systems and End Users who interact with the AI and may misuse it. Traditional liability often hinges on the foreseeability of harm. With autonomous AI, the actions and decisions made by the system can be unpredictable, even to its creators. This unpredictability challenges the application of foreseeability, making it difficult to hold any party accountable under traditional legal doctrines.

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AI systems can involve complex interactions between various software and hardware components. Determining the exact cause of harm can be challenging when an AI system fails. This complexity in causation makes it difficult to pinpoint which component or process malfunctioned, and who should be responsible for that failure. AI systems, particularly those that self-learn, may behave in ways that deviate from their initial programming.

Determining the standard of care required for developers and operators becomes challenging because the AI's behavior can evolve beyond their control. Legal standards for negligence may need to be redefined to accommodate these unique characteristics of AI. Beyond legal liability, there are ethical and moral considerations. For example, if an AI system causes harm, is it appropriate to hold a human responsible when the AI acted independently? This raises questions about moral agency and whether AI systems themselves could ever be considered liable.

Current legal frameworks may not be adequately equipped to handle the nuances of AI-induced harm. There's a growing need for new regulations and laws specifically tailored to address the challenges posed by autonomous AI systems. These frameworks might include:

- **Stricter Testing and Certification:** Before AI systems are deployed, they could be required to undergo rigorous testing and certification processes to ensure safety and reliability.
- **Liability Insurance:** Mandating liability insurance for AI developers and operators to cover potential harms caused by AI systems.
- **Establishment of AI Tribunals:** Specialized courts or tribunals with expertise in AI technology to handle disputes and liability claims.

AI systems that continuously learn and adapt pose unique challenges because their behavior can change over time. Liability must consider the AI's state at the time of harm, which may differ from its initial state. Tracking and documenting the AI's learning process and decision-making pathways become crucial in such scenarios. To address the diffusion of responsibility, legal frameworks might consider joint liability models where multiple parties share responsibility. This could involve proportional liability based on the extent of each party's contribution to the harm.

In conclusion, AI's rapid advancement requires a reexamination and evolution of current legal frameworks to address issues of liability, intellectual property, and privacy. Policymakers, legal professionals, and technologists must work collaboratively to create laws that balance innovation with protection.

Ensuring that AI operates within ethical and legal boundaries is essential to harness its potential while safeguarding individual rights and societal values. In the face of these challenges, the development of adaptive legal frameworks and proactive regulations will be pivotal in shaping a future where AI can thrive responsibly and ethically.

LEGISLATIVE UPDATES

Bangladesh Passes Offshore Banking Act 2024

In a strategic move to address the acute shortage of US dollars, the parliament of Bangladesh took a significant step in March this year by passing the Offshore Banking Act 2024. This legislation is a critical measure aimed at bolstering the country's efforts to stabilize its foreign exchange reserves, which have been under significant pressure due to higher outflows than inflows over the past two years.

The Offshore Banking Act 2024 establishes a comprehensive regulatory framework to facilitate the operations of offshore banking units (OBUs) within Bangladesh. Among the key provisions outlined in the Act are restrictions on offshore banking business, which include criteria for obtaining licenses and guidelines for conducting offshore banking activities. By offering a structured environment for these units, the government aims to attract multinational companies and foreign investors.

The Act delineates procedures for the commencement and notification of offshore banking activities, ensuring transparency and regulatory oversight. To maintain the integrity of offshore banking operations, it outlines procedures for the suspension, cancellation, or surrender of licenses. Additionally, it specifies the conduct of activities such as deposits, loans, advances, or investments within offshore banking units, ensuring adherence to established guidelines and limitations. Furthermore, the Act mandates record-keeping and audit requirements to ensure accountability and transparency in offshore banking operations.

A key feature of the Act is the provision of various tax incentives designed to make offshore banking more attractive. These incentives include reduced corporate tax rates for OBUs and exemptions from certain local taxes and duties. Moreover, the Act permits OBUs to conduct transactions in foreign currencies, which will help businesses in Bangladesh manage their foreign exchange risks more effectively.

The ability to repatriate profits without undue restrictions is also a significant draw for foreign investors, ensuring they can realize returns on their investments. The Offshore Banking Act 2024 also grants the authority to make rules and regulations to address any challenges or ambiguities that may arise during its implementation. It includes provisions for the custody of documents and other pertinent information related to offshore banking activities. Strict penalties are outlined in the Act for violations, including failure to submit financial statements, provision of false information, negligence, or violation of other provisions of the law. Regulatory authorities are empowered to issue orders, directives, and formulate guidelines to enforce compliance with the Act.

The expected benefits of the Offshore Banking Act 2024 are manifold. By attracting more foreign currency through offshore banking activities, the Act aims to improve the supply of US dollars in the country. This, in turn, is expected to ease the pressure on Bangladesh's foreign exchange reserves. Additionally, increased foreign investment and enhanced international trade facilitation are anticipated to contribute to the country's overall economic growth. The development of offshore banking is also likely to enhance the sophistication and competitiveness of Bangladesh's financial sector.

However, the success of the Offshore Banking Act 2024 will depend on its effective implementation. This includes establishing the necessary infrastructure, ensuring robust regulatory oversight, and maintaining transparency. Additionally, the Act must be complemented by strong anti-money laundering (AML) and counter-terrorism financing (CTF) measures to mitigate the risks associated with offshore banking. The global economic environment will also play a crucial role in determining the Act's effectiveness in boosting Bangladesh's US dollar supply and promoting sustained economic growth.

CASE UPDATE

Md. Dabir Uddin Vs Md. Moniruddin and Others. Civil Appeal No.399 of 2019

Fact:

This Civil Appeal by leave granted on 06.05.2019 in Civil Petition for Leave to Appeal No. 2780 of 2015 is directed against the judgment and decree dated 16.07.2014 by the High Court Division in Civil Revision No. 1603 of 2008. The High Court Division discharged the Rule, thereby affirming the judgment and decree dated 16.05.2007 by the learned Joint District Judge, 2nd Court, Manikganj, in Title Appeal No. 26 of 2007. This appeal had set aside the judgment and decree dated 10.01.2007 by the Senior Assistant Judge, Sadar Upazilla, Manikganj, in Title Suit No. 130 of 2005, which decreed the suit in favor of the plaintiff.

The relevant facts necessary for the disposal of this Civil Appeal are that the appellant, as plaintiff, instituted Title Suit No. 130 of 2005 in the Court of Senior Assistant Judge, Sadar Upazilla, Manikganj, for specific performance of contract. The plaintiff claimed that the land described in the schedule to the plaint was acquired by the defendants through purchase and heba-bil-ewaj from their father. The plaintiff, having separated from his family, purchased 59 decimals of land and took possession.

While abroad, he sent Tk. 5,000.00 (Five Thousand) and additional money for registration costs to the defendants, who later breached the trust by not registering the land in his name and misappropriating the money. Upon returning, the plaintiff discovered the deed was in both his and the defendants' names. He then gave Tk. 2,00,000.00 (Two lac) for the purpose of kabala, which the defendants again failed to honor, leading to a criminal case. The plaintiff also gave Tk. 1,00,000.00 (One lac) for the defendant No. 1's daughter's marriage. Thus, the plaintiff claimed the defendants misappropriated Tk.3,00,000.00 (Three lac).

Local Public Prosecutor Advocate Azad Hossain mediated, resulting in an 'aposhnama' on 14.10.2003 and a subsequent meeting on 18.10.2003, where it was agreed that pending cases would be withdrawn and the defendants would execute and register the kabala for the land described in schedules 'Ka' and 'Kha' of the plaint. The defendants, however, did not fulfill these terms, prompting the plaintiff to seek court intervention for registration of the kabala.

The defendants No.1-2 contested the suit by filing a written statement denying the averments made in the plaint and contended, inter alia, that with the negotiation of Mr. Azad Hossain, the Public Prosecutor, and Advocate Anwar Hossain, a sitting was held on 14.10.2003 wherein an "aposhnama" was executed. The defendant No.3 did not execute the "aposhnama" by putting his signature therein, and the plaintiff also failed to comply with the condition of the "aposhnama" and did not execute any deed in respect of his 11 decimals land in favor of the defendants.

The plaintiff also did not withdraw the cases filed by him, thereby failing to fulfill the terms and conditions of the compromise. The trial Court framed four issues, and after examining witnesses and documents, decreed the suit in favor of the plaintiff on 10.01.2007. The defendants appealed, and the Joint District Judge, 2nd Court, Manikganj, allowed the appeal on 16.05.2007, setting aside the trial court's decree. The plaintiff's subsequent revision to the High Court Division was discharged on 16.07.2014, leading to this appeal.

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CASE UPDATE

Md. Dabir Uddin Vs Md. Moniruddin and Others. Civil Appeal No.399 of 2019

Held:

The Supreme Court, after reviewing the judgments of the lower courts, the evidence, and submissions from both sides, found that the terms of the "aposhnama" were not fulfilled, as the criminal cases were not withdrawn, rendering the "aposhnama" revoked. The Court held that the unregistered sale deeds did not constitute a valid sale under Section 54 of the Transfer of Property Act, 1882, as no pecuniary consideration was involved. Therefore, the plaintiff was not entitled to specific performance of the contract.

The learned Counsel for the appellant, contended that the High Court Division had committed illegality by misconceiving the case, misreading and misconstruing the evidence and materials on record, and thereby misdirecting beyond the law and facts of the case in passing the erroneous decision discharging the Rule. The learned Counsel for the appellant also argued that the appellate Court below as well as the High Court Division did not discuss and assess each and every finding of the trial Court with reasonable grounds, which is required under the Code of Civil Procedure, and as such committed an error of law occasioning failure of justice. The learned Counsel for the respondents No.1&2 contended that the suit of the plaintiff is for specific performance of contract which is not maintainable since there was no valid contract for sale between the parties and no payment of consideration. The learned Counsel for the respondents also argued that the terms and conditions of the 'aposhnama' were not fulfilled and it was impliedly revoked, and as per section 21 of the Specific Relief Act, the contract which is in its nature revocable cannot be specifically enforced.

The Supreme Court found that both the plaintiff and defendants did not withdraw the criminal cases filed against each other and thus no compromise was made between the parties. Since the terms and conditions described in the "aposhnama" dated 14.10.2003 regarding the withdrawal of criminal cases had not been fulfilled, the "aposhnama" was impliedly revoked. Consequently, the plaintiff could not get relief on the strength of "aposhnama" dated 14.10.2003. The Court further held that the transaction in question could not be termed as a sale since no pecuniary consideration was dealt with between the parties. As per Section 54 of the Transfer of Property Act, 1882, a sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised, but in the case in hand, no such consideration was involved.

In view of the discussions made and the legal provisions, the Supreme Court held that the plaintiff is not entitled to get a decree of specific performance of contract. The trial Court, without proper appraisal of the oral and documentary evidence, decreed the suit, but the appellate Court below lawfully set aside the judgment and decree of the trial Court, and the High Court Division properly affirmed the judgment of the appellate Court below. Therefore, the impugned judgment and decree dated 16.07.2014 passed by the High Court Division in Civil Revision No. 1603 of 2008 does not warrant interference. The Supreme Court dismissed the appeal, finding no merit in the submissions of the learned Counsel for the appellant, and dismissed the appeal without any order as to costs.



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