

Comparative Analysis of Legal Challenges Faced by Startups in India and Bangladesh: The Way Forward

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ABSTRACT

This article carries out a comparative study to show legal problems faced by startups in India and Bangladesh, two countries where startups are also seen as an important socio-economic force. It examines the legal complications that come with regulatory uncertainty, compliance burdens, intellectual property protection, taxation, contract enforcement, data privacy, consumer protection and access to finance and markets in both jurisdictions. The Startup India initiative in India gives broad definition of startups and grants various benefits to them but still they face regulation and compliance problems due to variations across areas within states and sectors. Moreover, they encounter challenges while raising funds or acquiring intellectual property rights. In Bangladesh, startups have lesser clarity about their legal status or benefits from it than they do about other issues such as market access or IP protection. Therefore, for these purposes this work suggests several possible legal reforms. Some of the reforms include harmonization and coordination of laws, easing compliance mechanisms, promotion of intellectual property rights as well as protection, establishment of comprehensive legal framework for AI and startups, creation of specialized legal bodies in this area and development of favorable legal culture and ecosystems. These reforms seek to make the legal environment more transparent, consistent and supportive for startups in India and Bangladesh. Thereby, promoting innovation as well as economic development in the startup industry.

KEYWORDS: Bangladesh, Comparative Law, India, Legal Reforms, Startup, Artificial Intelligence.

INTRODUCTION

India and Bangladesh are among the booming countries in South Asia. Both have startups as a significant component of their socio-economic growth. According to data contained in Global Startup Ecosystem Report 2023¹, India is ranked third in terms of total number of startups globally with over seventy thousand active ventures², while Bangladesh³ ranks at position 36 with over two thousand five hundred start-ups⁴. Both

¹Insights Editor, *Global Startup Ecosystem Report 2023 (GSER 2023)*, INSIGHTSIAS (Jun. 21, 2023), <https://www.insightsonindia.com/2023/06/21/global-startup-ecosystem-report-2023-gser-2023/> (last visited Nov 5, 2023).

²The State Of Indian Startup Ecosystem Report 2023, INC42 MEDIA, <https://inc42.com/reports/the-state-of-indian-startup-ecosystem-report-2023/> (last visited Nov 5, 2023).

³LightCastle Analytics Wing, *Bangladesh Startup Investment Report 2022: A Year in Review*, LIGHTCASTLE PARTNERS (Jan. 11, 2023), <https://www.lightcastlebd.com/insights/2023/01/bangladesh-startup-investment-report-2022-a-year-in-review/> (last visited Nov 5, 2023).

states have seen an upswing in entrepreneurialism, innovation and investments across sectors such as e-commerce, fintech, healthtech, edtech, agritech, biotech etc. They have also filled the gaps when it comes to employment creation for inclusive growth and productivity enhancement by addressing local challenges.

But at the same time, startups have to face a number of startup legal hurdles which can restrict their development and survival.⁵ These issues include regulatory ambiguity, compliance burden, intellectual property protection, tax issues, contract enforcement mechanisms, dispute settlement procedures, data privacy and security regulations, consumer protectionism as well as accessibility to finance and market.⁶ Also, notably these issues may be different among jurisdictions depending on sectors or stages of development, thus, requiring different strategies and responses from new firms.⁷ Consequently, there is a need to have a clear picture of what constitutes the legal environment for start-ups in India and Bangladesh⁸, comparing such nations' commonalities and divergences; strengths and weaknesses; threats and opportunities.⁹

The purpose of this analysis is to make a comparative study of the legal challenges that start-ups face in both nations along with recommendations to further to support growth of startups.

UNDERSTANDING THE STARTUP ENTERPRISES

It is imperative to understand the concept of startup. We should be able to identify with how this term is defined and recognized by the respective governments. A startup is typically an aspiring business entity that seeks to introduce a new product/service. It must possess the potential for rapid growth in the market. However, it should be noted that there are no universally acceptable definition for startups. Different countries and organizations follow varying parameters for supporting them. This variability in classification underscores the intricately of the whole start-up ecosystem. The government adopted an inclusive definition of startups through their Startup India initiative of 2016.¹⁰ In line with "Startup India" website, a startup:

- i. is incorporated as a pvt. ltd.¹¹ company, a partnership firm or a LLP¹² in India
- ii. is not older than ten years from its incorporation or registration¹³
- iii. has a yearly turnover not in excess of Rs. 100 crore in any of the previous fiscal years
- iv. is engaged in fostering innovation; enhancing products, processes or services; & has a scalable business model conducive of employment opportunities or wealth generation
- v. is not created by splitting/reconstructing an existing business¹⁴

On top of that, a startup also needs to have recognition certificate from DPIIT¹⁵ to be eligible for benefits and incentives given through Startup India. These include tax exemption, simplified compliance regime, expedited process for patent registration, funding support and incubation.¹⁶

⁴LightCastle Analytics Wing, *Bangladesh Startup Investment Report Q'1 2023*, LIGHTCASTLE PARTNERS (Apr. 12, 2023), <https://www.lightcastlebd.com/insights/2023/04/bangladesh-startup-investment-report-q1-2023/> (last visited Nov 5, 2023).

⁵L. I. Network, *Legal Challenges Faced by Startups in India*, LAW INSIDER INDIA (Aug. 8, 2022), <https://www.lawinsider.in/columns/legal-challenges-faced-by-startups-in-india> (last visited Nov 5, 2023).

⁶Ashesh Anand, *Entrepreneurship in India in 2023: Challenges, Opportunities, and Growth | Analytics Steps*, <https://www.analyticssteps.com/blogs/entrepreneurship-india-2023-challenges-opportunities-and-growth> (last visited Nov 5, 2023).

⁷S. Shanthi, *Legaltech Startups: An Upcoming Business Model In Town*, ENTREPRENEUR (2023), <https://www.entrepreneur.com/en-in/news-and-trends/legaltech-startups-an-upcoming-business-model-in-town/447930> (last visited Nov 5, 2023).

⁸Maliha Arosha Hasan, *Is Bangladesh Friendly Enough for Startups? An Analysis*, THE DAILY STAR (2022), <https://www.thedailystar.net/life-living/news/bangladesh-friendly-enough-startups-analysis-3090656> (last visited Nov 5, 2023).

⁹Bangladesh-Startup-Ecosystem-2021-22.pdf, <https://www.startupbangladesh.vc/wp-content/uploads/2022/07/Bangladesh-Startup-Ecosystem-2021-22.pdf> (last visited Nov 5, 2023).

¹⁰STARTUPS IN EMERGING TECHNOLOGY, <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1911913> (last visited Nov 5, 2023).

¹¹Private Limited.

¹²Limited Liability Partnership.

¹³This text provides general information Statista assumes no liability for the information given being complete or correct Due to varying update cycles & Statistics Can Display More up-to-Date Data Than Referenced in the Text, *Topic: Startups in India*, STATISTA, <https://www.statista.com/topics/4839/startups-in-india/> (last visited Nov 5, 2023).

¹⁴Renu Suresh, *Know The Process of Recognition as a Startup*, INDIAFILINGS - LEARNING CENTRE (Aug. 3, 2021), <https://www.indiafilings.com/learn/definition-of-startup-2/> (last visited Nov 5, 2023).

¹⁵Department for Promotion of Industry and Internal Trade.

¹⁶Startup India, <https://www.startupindia.gov.in/content/sih/en/home-page.html> (last visited Nov 5, 2023).

The Bangla government in 2019 launched a Startup Bangladesh initiative.¹⁷ It aims at making the startup network more sustainable.¹⁸ However, unlike India, Bangladesh does not have a clear-cut definition of what constitutes a startup. It also lacks specific parameters against which eligibility is checked by the government before being granted any kind of assistance or support. According to the Startup Bangladesh website¹⁹, a startup is a company that:

- i. is registered in Bangladesh
- ii. is less than 5 years old
- iii. has a minimum viable product or service
- iv. has a scalable and innovative business model
- v. has a social or environmental impact

Even so, these yardsticks are not regularly employed or checked by the authorities and no official channel or procedure for registering or certifying a startup exists in Bangladesh. On top of that, the incentives offered by this Startup Bangladesh scheme are limited. They are quite vague as it only involves access to training, mentoring, networking and co-working spaces, etc.²⁰ Therefore, we can see that the concept of start-ups in India and Bangladesh is not one and the same. There is significant difference between how start-ups are defined, recognized and supported by governments & other stakeholders in both nations.

EXPLORING LEGAL CHALLENGES FOR STARTUPS

In addition to this fact about start-ups being unclear for global entrepreneurs discussed above, another legal hurdle in both these countries is complexity involved along with heavy compliance²¹ burden posed by regulatory environment.²² This complexity often emanates from dealing with several laws. These include company law; tax law²³; labor law; contract law; consumer protection law²⁴; intellectual property law; environmental law and sector-specific regulations²⁵ among others, generally varying across states or regions.²⁶ There are also numerous government agencies and authorities²⁷ startups have to be in touch with, like the RJSC²⁸, the NBR²⁹, the BIDA³⁰, the Bangladesh Bank, the Securities and Exchange Commission, the Department of Patents, Designs and Trademarks, the Bangladesh Accreditation Board, the Bangladesh Standards and Testing Institution and the Bangladesh Computer Council in Bangladesh,³¹ and MCA³², the

¹⁷Startup Bangladesh Limited - a Venture Capital Company, STARTUP BANGLADESH LIMITED, <https://www.startupbangladesh.vc/> (last visited Nov 5, 2023).

¹⁸iDEA, <https://idea.gov.bd/> (last visited Nov 5, 2023).

¹⁹Startup ecosystem in Bangladesh: Current status and future outlook | The Business Standard, <https://www.tbsnews.net/thoughts/startup-ecosystem-bangladesh-current-status-and-future-outlook-313441> (last visited Nov 5, 2023).

²⁰Shib Dhar, *Startup Bangladesh Limited - Startup Ecosystem in Bangladesh: Current Status and Future Outlook*, STARTUP BANGLADESH LIMITED (Oct. 13, 2021), <https://www.startupbangladesh.vc/startup-ecosystem-in-bangladesh-current-status-and-future-outlook/> (last visited Nov 5, 2023).

²¹A&A, *Legal Compliances for Startups in India | Compliance For Startups*, AHLAWAT & ASSOCIATES (Jun. 15, 2021), <https://www.ahlawatassociates.com/blog/legal-compliances-for-startups-in-india/> (last visited Nov 5, 2023).

²²Haripriya Sureban, *Indian Web3 Startups' Growth Stalls in Bear Market amid Regulation Uncertainty*, BUSINESSLINE (2023), <https://www.thehindubusinessline.com/economy/indian-web3-startups-growth-stalls-in-bear-market-amid-regulation-uncertainty/article67138375.ece> (last visited Nov 5, 2023).

²³Budget 2022: How 99% of start-ups will miss the tax benefit bus, BUSINESS TODAY (2022), <https://www.businesstoday.in/entrepreneurship/news/story/budget-2022-how-99-of-start-ups-will-miss-the-tax-benefit-bus-321153-2022-02-01> (last visited Nov 5, 2023).

²⁴Mollik Wasi Uddin Tami, *Consumer Rights Protection In Bangladesh : Law And Practice | BDL D*, (2016), <https://bdlawdigest.org/consumer-rights-protection-in-bangladesh.html> (last visited Nov 5, 2023).

²⁵Regulatory uncertainty has not slowed down India's crypto sector, (2022), <https://forkast.news/regulatory-uncertainty-not-slowed-india-crypto-sector/> (last visited Nov 5, 2023).

²⁶5 Legal Challenges Faced by Startups in India You Must Know! | Takelegal.in, (Mar. 9, 2023), <https://www.takelegal.in/legal-challenges-faced-by-startups-in-india/> (last visited Nov 5, 2023).

²⁷Angadi - 2021 - Issues, Challenges, and Opportunities of Indian St.pdf, <https://www.jetir.org/papers/JETIR2110281.pdf> (last visited Nov 5, 2023).

²⁸ Registrar of Joint Stock Companies and Firms.

²⁹ National Board of Revenue.

³⁰ Bangladesh Investment Development Authority.

³¹Khandoker M. S. Kawsar, *Enforcement of Contract in Bangladesh*, THE DAILY STAR (2018), <https://www.thedailystar.net/law-our-rights/law-vision/enforcement-contract-bangladesh-1537090> (last visited Nov 5, 2023).

³² Ministry of Corporate Affairs.

Income Tax Department, RBI³³, Securities & Exchange Board of India³⁴, DPIIT³⁵, CGPTDM³⁶, the Bureau of Indian Standards (BIS) & Meit³⁷. These different bodies can cause delays in start-ups since their practices may vary including the procedures used as well as charges incurred alongside required documentation.³⁸ Difficulty in accessing finance is another challenge that start-ups face in both countries.³⁹ Startups usually experience difficulties when seeking funds from traditional sources (primarily banks, financial institutions or capital markets) because they lack collateral, credit history profitability or track record.⁴⁰ Start-ups are also faced with a challenge accessing alternative platforms provided by angel investors, VCs⁴¹ or crowdfunding due to the fact that they lack awareness, networking and regulations.⁴² The other challenge affecting start-ups is access to markets both locally and internationally which are hindered by their visibility, reputation and distribution channels among others. There is a struggle for start-ups in competing against established players who have more resources, experience as well as market share.⁴³ Startups also face challenges such as quality standards of goods and services traded in the market which may hinder one's ability to sell them.⁴⁴ Fourth legal challenge faced by startups in both countries is the protection and enforcement of their IPRs^{45,46} Start-ups rely on their innovative ideas, products, processes or services that may be regarded as intellectual property.⁴⁷ Consequently, it becomes hard for them to protect IPRs such as patents, trademarks designs or copyright because of ignorance on this matter where it does not take into account the level at which one should invest upon registration. In addition, since, effective legal mechanisms do not exist, thus, there is difficulty when enforcing IPRs that enable prevention of infringement piracy counterfeiting etc.⁴⁸ There may also be challenges that start-ups face in exploiting their IPRs such as licensing, transferring or monetizing because there might be no market opportunities, valuation methods or negotiation skills.⁴⁹ These are some overlapping legal complexities confronted by Indian and Bangladeshi start-ups which can hinder their growth and survival.⁵⁰ Nonetheless, both countries have tried to solve these problems a little bit making a better environment for startups.⁵¹

³³ Reserve Bank of India.

³⁴Centre spearheads several initiatives under Ease of Doing Business and Reducing Compliance Burden aimed at creating a conducive business environment,

<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1898016> (last visited Nov 5, 2023).

³⁵Department for Promotion of Industry and Internal Trade.

³⁶Controller General of Patents, Designs and Trademarks.

³⁷Ministry of Electronics and Information Technology in India.

³⁸S. Shanthi, *Legaltech Startups: An Upcoming Business Model In Town*, ENTREPRENEUR (2023),

<https://www.entrepreneur.com/en-in/news-and-trends/legaltech-startups-an-upcoming-business-model-in-town/447930> (last visited Nov 5, 2023).

³⁹Scheme for Facilitating Startups Intellectual Property Protection, <https://www.investindia.gov.in/team-india-blogs/scheme-facilitating-startups-intellectual-property-protection> (last visited Nov 5, 2023).

⁴⁰srw1903.pdf, https://www.bb.org.bd/pub/research/sp_research_work/srw1903.pdf (last visited Nov 5, 2023).

⁴¹Venture Capitalists.

⁴²Anomalies that need to be fixed in India's startup regulations,

<https://www.businessinsider.in/business/startups/news/tax-rates-and-rules-change-expected-from-budget-2022/articleshow/88899801.cms> (last visited Nov 5, 2023).

⁴³Financing-Solutions-for-Micro-Small-and-Medium-Enterprises-in-Bangladesh.pdf,

<https://documents1.worldbank.org/curated/en/995331545025954781/Financing-Solutions-for-Micro-Small-and-Medium-Enterprises-in-Bangladesh.pdf> (last visited Nov 5, 2023).

⁴⁴Naoyuki Yoshino, *Major Challenges Facing Small and Medium-Sized Enterprises in Asia and Solutions for Mitigating Them*, SSRN JOURNAL (2016), <http://www.ssrn.com/abstract=2766242> (last visited Nov 5, 2023).

⁴⁵Intellectual Property Rights.

⁴⁶Jul 24 & 2023 | 0, *IPR And Startups In India: Strategies For Protection And Commercialization*, (Jul. 24, 2023), <https://ipbulletin.in/ipr-and-startups-in-india/> (last visited Nov 5, 2023).

⁴⁷Renu Suresh, *Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP)*, INDIAFILINGS - LEARNING CENTRE (Aug. 25, 2020), <https://www.indiafilings.com/learn/scheme-for-facilitating-start-ups-intellectual-property-protection-sipp/> (last visited Nov 5, 2023).

⁴⁸THE PROBLEM OF CONTRACT ENFORCEMENT IN INDIA AND HOW CAN IT BE SOLVED - Jus Corpus, (2022), <https://www.juscorpus.com/the-problem-of-contract-enforcement-in-india-and-how-can-it-be-solved/> (last visited Nov 5, 2023).

⁴⁹Technology-Startups-and-IP-Protection-in-India.pdf, <http://compip.circ.in/wp-content/uploads/2019/12/Technology-Startups-and-IP-Protection-in-India.pdf> (last visited Nov 5, 2023).

⁵⁰Katie Shonk, *Dispute Resolution for India and Bangladesh*, PON - PROGRAM ON NEGOTIATION AT HARVARD LAW SCHOOL (2023), <https://www.pon.harvard.edu/daily/international-negotiation-daily/dispute-resolution-for-india-and-bangladesh/> (last visited Nov 5, 2023).

ROLE OF CONTEMPORARY TECHNOLOGY

AI⁵² is abroad term for different technologies that allow machines to perform tasks typically requiring human acumen. These AI based devices or software perform tasks requiring judgment, understanding, reasoning and solving problems. The ever-increasing data, large-scale computing power combined with sophisticated algorithms has enabled artificial intelligence to grow exponentially. AI has become very popular in many fields including education, health care, agriculture, commerce and security.⁵³

The legal sector⁵⁴, especially for startups is one of the subject areas where AI might have a significant impact. Startups are innovative business organizations that confront numerous legal problems, including regulatory uncertainty, compliance burden, intellectual property protection, taxation issues, contract enforcement, dispute resolution, data privacy and security, consumer protection and access to finance and markets.⁵⁵ By offering them tools that can increase their efficiency levels; precision in work done; productivity & competitiveness; some of these legal challenges can be overcome or limited by the use of AI among start-ups. Nevertheless, there are risks associated with artificial intelligence as well as ethics which include biasness, transparency, liability and human dignity all of which require an appropriate legal framework and regulation to be put into place to address these matters.⁵⁶ This section highlights the significance of AI in relation to the issues connected with law faced by start-ups within India as well as Bangladesh:

- i. AI as a tool for legal research, analysis and advice⁵⁷:** AI is capable of helping startups conduct legal researches, analyses and advise them on matters relating to the law, tangling through NLP⁵⁸ tools, ML⁵⁹ or data mining techniques enabling it to handle huge chunks of information like statutes, case laws, regulations, contracts and other documents so as to provide relevant and accurate insights in timely manner. For instance, start-ups can take advantage of AI platforms such as ROSS Intelligence, LexisNexis⁶⁰ or Manupatra to browse through legal materials and make interpretations that would be later summarized into summaries' reports or opinions. Additionally, artificial intelligence can allow startups streamline their legal workflows i.e., drafting/reviewing/managing contracts, documents or forms by applying natural language generation software programs, OCR (optical character recognition) systems or smart contracting mechanisms.⁶¹ Consequentially, using artificial intelligence solutions like SpotDraft, LawGeex and LegalDesk may enable a new start-up business establish edit form or execute contract document in order to meet all requirements regarding its enforcement efficacy.
- ii. AI as a tool for legal automation and optimization:** AI can help startups automate and optimize their legal tasks and processes, by using robotics, computer vision or speech recognition technologies to perform repetitive, routine or low-value activities, such as entering data into databases, preparing files or documents in electronic form or reproduction of any kind. These can be done through the use of software applications which will also give new ideas on how the company can enhance their service delivery

⁵¹India & Bangladesh launch "50 Start-ups Exchange Programme," <https://newsonair.gov.in/Main-News-Details.aspx?title=India-%26-Bangladesh-launch-%26%2339%3b50-Start-ups-Exchange-Programme%26%2339%3b&id=460985> (last visited Nov 5, 2023).

⁵² Artificial Intelligence.

⁵³Dr Shikha Dhiman & Sahibpreet Singh, *Cybercrime and Computer Forensics in Epoch of Artificial Intelligence in India*, 2 CYBER LAW REPORTER 13 (2023).

⁵⁴Chay Brooks, Cristian Gherhes & Tim Vorley, *Artificial Intelligence in the Legal Sector: Pressures and Challenges of Transformation*, 13 CAMBRIDGE JOURNAL OF REGIONS, ECONOMY AND SOCIETY 135 (2020).

⁵⁵Artificial Intelligence Technology: Legal Implications and Challenges, INTERNET LAWYER BLOG (2023), <https://www.internetlawyer-blog.com/artificial-intelligence-technology-legal-implications-and-challenges/> (last visited Nov 5, 2023).

⁵⁶Artificial Intelligence and Legal Issues, <https://www.americanbar.org/groups/litigation/resources/litigation-journal/2017-2022/artificial-intelligence-legal-issues/> (last visited Nov 5, 2023).

⁵⁷"Best" AI Legal Assistants (November 2023) - Unite.AI, <https://www.unite.ai/best-ai-legal-assistants/> (last visited Nov 5, 2023).

⁵⁸Natural Language Processing.

⁵⁹Machine Learning.

⁶⁰The Use of Artificial Intelligence in the Legal Profession, <https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/the-use-of-artificial-intelligence-in-the-legal-profession>, <https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/the-use-of-artificial-intelligence-in-the-legal-profession> (last visited Nov 5, 2023).

⁶¹hillarybrodsky, *AI and Legal Research: What's Possible Now and Soon Will Be* | Legal Blog, THOMSON REUTERS LAW BLOG (2023), <https://legal.thomsonreuters.com/blog/what-has-legal-ai-ever-done-for-you/> (last visited Nov 5, 2023).

through innovative ways provided by technology advancement to run its operations efficiently.⁶² For instance, if a firm uses the AI robots like DoNotPay, LISA or Lawbot, then it would reduce the costs that they incur. Since, these robots offer basic legal services such as parking tickets issuance, non-disclosure agreements among others and this may also be carried out with limited errors.⁶³ Additionally, AI may aid start-ups optimize legal performance by means of predictive analysis, deep learning or reinforcement learning systems which analyze historical and current data so as to make projections recommendations or improvements. AI could assist fresh businesses improve their results technologies that are meant for analyzing current and past data.⁶⁴ For example, Premonition, Blue J Legal, CaseIQ among several other Artificial Intelligence systems might be handy when predicting outcomes of lawsuits disputes or decisions, thereby, improving strategies employed during them.

iii. AI as a tool for legal innovation and transformation: AI is capable of making innovative changes and shifting the legal products and services to another level in startups with the use of generative adversarial networks, neural networks or evolutionary algorithms to produce novel solutions that can meet either customers' needs or other stakeholders' expectations.⁶⁵ Startups can make use of AI models such as GPT-3, BERT, OpenAI Codex among others to generate content like articles, essays, poems, code, lyrics etc., which could be provided as value-added or differentiated offerings. In addition to this, AI can help startups change their legal business models and markets by deploying blockchain, cloud computing or internet of things in order to introduce new or better ways of delivering/accessing/consuming legal services including online/on-demand/peer-to-peer channels.⁶⁶ For example, startups can leverage on AI platforms like LegalZoom, Rocket Lawyer, LawRato. These offer affordable online convenience services including incorporation, wills, consultations, leading the way for new customers who had been underserved.

CASE STUDIES ON INDIAN AND BANGLADESHI STARTUPS

Some innovative startups that have been successful in e-commerce & fintech sectors from both the countries have been touched upon in this section. They include:

a) E-commerce: Flipkart & Daraz

During 2007, Flipkart, a pinnacle of Indian online retail platforms, was established by Sachin Bansal and Binny Bansal.⁶⁷ It proffers a variety of consumables including gadgets, apparel, books, home appliances, groceries among others to over 300 million customers throughout India.⁶⁸ Moreover, Flipkart has also bought stakes or invested in numerous other e-commerce companies. These include Myntra, Jabong, PhonePe and Udaan among others. Flipkart received over \$10 billion as investment from Walmart, Soft Bank, TigerGlobal, Naspers; and it is valued at more than \$37 billion.⁶⁹

Daraz, Bangladesh's top online marketplace was set up in 2012 by Muneeb Maayr and Farees Shah.⁷⁰ It retails a wide range of gadgets, books, appliances, groceries, etc., through its website to 10 million plus clients located across Bangladesh, Pakistan, Sri Lanka, Nepal and Myanmar.⁷¹ Moreover, Daraz has launched or

⁶²FIVE notable applications of legal AI in India, INDIAAI, <https://indiaai.gov.in/article/five-notable-applications-of-legal-ai-in-india> (last visited Nov 5, 2023).

⁶³Gramener Inc, *AI and Law: 9 Ways AI Is Automating the Legal Industry*, GRAMENER BLOG (Nov. 26, 2019), <https://blog.gramener.com/ai-and-law-9-ways-ai-is-transforming-law-industry/> (last visited Nov 5, 2023).

⁶⁴AI in Legal: Leveraging Automation Tools to Bolster the Bottom Line, LAW TECHNOLOGY TODAY (2023), <https://www.lawtechnologytoday.org/2023/05/ai-in-legal-leveraging-automation-tools-to-bolster-the-bottom-line/> (last visited Nov 5, 2023).

⁶⁵Legal innovation and generative AI: Lawyers emerging as 'pilots,' content creators, and legal designers, <https://www.mckinsey.com/featured-insights/in-the-balance/legal-innovation-and-generative-ai-lawyers-emerging-as-pilots-content-creators-and-legal-designers> (last visited Nov 5, 2023).

⁶⁶Tanguy Chau, *Council Post: Unlocking The 10x Lawyer: How Generative AI Can Transform The Legal Landscape*, FORBES, <https://www.forbes.com/sites/forbestechcouncil/2023/08/16/unlocking-the-10x-lawyer-how-generative-ai-can-transform-the-legal-landscape/> (last visited Nov 5, 2023).

⁶⁷Flipkart, WIKIPEDIA (2023), <https://en.wikipedia.org/w/index.php?title=Flipkart&oldid=1183260530> (last visited Nov 5, 2023).

⁶⁸Avinash Chandra, *The Flipkart Story- A Timeline of Funding since 2007* | Avinash Chandra, AVINASHCHANDRA.COM (May 20, 2020), <https://www.avinashchandra.com/flipkart-story> (last visited Nov 5, 2023).

⁶⁹Flipkart Company Profile, information, investors, valuation & Funding, YOURSTORY.COM, <https://yourstory.com/companies/flipkart> (last visited Nov 5, 2023).

⁷⁰Daraz - EverybodyWiki Bios & Wiki, <https://en.everybodywiki.com/Daraz> (last visited Nov 5, 2023).

⁷¹Daraz.pk Management systems - Introduction: History/BackGround: Daraz was originally founded as an - Studocu, <https://www.studocu.com/row/document/university-of-central-punjab/management-information-systems/darazpk-management-systems/22150615> (last visited Nov 5, 2023).

partnered with different other online market platforms like Dmart, Dfresh and Dtravel just to mention a few. Daraz has raised over \$200 million from investors such as Alibaba, CDC Group and Asia Pacific Internet Group; with its current valuation hitting over \$1 billion.⁷²

b) Fintech: Razorpay & bKash

One of India's leading fintech startups founded in 2014 by Harshil Mathur and Shashank Kumar is Razorpay.⁷³ It has created a full-stack payment solution. This enables online merchants, businesses and platforms to accept, process and disburse digital payments through cards, wallets, net banking, UPIs and QR codes.⁷⁴ Flipkart, Ola, Swiggy, Zomato and CRED are among the more than five million clientele of Razorpay. Sequoia Capital, Ribbit Capital, Tiger Global and GIC have invested⁷⁵ over \$366 million in Razorpay which values it at over \$3 billion.⁷⁶

Kamal Quadir and Iqbal Quadir launched Bangladesh's largest fintech start-up, bKash, in 2010. The company offers mobile financial services. Its users can send money, pay bills, shop online and other financial services via their cell phones.⁷⁷ With over 45 million customers it is the biggest mobile financial provider on Earth in terms of transaction volumes.⁷⁸ bKash raised over \$200m from investors including Alibaba, IFC Bill & Melinda Gates Foundation, Ant Group; valued at above one billion dollars.⁷⁹

Flipkart and Daraz, which are e-commerce platforms, as well as Razorpay and bKash, fintech firms, face similar legal challenges in their operations. These include regulatory uncertainty, compliance burden, taxation issues, consumer protection, data privacy and security or IP⁸⁰ protection. However, each of them has devised different strategies to deal with these matters. This demonstrates the various ways that might be adopted by e-commerce and fintech sectors to manoeuvre through thorny legal paths.

POTENTIAL REFORMS FOR IMPROVING LEGAL FRAMEWORK

India's and Bangladesh's startup environment is made up of a complexity of different legal tools; institutions and actors working at different levels of power, jurisdiction or enforcement. Whilst this framework is aimed at enabling the growth and innovation of startups, it also has several disadvantages that may slow down or interfere with their development processes. Therefore, one should investigate the problems associated with improving a legal framework for startups in both countries; suggest some possible reforms as well as improvements that may boost the conditions and context under which startups happen. Some proposed reforms are:

a. Synchronization of laws and conventions: The absence of conformity and coordination of legislations and rules governing incorporation, taxation, intellectual property, data protection, consumer protection and foreign exchange among others are some of the major problems which startups in India and Bangladesh face. These may differ from state to state or sector to sector or even authority to authority leading to ambiguities in them for the operators. As an illustration, a startup firm in India can be exposed to various tax rates depending on its turnover, location and industry. These also apply to various exemptions or incentives. On the other hand, startups in Bangladesh face different requirements for registration/licensing/authorization depending on their activities/type/size among others. Additionally, these laws and regulations change frequently without appropriate consultation with stakeholders or adequate notification provided for startups.⁸¹ For instance, startups in India may face frequent changes in the FDI⁸² norms, GST⁸³ rates or data localization rules. Similarly, startups in Bangladesh may face frequent changes in

⁷²Daraz.pk - Crunchbase Company Profile & Funding, CRUNCHBASE, <https://www.crunchbase.com/organization/daraz-pk> (last visited Nov 5, 2023).

⁷³Dawson Sewell et al., *Razorpay - Wiki*, GOLDEN, <https://golden.com/wiki/Razorpay-K46PKN4>.

⁷⁴Razorpay Success Story: Business Model, Journey, Founders -, (Apr. 25, 2023), <https://finreserch.com/razorpay-success-story/> (last visited Nov 5, 2023).

⁷⁵Razorpay Stock Price, Funding, Valuation, Revenue & Financial Statements, <https://www.cbinsights.com/company/razorpay-software/financials> (last visited Nov 5, 2023).

⁷⁶Razorpay - Funding, Financials, Valuation & Investors, CRUNCHBASE, https://www.crunchbase.com/organization/razorpay/company_financials (last visited Nov 5, 2023).

⁷⁷About, <https://www.bkash.com/en/about> (last visited Nov 5, 2023).

⁷⁸BKash - Crunchbase Company Profile & Funding, CRUNCHBASE, <https://www.crunchbase.com/organization/bkash> (last visited Nov 5, 2023).

⁷⁹better-than-cash.pdf, <https://businessinspection.com.bd/wp-content/uploads/2021/05/better-than-cash.pdf> (last visited Nov 5, 2023).

⁸⁰Intellectual Property.

⁸¹Start up law in Bangladesh in 2023 | Hire the most capable lawyer to help you with your seed funding stages, (Jan. 9, 2023), <https://tahmidurrahman.com/start-up-law-in-bangladesh-and-funding-stages/> (last visited Nov 5, 2023).

⁸² Foreign Direct Investment.

⁸³ Goods and Services Tax.

the VAT⁸⁴ rates, AIT⁸⁵ rates or MFS⁸⁶ guidelines. These changes may create uncertainty, instability or unpredictability, for startups. Thus, one of the most important areas for improving the legal frameworks governing start-ups in both nations is to integrate and align laws and rules that concern such enterprises thereby creating a consistent, clear and transparent environment where its sphere extends across levels, agencies or domains. Both countries can opt for instance to have a single-window system or a one-stop shop which will be aimed at providing start-ups with all necessary counseling support, information as well as guidance regarding relevant laws and statutes and their requirements on compliance issues. Both nations may also adopt a general definition, characterization and acknowledgement of start-ups that would allow them to take benefits from different programs at various levels and industries.⁸⁷

b. Simplification and reduction of compliance burden: Another big problem for start-ups in two countries in Asia – India and Bangladesh is the cumbersome high regulatory burden that they must adhere to pursuant to various laws and regulations governing their operations. Such laws may come with different formalities, charges, timelines and documentations that may cause delays, costs, inconveniences on the part of start-ups. For example, in India start-ups will have to lodge multiple returns, forms or reports with divergent authorities like Registrar of Companies, tax authorities (Income Tax Department), sales tax authorities (GST Department), the RBI⁸⁸ among others. Likewise Start-ups in Bangladesh are supposed to obtain many approvals clearances or permissions from variety of entities such as Bangladesh Bank, BIDA⁸⁹, NBR⁹⁰, BTRC⁹¹ etc. In addition, these legislations may be complicated; burdensome; not up-to-date with current needs; realities and trends pertaining to growing firms. For instance, Indian Startups often get stuck while raising finance or issuing shares/asset valuation because of inflexible provisions as contained under Companies Act, 2013; Income Tax Act, 1961; FEMA⁹², etc.⁹³ Similarly, startups in Bangladesh may find it difficult reaching out to markets, serving clients or expanding their operations due to the absence of or insufficient e-Commerce Policy, Digital Security Act⁹⁴ and Foreign Exchange Regulation Act⁹⁵ among others. A significant opportunity for improving the legal framework within both countries is, therefore, also a simplification and reduction of burden on start-ups that are associated with compliance and making the laws and regulations more user-friendly, adaptive and startup sensitive as well. For instance, either country can adopt self-certification or self-regulation mechanisms or regulatory sandboxes that can enable start-ups operate with minimal or no regulatory interferences during specified periods of time or for specific activities or sectors. Additionally, both countries can make use of a web-based system (a digitized system) or one-stop shop mechanism (central point), which will help startups to undertake their compliance and reporting procedures easily, quickly and efficiently by way of single platform /authority.⁹⁶

c. Safeguarding intellectual property rights: On one hand, Indian and Bangladeshi start-ups face a major problem of inadequate protection and promotion of their intellectual property rights: trademarks, designs, patents or copyrights needed for their innovation, uniqueness and competition. The start-ups may find it hard to obtain, enforce or exploit these intellectual property rights for various reasons including lack of awareness capacity or resources; high costs fees or time; complex procedures formalities or criteria; weak enforcement monitoring adjudication; rampant infringement piracy counterfeiting. For example, the long delays backlogs pendency at Trademark Registry, Design Wing, Patent Office; and high fees imposed by these authorities might make registration, renewal, objection, design, patent difficult in India.⁹⁷ The same goes for any young company in Bangladesh that seeks to protect, enforce or license its trademark, design or patent. It faces hurdles because of the low level of public awareness or recognition as well as valuation regarding these rights on one hand; and the poor enforcement, prosecution or adjudication of these rights by the courts,

⁸⁴ Value Added Tax.

⁸⁵ Advance Income Tax.

⁸⁶ Mobile Financial Services.

⁸⁷Tanisha Sharma & Sunil Kumar, *Legal Framework and Policies Related to Startup in India*, 9 INTERNATIONAL JOURNAL OF LAW 73.

⁸⁸ Reserve Bank of India.

⁸⁹ Bangladesh Investment Development Authority.

⁹⁰ National Board of Revenue.

⁹¹ Bangladesh Telecommunication Regulatory Commission.

⁹² Foreign Exchange Management Act, 1999.

⁹³REGULATORY FRAMEWORK FOR STARTUPS IN INDIA,

<https://thinkinglegal.in/demo/sites/default/files/Regulatory%20Framework%20for%20Startups%20in%20India.pdf>.

⁹⁴ Digital Security Act (DSA) of 2018 to be replaced by the Cyber Security Act (CSA) of 2023.

⁹⁵ Foreign Exchange Regulation Act, 1947.

⁹⁶Centre spearheads several initiatives under Ease of Doing Business and Reducing Compliance Burden aimed at creating a conducive business environment, (2023),

<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1898016> (last visited Nov 5, 2023).

⁹⁷Lalit Jajpura, Bhupinder Singh & Rajkishore Nayak, *An Introduction to Intellectual Property Rights and Their Importance in Indian Context* (2017).

tribunals, law enforcement agencies on the other.⁹⁸ Therefore, a third major opportunity for improving the legal framework for startups in both countries is promoting and protecting their intellectual property rights as well as creating an enabling environment and ecosystem for their development, utilization and growth by startups.⁹⁹ For example, both countries can adopt a fast-track or expedited system or a startup-friendly system, for startups, that can enable them to register, renew or oppose their intellectual property rights, quickly, easily and affordably, through a simplified, online or single-window system or through a reduced, waived or subsidized fee, requirement or standard. Additionally, there can be a tough regime expounding on effective system that will keep up with start-ups interests in securing intellectual property rights. This article has identified several ways in which developing economies can improve on their business climate with regard to start-ups.

d. Enactment of a comprehensive and consistent legal framework for AI and startups: Both India and Bangladesh can make one of the most significant legal reforms by enacting AI and startups' consistent legal framework, which will address present and prospective challenges plus the opportunities in the sector, as well as deliver a clear, stable and predictable legal environment for both.¹⁰⁰ The law should cover several areas such as definition, classification, recognition of AI and startups; licensing, registration or authorisation of AI and startups; taxation, incentives or exemptions; intellectual property rights (IPRs), data protection and consumer protection in relation to AI & start-ups; ethical social environmental implications for artificial intelligence companies; dispute resolution grievance redressal, liability, etc., involving AI and startups. Such a framework must also be consistent with existing laws including the Companies Act, Information Technology Act, Payment & Settlement Systems Act, guidelines on Mobile Financial Services (MFSs), e-Commerce Policy, 2009; Digital Security Act, 2018; Foreign Exchange Regulation Act, etc., which relate to AI-startups. Even in this case, the legal framework should be built on principles such as innovation, inclusivity and interoperability while adopting a risk-based approach that is proportionate and adaptive to regulating AI and startups based on their nature, scope and impact. Moreover, this legal framework needs to be involve formulation as well as implementation of the above by relevant stakeholders including but not limited to: AI & startup communities, Industry associations, academic & research institutions, civil society organizations, international organizations; it should also updated at various points in time so as to reflect ever evolving requirements/realities/developments within AI & start-up space.¹⁰¹

e. Establishment of a dedicated and specialized legal authority for AI and startups: Another crucial legal reform that could be done by both India and Bangladesh is to establish a dedicated and specialized legal authority on AI and startups, which will give them all the relevant information needed, advise them on applicable laws, make sure they comply with these regulations properly and report if necessary.¹⁰² An authority like this should also serve as a one-stop shop or single-window system for AI and startups in order to enable an easy, quick and efficient execution of their legal processes through an uncomplicated online or single-point system. This kind of a legal body would also serve as a facilitator and mediator for AI and start-ups to assist them in amicably overcoming their novel issues through alternative dispute resolution methods like mediation, conciliation or arbitration; so, as to avoid time wastage due to litigation. Additionally, it should operate as a promoter plus protector of startups in AI, thus, helping them access different inducements offered through diverse schemes along with programmes at multiple levels within various sectors, thereby, protecting against infringement, piracy, counterfeiting, etc. Such a legal authority should also function as a watchdog and controller, for AI and startups, to oversee that they adhere to the law and the norms of society while punishing any misuse or violation of AI technologies by start-ups. Such a legal authority should also act as an overseer and examiner for AI and startups who are able to evaluate performance, gauge impact as well as provide feedback with recommendations for improvement on them. Additionally, such a legal authority should have sufficient powers, means and skills to execute its roles properly.¹⁰³

⁹⁸Md. Jumman Hossain, Mst. Farjana Akter & Tasnimul Hasan, *INTELLECTUAL PROPERTY RIGHTS AND BANGLADESH* (2021).

⁹⁹Esrat Jahan & Rajib Hasnat Shakil, *The Enforcement of Intellectual Property Rights in Bangladesh*, 8 *SOCIAL CHANGE* (2018).

¹⁰⁰Bangladesh needs a comprehensive framework to address the risks of AI | The Business Standard, <https://www.tbsnews.net/thoughts/bangladesh-needs-comprehensive-framework-address-risks-ai-732414> (last visited Nov 5, 2023).

¹⁰¹ICT Division, *Smart-Bangladesh ICT Master Plan 2041 (Draft)*, <https://a2i.gov.bd/wp-content/uploads/2023/03/Smart-Bangladesh-ICT-Master-Plan-2041-Draft-PDF-1.pdf> (last visited Nov 5, 2023).

¹⁰²Arnab Kumar, *National Strategy for Artificial Intelligence*.

¹⁰³National Strategy for Artificial Intelligence - Bangladesh, https://ictd.portal.gov.bd/sites/default/files/files/ictd.portal.gov.bd/policies/e57f1366_a62c_4d1a_8369_a9d3bc156cd5/National%20Strategy%20for%20Artificial%20Intelligence%20-%20Bangladesh%20.pdf (last visited Nov 5, 2023).

f. Creation of a conducive and supportive legal culture and ecosystem for AI and startups:

India and Bangladesh can make a move to create the right legal culture that will encourage artificial intelligence and startups. This will go a long way in encouraging their growth, innovation and finally creating an even playing field for them to compete fairly. This legal culture and ecosystem should comprise varied components such as government, judiciary, legislature, law enforcement agencies, legal practitioners, legal education institutions, media and public with a view to making AI and start-ups understand the need to have knowledge about the legal framework of these two countries as well as their surrounding environment so as to create trust among various players in this sector when it comes to dealing with artificial intelligence and startups.¹⁰⁴ Inclusion of variety of initiatives and measures should be part and parcel of such legal culture and ecosystem, including dissemination, communication, legal framework and information to AI start-ups through different channels like websites, social media, newsletters webinars workshops events to get into engagement for legal stakeholders with AI start-ups using various mechanisms such as consultations, surveys, feedback, suggestions, complaints that would eventually lead to recognition and appreciation of the legal achievements made by AI start-ups through certificates, medals, trophies & scholarships. Such a legal culture and ecosystem should also involve various collaborations and partnerships among the legal stakeholders for AI startups including government, industry, academia, civil society, international organizations, etc., which would in turn create synergies and complementarities between different legal initiatives and programmes for AI start-ups (e.g. Startup India, Digital India; Atal Innovation Mission; Startup Bangladesh & Digital Bangladesh) Access to Information Program, etc.¹⁰⁵

Legal Challenges	India	Bangladesh	Proposed Reforms
Regulatory Ambiguity	Varying regulations across states and sectors.	Lack of clear definitions and regulatory frameworks.	Harmonization of laws and regulations.
Compliance Burden	Complex and cumbersome regulatory procedures.	High regulatory compliance requirements.	Simplification of compliance processes.
Intellectual Property Protection	Challenges in obtaining and enforcing IP rights.	Limited awareness and enforcement of IP laws.	Strengthening intellectual property protection.
Taxation Issues	Complex tax structures and frequent changes.	Unclear tax regulations and high tax burdens.	Streamlining tax laws and providing tax incentives.
Consumer Protection	Varied consumer protection laws and enforcement.	Inadequate consumer protection mechanisms.	Enhancing consumer protection regulations.
Data Privacy and Security	Concerns over data privacy and security regulations.	Lack of comprehensive data protection laws.	Developing robust data privacy plus security frameworks.
Access to Finance and Markets	Difficulty in accessing funding and markets.	Limited access to finance and market.	Facilitating access to funding & expanding markets.

Table 1.1 Challenges & Reforms

The Table 1.1 highlights legal challenges encountered by startups in India and Bangladesh, proposing reforms such as harmonizing laws and enhancing consumer protection to address them.

CONCLUSION

This study has attempted to make a comparative analysis of the legal difficulties faced by start-ups in India and Bangladesh and the part artificial intelligence can play tackling or exacerbating such problems. It has also discussed opportunities and challenges for improving legal framework for AI and start-ups in both countries, current ones, as well as made suggestions on some likely applicable laws that could help improve on them, creating better legal systems for startups and AI companies. Different criteria have been used which include level/scope of AI adoption/innovation happening, legal/regulatory frameworks/supports provided, best practices/lessons learnt from mistakes made and finally the threat posed by AI to this industry. The intention was to present readers with some thoughts regarding issues related to law concerning AI and startups in India and Bangladesh as well as stimulate further research into this subject matter.

¹⁰⁴Marcello M. Mariani, Isa Machado & Satish Nambisan, *Types of Innovation and Artificial Intelligence: A Systematic Quantitative Literature Review and Research Agenda*, 155 JOURNAL OF BUSINESS RESEARCH 113364 (2023).

¹⁰⁵India, Bangladesh to expand strategic ties in AI, cyber security, startups, ET Government, <https://government.economictimes.indiatimes.com/news/technology/india-bangladesh-to-expand-strategic-ties-in-ai-cyber-security-startups/92328546> (last visited Nov 5, 2023).