JOURNAL OF LEGAL STUDIES
https://e-journal.uum.edu.my/index.php/jls

How to cite this article:
Chowdhury, M. A. A., & Fahim, H. K. (2023). Revisiting the geographical indication regime in Bangladesh: *Trips* compatibility and prospective challenges. *UUM Journal of Legal Studies*, *14*(1), 89-111. https://doi.org/10.32890/uumjls2023.14.1.4

REVISITING THE GEOGRAPHICAL INDICATION REGIME IN BANGLADESH: *TRIPS* COMPATIBILITY AND PROSPECTIVE CHALLENGES

[1]Mohammad Aktarul Alam Chowdhury &
[2]Hasnath Kabir Fahim
School of Law, Chittagong Independent University, Bangladesh

[2]Corresponding author: fahim.law22@gmail.com

Received: 28/6/2021 Revised: 10/2/2022 Accepted: 20/2/2022 Published: 18/1/2023

ABSTRACT

In the domain of intellectual property (IP), the Geographical Indication (GI) is deemed to be a sleeping beauty due to its imperial reverberation in consolidating cultural and economic values, particularly in the developing and least developed countries. Bangladesh, being rich in cultural diversities and traditions, has a number of world famous foodstuffs, handicrafts, agricultural products and cultural heritage that could qualify as geographical indications. In this context, the country introduced a sui generis method of GI protection with the promulgation of the Geographical Indications of Goods (Registration and Protection) Act, 2013, which was also monumental in discharging Bangladesh's obligation under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The present paper has firstly chosen to examine the concept of the GI and its legal framework from the IP perspective in order to safeguard both the

cultural legacy and genuine producers of geographically exhibiting products of Bangladesh. The key focus of this paper is, however, on the compatibility of TRIPS to Bangladeshi law, particularly in relation to the aspects of protection and registration of GIs, and to identify the unexplored challenges that the country is supposed to confront as a developing nation. Finally, this article portrays some way-outs to combat potential challenges and help ensure the prospects of Bangladesh in an ever expanding local and global market of GI goods.

Keywords: Geographical indications, TRIPS compatibility, intellectual property, TRIPS Agreement, economic development.

INTRODUCTION

A Geographical Indication is a form of collective intellectual property that represents a product having an exclusive geographical origin and bears quality, repute or distinctive features which are materially attributable to its origin. It is a signifier to assist consumers in identifying genuine products and making rational picks about price, quality, and credibility (Vecchio, 2020). Typically, GIs are signs to denote a narration of quality and uniqueness, which is a principal characteristic of its origin in a distinct geographical locality, area or country (Aggarwal et al., 2014). The TRIPS Agreement has cited three key requirements that a product must contain to get recognition under the GI scheme, i.e., it must be related to an earmarked type of agricultural or non-agricultural product, the product must come from a defined location and must have a peculiar quality, goodwill and unique form due to some natural or human factors of any specific location (Hoang & Nguyen, 2020). There is no denying the fact that many traditional and local goods exist, such as food, handicrafts and heritage, which are physically and socially characterized by the local climate, soil and culture (Kohsaka & Uchiyama, 2019). There is no doubt that the developing and least developed countries (LDCs) are potentially rich in the agricultural sector, indigenous handcrafts and traditional knowledge (Vittori, 2010). Therefore, GIs can be significantly utilized as an effective public policy tool for sustainable economic enhancement, more particularly towards a rural development scheme (Vecchio, 2020). It can also be used to metamorphose producers or artisans of generic products from the developing countries and LDCs into successful exporters and established lucrative businesses which have a terrific potential in terms of profit distribution (Airriess, 2019). As a result, the GI has flourished as one of the leading issues in the

field of Intellectual Property Law, International Trade Law, as well as Agricultural Policy (Karim, 2016). In spite of the commercial dividends of the GI, the cultural heritages of communities are enhanced; their social tenacity aids indigenous artisans or producers of artwork to build a positive image of the country at the international level. The TRIPS Agreement especially its Article 22 to 25 has made it an obligation for all the World Trade Organization (WTO) members to protect GIs within their national territory. Such national treatments of the GI shall not be less favorable than the minimum standard specified in the Agreement. However, this Agreement does not stimulate thought on the best method for the protection of the GI, i.e., via a sui generis system or part of the trademark system. However, there are some flexibilities and members are free to articulate their choice of appropriate measures in implementing the Agreement (Islam et al., 2020). In relation to the protection of the GI, this can now be harnessed by member states through a *sui generis* system or by using collective marks and certification marks. Effective protection and implementation of the GI tools thus, comprises adherence to the quality standards by producers, branding, promoting and watchful market patrol for any violation of the registered GI goods (Lawal-Arowolo, 2019).

The TRIPS Agreement has played the role of a catalyst for both developing countries and LDCs to promote their GIs as marketable products and a poverty eradication policy (Neison et al., 2018). In 1975, the United Nations included Bangladesh in LDC group and as a result, the country has a tremendous opportunity in exploiting the flexibilities imparted by the TRIPS Agreement for interpreting and tailoring its national legal framework when addressing the issues of geographical indication. Accordingly, the country introduced a *sui generis* strait of GI protection with the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 2013. This was in response in compliance with the obligation addressed by the TRIPS Agreement. It is clear that Bangladesh has huge potential with its abundance of living artisanal traditions in textiles, foodstuff, metal goods, household items and jewelry, etc. (Basole, 2015). The country is blessed with numerous local food products and handicrafts that extent from *Jamdani of Dhaka*, *Nakshi Kantha of Faridpur, Hilsha Fish of Padma*, *Fazlee Mango of Rajshahi, Curd of Bogura, Rasamalai of Cumilla, Kalijira Paddy of Mymensingh, Khadi Cloths, Jute* to *Unani and Ayurvedic Medicine Plants* and many more (Jahed, 2019). Some of these products have exclusively received recognition as a GI under the law of Bangladesh. Notably on 18 November of

2016, *Jamdani of Dhaka*, the classic Muslin craft, was registered as the first geographical indication product of Bangladesh (Matin & Shamim, 2018). After that, *Hilsha Fish of Padma* secured recognition in 2017 as the second GI product and on 27 January of 2018, *Khirsapat mango of Chapainawabganj,* also known as *Himsagar*, became the third Bangladeshi product to get GI recognition (Hossain, 2017). Considering the availability of GI in Bangladesh, it is undeniable that there is the huge possibility and scope to register them at home and abroad, which would consequently not only enhance economic prosperity, exports, conservation of culture and heritage, but also additionally assist as a considerable pathway towards poverty reduction in the country.

METHODOLOGY

To design this paper, analytical method has been adopted following the qualitative approach which is based on the secondary source of information. Secondary sources comprise statutory provisions of Bangladeshi laws on the GI and trademark, articles published in credible journals, information gathered from book chapters, websites, and newspaper articles. Information was gathered on parameters related to applicability, enforceability and compatibility of the national GI Act with the international standard.

DESCRIPTIVE ANALYSIS OF THE BANGLADESHI GI ACT

From the perspective of Bangladesh, the enforcement and protection of the GI like other intellectual properties (IPs), is guided by the national policy and legislation. However, the issue of the protection of traditional and cultural IPs has long been either ignored or not precisely grasped by policy makers of the country. In 2012 when India, a neighboring country, registered a few location-based indigenous foodstuffs and handicrafts which bear the flag of the Bangladeshi national identity, the apprehension of misappropriation led the government to give attention to this economically significant area for the country (Karim, 2018).In light of this, around 73 domestic products were marked out from foodstuffs, handicrafts to weaving patterns as having the criteria annexed to the locality of their origin (Zahur, 2017). Apart from this reason, it is the empirical rationale that Bangladesh, being a signatory of TRIPS, has to comply with the minimum standard entailed by the TRIPS Agreement.

Like the European Union (EU), Bangladesh has opted for a *sui generis* mode which requires associations of artisans or/and producers in a geographic area to apply for registration. It is noteworthy that the aspiration for Bangladesh to adopt a *sui generis* method of GI protection was for two reasons (Karim, 2018). Firstly, the initiatives of other Asian countries inspired Bangladesh to frame a similar protection system of GIs, considering the socioeconomic condition of the country. Secondly, Bangladesh being a home of numerous traditional and agricultural goods, was concerned about formulating a higher level of protection than trademarks (Marie-Vivien, 2020). In fact, GIs do not confer individual rights but rather "collective rights" (Aggarwal et al., 2014). The Geographical Indications of Goods (Registration and Protection) Act, 2013 together with The Geographical Indications of Goods (Registration and Protection) Rules, 2015 has inaugurated the legal basis and thus, institutional setting to preserve and protect GIs in Bangladesh. The said Act of 2013 is comprised of different chapters specially prescribing the registration, protection and enforcement regime of GI rights within the country. Section 2(9) of the GI Act introduced geographical indications as follows:

> *Geographical indication of goods means a geographical indication of agricultural or natural or manufactured goods which identifies its originating country or territory, or a region or locality of that country or territory, where any specific quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either production or processing or preparation of the goods concerned conceivably takes place in such territory, region or locality as the case may be.*

This definition regenerates the definition of the GI of TRIPS and underscores the triple fraternity between the goods, their features and the geographical origin. The definition also envisages different stages in the preparation activity- from processing to manufacturing and punctuate on human factors to secure the protection of numerous GIs in the domain of handicraft and hand sown industry of Bangladesh (Vinayan, 2017).

In addition, The GI Act, 2013 outlines the institutional layout for the protection, administration and overall superintendence of GIs in

Bangladesh. Under Section 4 of this Act, the government of Bangladesh has established a Geographical Indications Unit under the Ministry of Industries to administer GI related affairs. This Unit has its official seal and capability to issue judicial notice. The Register of the Department of Patents, Designs and Trademark (DPDT) of Bangladesh *ex officio* oversees the administrative functions and has responsibilities for the registration of GIs, in terms of the Geographical Indications of Goods Act, 2013.

With regards to registration of GIs under the present Act, registration is compulsory as a precondition for entitlement and this can only be sanctioned in favor of any association, government body or co-operative society that represents the interest of persons producing GI goods, but not to any individual (Karim, 2018). However, unregistered GIs are also entitled to protection under the GI Act in as long as the indication is authentic in respect of its place of origin (Zahur, 2017). While the initial registration is for a term of five years, it may subsequently be renewed for a further period of three years under Section 16 of the Act. Section 9 of the GI Act and Rule 4 of the GI Rules of Bangladesh postulate that every application seeking the registration of GI shall be filed in the prescribed form GI form-1, along with the signature of the applicant or his agent and shall be made in three copies of a Statement of Case. Moreover, Section 20 of the GI Act provides for the National Treatment Principle that requires similar protection of foreign GIs (Islam & Habib, 2013). When applying for foreign GI applications, an accredited certificate narrating that such GI has been rightly registered in the concerned convention foreign state, shall be accompanied with a GI application and must be made in GI form-2, with a payment of ten thousand taka. If the application complies with the required formalities and the Registrar is satisfied that the GI is not adverse to law and public policy, he will approve the registration and advertise in the Journal within three months of the approval of the application under Section 12 of the GI Act. However, the rights achieved by registration are not subject to alienation by means of transmission, assignment or licensing, etc. On the contrary, if the Registrar after scrutinizing the application finds any deficiencies or if the application has been erroneously filed, may refuse the registration, after giving opportunity of being heard to the applicant, under Section 11 of the GI Act.

The GI Act, 2013 also lays out a detailed procedure for written objection or the challenging of the registration of any GI product.

With regard to opposition to registration of a certain geographical indication, Section 13 and 14 of the Act provide the procedural rules along with the counter reply by the applicant. Any interested individual, organization or authority may give a notice of opposition to the registrar of a geographical indication identifying the specific issues with reasons, such as not being matched as per the requirement of law, being fraudulent or confusing, being contrary to national policy or likely to injure religious beliefs of Bangladeshi citizens. In such a situation, the opposition notice shall be made in the GI form-3 within two months from the date of publication of Journal as mentioned under Section 12 of the GI Act. The Registrar, then, under Section 14 of this Law shall issue a notice to the applicant for a counter-statement, which must be replied in the GI form-4 within two months from the notice of the opposition. After getting the reply or explanation from the applicant, if any, the Registrar may either allow or deny the application after concluding the forwarded replies, evidences and hearing from both the parties. Nevertheless, if the applicant fails to reply within the prescribed period of two months and extended time of one month by the Registrar, then, it would be presumed that the applicant has decided to withdraw the application. Where no objection proceeding is lodged under Section 13 or when the prayer for opposition to registration is not granted, the Registrar shall grant the GI goods and issue the certificate of registration. Bangladeshi GI Act enacts monetary compensation and/or imprisonment as penalty for violation of any registered GI under Chapter 9 of the GI Act. In this regard, the local District Judges Courts are the designated authority in suits of civil nature, whereas the First Class Judicial Magistrate Courts are empowered to regulate the criminal matters.

EXAMINATION OF THE COMPATIBILITY OF THE BANGLADESHI GI ACT WITH THE TRIPS REQUIREMENTS

The inclusion of Geographical Indication in the provisions of the TRIPS took place after a long controversial debate between the "old world[1]" and the "new world[2]" countries. It was due to a number of

[1] The term "old world" refers to those countries who are cultural heirs of earliest civilizations. They are the European and Asian countries.

[2] The term "new world" refers to countries of recent settlement, as is the case of the United States, Canada, Australia and New Zealand. Several Latin American countries also fall within this category.

different theories regarding GI protection (Saavedra-Rivana, 2012). Nevertheless, the GI was incorporated in the TRIPS and thus, had to be given legal protection in the member states worldwide. As the TRIPS does not specify any earmarked protection mechanism, some countries like the United States, Canada, Japan and Australia have chosen to govern GIs under trademark law, whereas other nations and especially European Union (EU) have preferred a *sui generis* means to protect the GI. Bangladesh is the home of numerous traditional place-based goods and like many other Asian countries, has opted for the *sui generis* mechanism for regulation of GIs within the country. However, the term *sui generis* (of its own kind) has not been defined by the TRIPS, but it refers to a set of domestic laws and regulations for the safeguard of IPRs.

The Definition of Geographical Indications in TRIPS and its Status in Bangladeshi Statute

The TRIPS Agreement has given some flexibilities and options that WTO members can exploit in their quest of safeguarding and regulating GIs (Ali, 2011). While conceptualizing the definition of GI, a WTO member must formulate the TRIPS standard for which it could ensure protection to the domestic GIs (Yeung & Kerr, 2011). Article 22 of the TRIPS does not precisely give a list of goods that may be considered as protectable GI in a member state. By providing a broad definition of the expression "indication", it has rather offered a universal criterion of determining the nature of registrable GI. Article 22(1) defines GIs as:

> *Indications which identify goods as originating in the territory of a member, or a region or locality in the territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.*

From the perspective of TRIPS, the crucial characteristics of any particular GI is that the product must cover the feature or quality that originates from the place of origin and cannot have been breed from another place (Sanders, 2010). In Bangladesh, Section 2 of the GI Act, 2013 has provided an expressive and standard definition of geographical indication by scheduling three grades of GI products, such as natural, agricultural and manufactured along with their features

attached to a certain locality or place of origin. In essence, it is quite realizable that not only the agricultural and natural products, but also any goods that can be attributed to human factors found in the product's origin such as exclusive manufacturing skill that can be covered by the Bangladeshi GI Act (Raju & Tiwari, 2015). So, the definition clause under the GI Act, 2013 goes wider than the TRIPS and it can be argued that the GI Act of Bangladesh has introduced a TRIPS-plus feature. Indeed, such extended definition and conceptualization of GI would be beneficial to Bangladesh not only to protect agricultural and natural GI goods, but also manufactured goods essentially due to the particular feature or quality.

The GI Protection Scheme under the Law of Bangladesh and TRIPS

The TRIPS Agreement does not prescribe any specific or standard protection mechanism for WTO member states to safeguard GIs. As a result, GIs are either protected through a *sui generis* GI protection regime or through the use of a trademark, or passing-off legislation[3] (Hyder, 2016). Article 22(2) of TRIPS encompasses the misleading use of GIs:

> *Any means in the designation or presentation of goods that indicates or suggests that the goods in question originate in a geographic area other than the true place of origin in a manner which misleads the public as to the geographic origin of the goods.*

In Bangladesh, the Geographical Indications of Goods (Registration and Protection) Act, 2013 recognizes the registration-based mechanism of protecting GIs. Under this Act, the registration of GIs has been made a prerequisite to the acquisition of exclusive GI rights within the national territory. It is noteworthy therefore, that in respect of unregistered GIs, GI rights would also be protected through the common-law "doctrine of passing-off" (Islam & Habib, 2013). In responding to this obligation of registration, the Bangladeshi GI Act under Chapter II has set up an individual geographical indication unit under the DPDT that provides registration for five years, subject to renewal. In establishing this, GI registration is only issued in favor of

[3] The term 'passing-off' generally indicates the prohibition on one trader from misrepresenting goods or services of another.

any association or co-operative society. After a valid registration, the legitimate right holder of the GI is entitled to remedies guaranteed by the GI Act for the infringement of registered GI product (Neilson et al., 2018). However, according to Section 19, such right is not subject to alienation by means of transmission, assignment or licensing, etc. Besides, the importance of Article 22(2) is that it interdicts any sort of unfair commercial practice relating to the GI within the interpretation of Article 10*bis* of the Paris Convention (Marie-Vivien, 2020). This Article ascribes the obligation on member countries to adopt a legal mechanism for preventing practices that are considered to be misleading to customers and constitute unfair competition (Davies, 1998). In addition, such provision would essentially provide a right to legitimate producers to restrain the misappropriation of their GI products (Zahur, 2017). In responding to this obligation, Section 28 of the Bangladeshi GI Act replicates exactly the same provisions as 10*bis* of the Paris Convention to prevent public confusion and unfair competition. In addition, the GI Act under Chapter IX outlines certain acts as a violation of GIs. These are violations such as infringing, falsifying and deceptively using geographical indication, and will led to imprisonment and monetary compensation as prescribed by law. Thus, in terms of compatibility of protection mechanism, all such provisions spelt out in the GI Act of 2013 are subsumed under the mandate of TRIPS.

Considering the enforcement mechanism of the GI Act of 2013, the Registrar, under Section 25 of the same Act has certain powers and functions, but they are administrative in nature (Karim, 2018). A party, if victimized by the decision of the Registrar may apply to the government within 60 days from the date of decision by the Registrar. Such a review proceeding of the administrative decision as mentioned by the GI Act is in compliance with the TRIPS Agreement. However, the formation and functions of such a governmental appellate organ is not explicitly provided for in the Law. To put this in another way, this appellate organ is not even a judicial authority, rather it is only an administrative body. Thus, an aggrieved party has been deprived of the right of seeking legal remedy against the decision of the Registrar. Nevertheless, Article 45 of TRIPS concludes that "Members shall make available measures for the right holders the access to civil judicial procedures". To comply with this mandate of TRIPS, the Court of District Judge of the concerned locality has been authorized

with civil jurisdiction to secure compensation for economic damage to a right holder of GIs (Nyakotyo, 2013).

TRIPS Framework on Homonymous GIs and the Bangladesh Perspective

The homonymous GI indicates to those names which are spelled or pronounced alike, but used to identify the products originating in different regions, usually in different countries. Under this homonymous protection principle, similar GIs can coexist but due to the coexistence of another homonymous indication, it can be potentially misleading to consumers regarding the product's true origin.

In respect of homonymous GI under Article 22(4) and 23(3) of TRIPS, the protection mechanism has been laid down in the Bangladesh GI Act, but it does not describe any enlarged method of protection to any particular goods such as wine, spirits, etc. Section 7 of the Act provides the scope for registration, safeguard and equal treatment of homonymous GIs. In addition, the GI Act under Section 27 provides for the procedures for lodging objection and opposing the registration of any particular geographical indication by giving a written objection and reply thereof to the Registrar. The Registrar is, after all the final authority empowered to settle the dispute regarding registration. The GI Act, however, has not specified whether any sort of further legal step can be taken against the decision of the Registrar, if aggrieved (Karim, 2018). Furthermore, registration of certain geographical indications is forbidden under the Act if it is contrary to morality or can cause confusion among the consumers. Any use of the GI by expressions like "kind", "imitation", "style" or similar expressions would also give rise to an infringement under Section 28 (San, 2017). It is in this sense that the provisions of the Bangladesh GI Act in respect of homonymous GIs are in compliance with TRIPS.

National Response towards TRIPS on the Issue of Trademarks with GIs

After the successful adoption of TRIPS in 1996, the GI is categorized as an IP right and is on an equal footing with other segments of IPs (Basole, 2015). Some countries, for example, the USA, Canada,

Australia and China protect their GIs under the trademark law, more particularly through collective marks or certification marks. On the other hand, the EU, some African and Asian member states have preferred the *sui generis* method to administer GI goods. It is noteworthy that there have been several conflicts between GIs and trademarks, but it is feasible for them to co-exist in the market place due to their similar functions (Almeida, 2020). Yet, despite the similar functions of GIs and trademarks, the kinship between these two models of protection is complicated (Gangjee, 2007). In fact, the GIs are collective public rights owned by concerned association, whereas trademarks are private monopoly rights that can be possessed by an individual or a group of individuals. Besides, GIs reveal tradition and culture as an indication of geographical origin, while trademarks bear the trade distinctive sign that is related to a company (Askari, 2018). Article 22(3) of TRIPS states that:

> *A Member shall, ex officio if its legislation so permits or at the request of the interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that member is of such a nature as to mislead the public as to the true place of origin.*

The equivalent of this Article in the Bangladesh GI Act is Section 21 that authorizes the Registrar, either of his own motion or upon the prayer of interested individual, to deny or cancel the registration of a trademark if it is in contradiction with GIs, and if such a trademark is comprised of a GI but fails to indicate a true locality of origin or mislead the consumers concerning the true source of the goods or services. Before enacting the GI Act in Bangladesh, the Trademark Act of 2009 in its Section 6 granted a similar safeguard to GIs against trademarks by prohibiting the registration of trademarks that consist of a geographical name.

Apart from this, the TRIPS Agreement acknowledges the fact that a trademark is one of the oldest varieties of intellectual property, whereas the GI is a modern innovation. Moreover, in some instances, a trademark may have received registration before a GI (Nyakotyo, 2013). Article 24(5) states:

> *Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, the validity, registration, or a right to use a trademark should not be prejudiced on the basis of it being identical or similar to a GI.*

In accordance with this obligation, Section 22 of the GI Act, 2013 postulates that registration or recognition of the right of using a trademark having affinity to GIs shall not be prejudiced under this law if the said trademark is registered, or acquired in *bonafide* intention prior to the promulgation of the GI Act, or before an application seeking registration of the GI in question is placed. To put it another way, some have taken the position that it is better to deal with this concept under the principle of "first-in-time, first-in-right", whereas others have either argued to grant exclusive GI rights or the co-existence of them (Song, 2018). Article 24(8) of TRIPS further safeguards the right of an individual to use his/her name, or the name of his/her ancestor in the course of business, unless such name is misleading to the consumer. In relation to the law in Bangladesh, Section-22(2) of the GI Act animates that the GI regulation does not affect the right of using one's personal name or the name of an ancestor in relation to trade, unless such name is confusing to the public. It thus appears from the above observation that the GI Act of Bangladesh is TRIPS-responsive in terms of the interface and kinship between geographical indications and trademarks.

CHALLENGES IN STANDARDIZING GEOGRAPHICAL INDICATIONS IN BANGLADESH

The potential for geographical indications to exploit economic and commercial benefits is undoubtedly enormous and needs to be tapped into (Neilson et al., 2018). However, unless a GI originating country affixes consideration to the legal, economic, and cultural implications to geographical labelling, the anticipated profits may remain mostly theoretical (Nyakotyo, 2013). It is no less important for Bangladesh to realize GIs as an integral part of her national economic development tool and for poverty eradication, besides considering it as a means of export and local trade (Durand & Fournier, 2017). The lack of awareness of the Bangladesh government has already jeopardized

numerous traditional and significantly economic goods. India, a neighboring country has registered some Bangladesh GIs in its name. The *Jamdani* sari has been registered as Uppada, claiming its origin is from Andhra Pradesh, the *Nakshi Kantha* from West Bengal and the *Fazlee* Mango from the Malda District of West Bengal (Karim, 2016). The issue of the Indian registration of these well-known products from Bangladesh is a grave challenge that the Bangladesh government needs to address and overcome. Using these GI goods in India and claiming them to be their own GIs can be misleading to the public and will cause harm to the producers in Bangladesh. Though the *Jamdani* sari has been registered in India, the varieties of the *Jamdani* sari, along with the flowery Muslin sari, belong to the indigenous craftsmanship and traditional national weaving traditions of Bangladesh, and are exalted as symbols of the century-old Bangladesh handloom and cultural heritage. In addition, foodstuffs and handicrafts of Bangladesh that are registered in India with similar names, are however much more famous and enchanting than those of India. To put it another way, India completed the registration of these disputed GI products when Bangladesh had no law on GI. The legal shortcoming of Bangladesh created the scope for a neighboring country like India to market similar goods with false indications, which is confusing to consumers and has encouraged unfair competition. Thus, Bangladesh has lost proprietorship of these GI products, and this has caused irreparable harm to her cultural treasures, as well as the country's general and economic interest. The Lisbon Agreement, TRIPS and GI laws of both countries have approved the co-existence of homonymous GI only when those terms do not potentially mislead consumers in the market. Seen in this light, it may be argued that Bangladesh and India can share these somewhat similar products as homonymous GIs. But owing to the confusion, the distinctive nature of these goods and the higher standard of related products from Bangladesh, the homonymous safeguard policy will not resolve the dispute (Karim, 2016).

Bangladesh is indeed a country of fabulous GIs and needs to register them with priority since under Article 29 of TRIPS, a country can register their own GIs abroad when it has registered them within the country. At present, Bangladesh has only registered three GI goods, namely the *Jamdani, Hilsha*, and *Khirsapat* mango. A number of applications for registration of around twenty nine geographical indications is still pending in the GI unit of the DPDT. Responding to

the obligation of TRIPS, Bangladesh has just introduced a domestic GI legal regime for safeguarding its agricultural products, handicrafts, foodstuffs and other potential goods. Regulatory and protection mechanisms of registered GIs both in the national and international arenas involve extensive costs and a wide enforcement scheme (Besah-Adanu et al., 2019). This requires constant monitoring of the market to scrutinize whether counterfeit products are being passed off (Yeung & Kerr, 2011). Unfortunately, the GI Act of Bangladesh does not prescribe how such market monitoring will be conducted. Apart from an effective legal protection mechanism, the national success of a GI is largely conditional upon proper marketing and promotion of the goods, which is not only enormously resource-intensive and thus, challenging to implement for stakeholders of LDCs including Bangladesh (San, 2017). Furthermore, in respect to establishing GI status in foreign nations, it may turn into a daunting task for Bangladesh to gain legal jurisdiction in some other countries as per their own legislations, more so because there remain indicative disparities among countries regarding rules, their own history, culture, economic institutions and other factors of protection of GIs (Rangnekar, 2010). To resolve this tension, TRIPS under Article 1(1) does not however, implicate any specific method. Rather it is up to the WTO members to work out the specific procedures of enforcing the provisions of the Agreement with their respective legal mechanisms. There may be another pressing challenge for Bangladesh regarding the protection scheme for GI goods, such as wines, spirits, etc. The GI Act provides protection for such goods but with a wider scope (Zahur, 2017). However, the developing nations are not generally wine producers and they have colossal potential to exploit and trade in other GI products, particularly agricultural goods and handicrafts (Ali, 2011).

Besides, there are other challenges including the dire necessity of capacity building and public awareness at a larger scale in Bangladesh (Marie-Vivien, 2020). The country provides for the enforcement of geographical indications using similar method as other IPRs but in practice, most people do not consider the infringement of any sort of IP as a crime (Marie-Vivien, 2020). Moreover, new generations of modern communities have alarmingly less interest in taking up and preserving the profession of their ancestors. If such a situation continues, many cultural and artistic heritage of Bangladesh might become extinct in the near future (Das, 2010). Climate change can

be another threatening issue for Bangladesh, in terms of dealing with the quality control of many GI products. It is the case that the change in climate may give rise to the challenge of territorial based GIs and inflict adverse effects on the quality and features of such products (Clark & Kerr, 2017). In terms of compatibility, the GI Act, 2013 can be designated as TRIPS compliant, but the actual success and challenge rely on how the country manages the entire scheme for the enhancement of the domestic GI industry. In today's global competitive trade and business, Bangladesh needs to set up its GI regime with all sorts of amenities and legal frameworks for promoting and safeguarding her local geographical indications.

RECOMMENDATIONS

Bangladesh is a goldmine of natural resources and cultural heritage and hence, it is extremely significant for the national government to preserve the skill, the invaluable work and the revenue achieving competency of these artisans and their various GI products. It is noteworthy that to comply with the standards of the TRIPS Agreement, Bangladesh has initiated a *sui generis* GI protection scheme by enacting the Geographical Indications of Goods (Registration and Protection) Act, 2013. Given this initiative, the GI Act of 2013 is seen as compatible with the mandate of TRIPS, but still have certain loopholes that need further legislative consideration. Moreover, as India has already registered some GI goods originally from Bangladesh, it has become a challenging issue for the government in Bangladesh to defend and register these controversially claimed GIs within the country. Analyzing the above mentioned discussions, the following recommendations are proposed:

- Firstly, the Bangladesh government should identify the existing registrable GI products, ranging from natural goods to human outputs of any specific location, and by notification in the official gazette, publish the names of these goods without further delay.
- Technical and the complicated structure of current GI legislation has made it cumbersome for the protection of GIs in rural areas as the local producers often fail to understand the process. To resolve this tension, government officers at the local level should be recruited to support the rights holders in understanding the concept of the protection system.

- As per the GI context of Bangladesh, granting GI registration to an individual is not permitted. Keeping that in mind, a post-registration mechanism should be introduced to monitor whether influential traders or locally interested groups are depriving the actual producers from getting the benefits derived from their respective GI products.
- The GI Act of 2013 is silent regarding the remedy of an aggrieved party against the decision of the Registrar. It seems to be a lacuna in the national GI legal regime and is a point of reconsideration for the legislature. Bangladesh should establish both the Intellectual Property Tribunal and Appellate Tribunal to comply with the enforcement mechanism of TRIPS.
- Rule 27 of the GI Rules empowered the Registrar to constitute a "consultative group" to scrutinize the applications made for GI registration. However, the Rule fails to spell out which field of expertise the members of such group shall have. It reveals the scarcity of proper legal provision which must be resolved by the law makers of the country.
- Moreover, rules should be incorporated into the existing GI Act for preserving the producer-quality-geographical location link by ensuring that the rights holders are able to maintain a promising level of quality in their goods.
- For a GI product to sell and gain a particular status in the market, adequate branding has to be made to attract the prospective consumers. Bangladesh has not yet taken any effective initiative in the branding of GIs and thus, the branding of GIs by means of logo and marks can be a significant marketing policy.
- In respect of disputed GIs with India, Bangladesh has to ensure the registration of her products within the country and then can apply to Indian jurisdiction for the cancellation of the registration of the disputed GI goods. After seeking remedy in India, if Bangladesh still remains a victim, the country may turn to the WTO to settle the dispute according to the relevant trade rules and regulations.
- The policy makers of Bangladesh may also initiate special arrangements for GIs breeding from hilly and coastal regions an approach similar to that available in the EU for GIs typically found in mountains and islands.
- No direct reference to traditional knowledge and practice has been made by the GI Act of 2013. Bangladesh has certain medicinal plant varieties and traditional healing practices that can also be subject to legal protection under the GI regime.

- Bangladesh should facilitate regional trade agreements with neighboring countries in respect of agriculture, forestry and fishery goods. By doing so, GI regulations can enhance local livelihoods, preserve biodiversity and ensure socio-economic prosperity.
- For market improvement, awareness among consumers in local and export markets should be increased to enable them to appreciate and be more sensitive to the quality and uniqueness of Geo-based products.
- Awareness building campaigns should also be intensified for common citizens, i.e. through holding seminars, workshops or road shows around the country. The objective is to sensitize private and public stakeholders about the available GIs in the locales.
- Last but not the least, Bangladesh must become a party to the Lisbon Agreement on International Protection of GI as this Agreement provides for the global registration of geographical indications.

CONCLUDING REMARKS

In the foregoing discussion, the TRIPS compatibility with particular aspects of the Geographical Indications of Goods (Registration and Protection) Act, 2013 has been evaluated in great detail with a focus particularly on the conceptualization, registration and supervision, relation of GIs with trademarks and unfair competition in Bangladesh. In general, the discussions have further highlighted the nature and scope of GI rights under the present regime of safeguarding geographical indications in Bangladesh. It is a noteworthy achievement that the promulgation of the GI Act of 2013 in Bangladesh has to a certain extent helped to protect her local handicrafts, indigenous craftsmanship, foodstuffs and other products with geographical indications. The evaluation carried out in this study has shown that the nature and scope of GI rights in Bangladesh have in some respects been able to accommodate a slightly higher standard than that envisioned in TRIPS. In framing the concept of geographical indication, the GI Act has contemplated a broader definition which is a TRIPS-plus feature, indeed. In respect of other grounds of GI regulation, the said Act of Bangladesh is also seen as passing the test of compatibility.

However, the GI Act of 2013 is still in a very nascent stage, experiencing the process of going through the rigorous system of recognition, commercialization, and regulation of GI items in Bangladesh. Besides, despite the TRIPS compliance, there remain several drawbacks in the Bangladesh GI Act, which should be revised further to make them conform with the many aspects of trade regulations in the country. For example, the GI Act should suggest a judicial forum to hear appeals against the decision of the Registrar. The absence of specific terms and conditions for differentiating categories of homonymous GIs may also continue to mislead customers in the market. At the same time Bangladesh needs to implement a policy on post GI measures in order to raise the brand value of goods and generate extended revenues to uplift the status of the beneficiaries (Raju & Tiwari, 2015). While dealing with disputed GIs, Bangladesh should sustain a strong proposition to ensure the obligation of India as a WTO member, to not use any state policy that creates unfair competition and harm the economic interests of Bangladesh (San, 2017). In addition, Bangladesh and India should consider the need for a bilateral negotiating mechanism in resolving the issue of controversial overlapping GIs in an optimal way (Vittori, 2010).

As GI goods demand premium prices, they have a significant role to play in the advancement of rural areas, which are generally GI producing regions and by extension, are capable of contributing to the social and economic development of Bangladesh (Durand & Fournier, 2017). It is noteworthy that the efficient execution of GI policies includes adherence to the quality standards by producers, branding, promoting and cautious market watch against any infringement of the registered GI items (Raju & Tiwari, 2015). The foregoing arguments seem to suggest that the entire enforcement and protection mechanisms for GIs in Bangladesh is a topic worthy of further study and discussions. To conclude, it can be argued that the present regime of geographical indication protection under the GI Act, 2013 is not at loggerheads with TRIPS and as suggested above, the GI regulation can move towards more a comprehensive form in Bangladesh.

ACKNOWLEDGMENT

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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