



LAW campaign



GOOD NEWS



Rights relating to geographical indications

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ON 2 May 2010 a letter issued by the Patent, Designs and Trademark Department under the Ministry of Industries urged all the Deputy Commissioners' office to make the list of products or processes (if the product is a processed one) that could be protected as Geographical Indications (GI) rights. It reveals the country's eagerness for protection of GI. In the context when several Multinational Companies and developed countries are claiming rights over indigenous products, plants, processes related with production etc. The issuance of such a letter bears a lot of significance. This write up is an attempt to identify the nature and scope of GI protection regime. It also highlights on politics in international arena about protection of GI. Then it concludes with some general recommendations.

What is GI?

Geographical Indications (GI) identifies the specific geographical origin of a product, and the associated qualities or other characteristics. They are usually named after the place of the origin. They refer to the superior quality of product or process related with production of the product if it is a manufactured one. For example, *Fazli* (a species of mango) of Rajshahi is known to have superior quality than other species of mangoes in Bangladesh. It is a GI for the species of mango. The immense economic implication associated with this species of mango seeks to prevent other producers of mango in other region of Bangladesh to use the term in case of business. This is a GI right. The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement defined GI right as the exclusionary rights for the indicator which identifies the goods originated within the member nation's territories, or area or region of that territory, where the reputation or other attributes of the goods is essentially related to the geographic origin of the place. The agreement in Article 22 emphasises on the obligations of the government for providing legal opportunities within their territories for safeguarding GI use and curbing its inappropriate use.

Why GI?

Having protected by the international legal it is viewed as one the valuable business tools. It has created stimuli among the countries and corporations to establish GI right over various products. For example, India and Pakistan



joined hands to obtain a joint GI registration for *Basmati* rice in 2004. This has happened in the event of a lurking threat of private companies in the United States marketing *Basmati* like rice. It is pertinent to mention here that income accrued from the India's *basmati* exports has risen to Rs 35.48 billion during 2007 to 2008, from Rs 24.82 billion in the previous year. So any dilution of quality of *Basmati* rice by any unwarranted registration would prove detrimental to India's economic interest affecting revenue earning.

Convinced by the enormous economic prospect of GI India has adopted measures to protect her GI right in national and international level. Nationally, India has got the Geographical Indication of goods (Registration and Protection) Act, 1999 and the GI of goods (Regulation and Protection) Rules, 2002; both of them providing for procedures and requirements for GI registration. Internationally, India along with countries like Pakistan, Cuba, Sri Lanka, Thailand, etc. led by European Union; is propagating for extension of GIs from current wines and spirits. Such extension of GIs would embrace a broader range of agricultural produce and processed foods. They are advocating

for the creation of an international system for the listing of GIs where all the members of WTO would be required to submit their GIs for registration. Countries like Australia, Japan etc. are against the extension as they think that this would contradict the prevailing trademark system and result in higher price.

Prospect of GI

However, the extension, as it is believed, would result in greater economic prospect for Asian countries particularly as they are rich in biodiversity, indigenous knowledge, favourable atmosphere to bring a lot of agricultural produce, processed foods etc. *Basmati* rice, *Kashmiri Shal*, *Batik*, *Nakshi Kantha*, *Darjeeling Tea*, *Persian Galicha* (carpet) etc. are some examples of Asian aesthetic and agricultural products worthy of being protected as GI goods. Hundreds of items can follow the lists. Again, extension of GIs beyond wines and spirits shall reduce the costs of trademark registration for the businessmen of developing countries. For, trademark is a private right requiring its holder to get it distinctively registered in countries where it is to be traded. Unlike, trademark GI is a national right and the

single international system of GI registration could serve the purpose well. GI extension shall also stimulate the indigenous knowledge to be disclosed and traded in the world market, as it is likely to make the recognition of indigenous knowledge easier.

Bangladesh context

Notable here that countries like India, Pakistan, Cuba, Thailand which are in favour of extension of GIs, have more or less same social, cultural, economic base like Bangladesh, if not a bit ahead in terms of economy. Bangladesh does not produce much wines and spirits to register as GI while it has a lot of agricultural produce worthy of getting GI status. So, inference can be easily drawn that extension of GIs would certainly benefit Bangladesh. So, Bangladesh should avail the benefit. To maximise the benefit Bangladesh needs to do the following thing:

- Enacting laws, rules for national protection of GI. Existence of a national protection regime can be used as a reference for securing international protection.
- Enlisting and categorize the products and processes that she desires to protect as GI.
- Joining in international forum with the countries that are in favour of GI extension.
- Popularising unique agricultural and handmade products so as to attract the customers worldwide. In this regard, wide publicity and exhibition of products like *Jamdani* Saree of Dhaka, *Nakshi Kantha* of Faridpur, *Monipuri* clothes, *Khadi* of Comilla, *Hilsha* of Chandpur, *Fazli* (mango) of Rajshahi, curd (doi) of Bogra, etc. can be the best choices for Bangladesh.
- Plants and herbs such as *Basak*, *Tulsi*, *Sarpaganda*, *Neem*, etc. that are used for drug for production should be declared as GI so that we can claim royalty from foreign companies using those for drug production.

Concluding Remarks

Like most other Asian countries Bangladesh is blessed with biodiversity, cultural heritage, handicrafts, indigenous knowledge. The extension of GI protection from current scheme is likely to benefit countries like India, Pakistan, Sri Lanka. Being a close of these countries and having a lot of things in common Bangladesh is also predicted to be the beneficiary of such extension. It is high time we adopted appropriate measures to maximise the benefits.

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COURT corridor

No extra-judicial penalty in the name of 'fatwa'

IN a landmark judgment for women's rights, the High Court has declared that "Imposition and execution of extra-judicial penalties including those in the name of execution of Fatwa is bereft of any legal pedigree and has no sanction in laws of the land." The Court cited the constitutional mandate of equality and the state's international human rights treaty obligations to ensure women's right to live free from violence. The bench comprised of Justice Syed Mahmud Hossain and Justice Gobinda Chandra Tagore directed that persons responsible for imposition of extra-judicial punishments and their abettor(s)

shall be held responsible under the relevant sections of the Penal Code and other laws. They further directed the law enforcing agencies, Union Parishads and Pourashavas (municipalities) to take preventive measures against the issuing of such "fatwas" in their concerned areas, and to take legal steps for prosecution in case of such occurrences, as appropriate. They directed the Ministry of Local Government to inform all law enforcing agencies, Union Parishads and Pourashavas of the unconstitu-

tional nature of such penalties. In a particularly significant step, the Bench directed the Ministry of Education to introduce educational materials in the syllabi of all educational institutions particularly in madrassahs on the supremacy of the Constitution and rule of law. The full text of the judgment, pronounced in Court on 8 July 2010, has recently been made public. This judgment was given analogously in three separate writ petitions filed during 2009/2010 with respect to the continued failure of state authorities to address the incidence of extra-judicial penalties being issued in the name of fatwa. The first petition was filed

cases in which they were petitioners.

Background

Through 2010, newspapers reported a series of incidents of violence inflicted on women and girls in the name of 'fatwas' by traditional dispute resolution processes (*shalish*), often involving religious leaders. These incidents had reportedly resulted in women and girls in villages across the country being caned, beaten, lashed or otherwise publicly humiliated within their communities. They included

- a woman in Comilla being subjected 39 lashes, and hospitalised, then admitted to the one stop crisis centre, after a *shalish* over a dispute regarding acknowledgement of paternity of her child born out of wedlock.
 - a woman and man in Hobigonj being subjected to 101 lashes for 'breaching social norms' and her husband being directed to divorce her
 - a woman being subjected to 101 Lashes for refusing her uncle's sexual advances
 - the wife of a madrassah teacher in Naogaon district being subjected to a *hilla* (intervening) marriage, and she and her husband being subjected to 101 lashes and then refused medical treatment, after he reportedly pronounced talak (repudiation).
 - a woman in Srimongol was subjected to 101 lashes for 'talking to a man on the road'.
 - a woman in Nilphamari district had her hair forcibly cut and was compelled to leave her village with her two children, for refusing sexual relations with a locally influential person, the son of the elected Union Parishad Chairman.
 - a woman's family were ostracized from their village due to their refusal to submit her to a *hilla* marriage after her husband pronounced a divorce, and their son was forced to leave the local madrassah, and the local mosque refused to allow them to share *iftar*.
- Despite sporadic responses from law enforcement agencies, and in some cases high-level interventions by the Prime Minister's Office providing medical treatment to the survivors, no systematic efforts were undertaken to address such cases.

In July 2009, a constitutional challenge was filed against the state's failure to take action to

prevent such incidents or to investigate them, and to prosecute and punish those responsible. The petitioners were five human rights women's rights and legal services organisations ASK, BLAST, Bangladesh Mohila Porishad, BRAC Human Rights and Legal Services and Nijera Kori (Writ Petition No. 5863/2009). The petitioners were represented by Ayesha Khanam of the Bangladesh Mohila Porishad, Sultana Kamal, Executive Director of ASK, Farida Yeasmin, Deputy Director Legal Aid of BLAST, Faustina Pereira, Director of BRAC HRLS, and Khushi Kabir, Coordinator of Nijera Kori.

On 25 August 2009, the Court directed the Government (Ministry of Local Government and Rural Development, law-enforcing agencies and the Union Parishads and Pourashavas) to take immediate measures against extra-judicial penalties issued in the course of traditional dispute resolution processes (*salish*), and to show cause as to why their failure to prevent or investigate and prosecute such illegal acts should not be declared to be without lawful authority. Two further incidents of such extra judicial punishments were reported even after the Court's intervention. This gave rise to two other writs filed by two Supreme Court lawyers, Salahuddin Dolon and Mahub Shafique respectively:

Salahuddin Dolon v. Bangladesh (Writ Petition No.754 of 2010): This case was filed after reports of a 16 year old girl in Brahmanbaria being subject to 101 lashes and her father fined and threatened with ostracism, after she was raped. She had been married to another person and had a small child.

Mahub Shafique v. Bangladesh (Writ Petition No.4275 of 2010): On 8 July 2010, the High Court gave its judgment disposing of all three petitions. It declared infliction of all kinds of extra judicial punishments, including those imposed or inflicted by local *salish* in the name of 'fatwa' to be illegal and without any lawful authority. The Court further declared that any person involved, present, participating or assisting in any such action or its execution would come under the purview of the offences under Penal Code and be liable to punishment.

Source: Bangladesh Legal Aid and Services Trust.

Indian government's decision to reject Vedanta refinery expansion welcomed

AMNESTY International on Thursday, October 21, 2010 welcomed the Indian government's decision to reject plans for the expansion of an alumina refinery by a subsidiary of UK-based Vedanta Resources, in the state of Orissa.

India's Ministry of Environment and Forests rejected a six-fold expansion of the refinery in the Lanjigarh area, proposed by Vedanta Aluminium, finding that the project violated the country's environmental laws.

"The decision is very welcome - and tremendously important for local communities, who have been fighting to prevent this expansion going ahead," said Amnesty International's Asia-Pacific Deputy Director, Madhu Malhotra.

"The refinery fails to meet accepted national and international standards in relation to its environmental, social and human rights impact. The authorities should order a clean-up and monitor the health status of the local communities."

Residents of 12 villages who live in the shadow of the massive refinery - mostly Majhi Kondh adivasi (indigenous) and Dalit communities who rely on agriculture for their livelihoods - have long campaigned against the expansion, arguing it would further pollute their land and water.

Kumti Majhi, a local indigenous leader, told Amnesty International, that the decision to prevent expansion was very



welcome, adding that "however, we continue to breathe polluted air; our water sources continue to be polluted by the refinery and our health continues to suffer. We will not rest till these problems faced by us due to the refinery under operation are fully addressed."

The Ministry had in August rejected plans, by Sterlite India, another Vedanta Resources' subsidiary and the state-owned Orissa Mining Corporation, to mine bauxite at Niyamgiri Hills near Lanjigarh after finding that it would violate forest and environmental laws and the rights of the Dongria Kondh adivasi communities.

The Ministry's decisions have been based on reports by two expert committees which documented the companies' breaches of Indian law.

Their findings and the authorities' rejection of both the proposed mine and refinery expansion are consistent with the findings and recommendations of a detailed report published by Amnesty International's in February 2010, Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India.

This work is part of Amnesty International's Demand Dignity campaign which aims to end the human rights violations that drive and deepen global poverty. The campaign will mobilise people all over the world to demand that governments, corporations and others who have power listen to the voices of those living in poverty and recognise and protect their rights.

Source: Amnesty International.

HUMAN RIGHTS advocacy



Advocate for change on anti-trafficking policies in the European Union

ON the eve of a major conference relevant in the formulation of a European Union (EU) strategy against trafficking, six UN agencies have shared their views and suggestions to ensure that the rights of victims of trafficking are effectively addressed.

The six agencies (UNODC, OHCHR, UNHCR, UNICEF, ILO, UNIFEM/UN Women) in a public letter have drawn the attention of EU members States and institutions to the importance of providing free and quality legal assistance to victims, of not pursuing prosecution of victims and respect for the principle of non-refoulement, and the right not to be forcibly returned to their countries of origin. The joint submission also calls for an approach to trafficking that is gender-sensitive, has a broad definition of particularly vulnerable persons and focuses on child victims of trafficking.

On 18 and 19 October the Belgian Presidency of the European Union is holding a conference in Brussels entitled, Towards a multidisciplinary approach in prevention of trafficking in human beings, prosecution of traffickers and protection of victims.

Jan Jaob, the OHCHR Regional Representative for Europe says the conference is "an important step towards the formulation of the future EU strategy against trafficking in persons and a new opportunity to discuss the provisions of the proposal for an EU Directive on trafficking, in particular those relating to the protection of the rights of victims".

Source: OHCHR News.



shall be held responsible under the relevant sections of the Penal Code and other laws. They further directed the law enforcing agencies, Union Parishads and Pourashavas (municipalities) to take preventive measures against the issuing of such "fatwas" in their concerned areas, and to take legal steps for prosecution in case of such occurrences, as appropriate. They directed the Ministry of Local Government to inform all law enforcing agencies, Union Parishads and Pourashavas of the unconstitu-

tionally by five human rights and women's rights groups, Ain o Salish Kendro (ASK), Bangladesh Mohila Porishad, Bangladesh Legal Aid and Services Trust (BLAST), BRAC, Nijera Kori. The second and third petitions were filed by two lawyers, Salahuddin Dolon and Mahub Shafique. Sara Hossain, with Masuda Rehana Rosy, Taufiqul Islam and Abante Nurul appeared for ASK/BLAST/Mohila Parishad/BRAC/Nijera Kori, while Salahuddin Dolon and Mahub Shafique appeared in the