

LAW OPINION

# ‘TANGAIL SAREE’ GI SAGA

## A Pragmatic Legal Approach

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Many legal opinions are spelled out about the ‘Tangail Saree’ geographical indication (GI). Unfortunately, some of them are emotion-driven or misconceived! This piece takes a rather pragmatic legal approach. However, it proceeds with a few caveats: a) all relevant legal issues cannot be navigated due to the limited space, and b) concrete conclusion is difficult because of the blind spots within the GI jurisprudence.

Why (geographical) name matters?

Name matters for ‘origin function’. It reduces ‘search costs’ for the consumers. It provides legal avenues for the traders to identify their products and distinguish them from the competitors. This is a core function of the trademarks law. Yet, trademark law ordinarily has nothing to do with quality of a product (with few exceptions). Further, certain products origin from specific geography or territory and possess distinct qualities, reputation or other characteristics that are essentially due to their geographical origins. Often, the geographical origin factor of such products is triggered by the cultural, traditional, and community entitlements. Thus, the claim is simple. Their names should be protected but trademark law is insufficient in this regard. Hence, they demand special protection regime. This is why GI matters—and what the sui-generis GI legal regime is designed for.

Can the ‘Tangail Saree’ be protected via GI law?

Answer is rather straightforward, yes. ‘Tangail Saree’ reflects the textbook definition of GI under the international and national law (Article 22 (1) of the TRIPS Agreement 1995 and Section 2(9) of the Bangladesh Geographical Indications of Goods Act 2013). The official GI journal (no. 32) of Bangladesh, published on 9 February 2024, clearly outlines the product, community, territory specifications and historical documentations with respect to the ‘Tangail Saree’. Seemingly, it will soon be registered as a Bangladeshi GI. There is no plausible legal barrier. The apprehension is that India may object our domestic registration based on its prior registration. Legally, the scope of objection exists under Section 13 of the Bangladesh GI Act. It is, however, less likely to sustain on merits.

Can Bangladesh claim exclusivity over ‘Tangail Saree’ GI tag?



Unfortunately, there is no clear answer. It involves complicated legal and historical issues. A legal option is to apply for the cancellation or correction of the Indian registration under the Section 27 of the Indian Geographical Indications Act 1999. However, the grounds are very limited. They are primarily designed to remedy ‘any contravention or failure’ to observe the conditions of registration or error in the GI registry.

Is there any international legal recourse?

In the absence of the domestic legal recourse, the only viable option is the dispute settlement under the WTO-TRIPS regime.

The following two arguments could be made. First, the prohibition in Article 22 (2) (a) of the TRIPS is triggered for ‘Tangail Saree of Bengal’. In other words, the GI tag of India would represent that “the good in question [Tangail Saree of Bengal] originates in a geographical area other than the true place of origin [Tangail of Bangladesh] in a manner which misleads the public as to the geographical origin of the good.” India registered ‘Tangail Saree of Bengal’ whereas Bangladesh applied for ‘Tangail Saree’

without any prefix or suffix (GI journal no. 32). Bangladesh could argue that the Indian name does not reflect true geographical origin and it is susceptible to misleading the public as to the true origin of the product. ‘Tangail’ is a famous place in Bangladesh and the product has long history, reputation as well as superior quality. Thus, public would associate the Indian name with Bangladeshi origin.

Second, Article 22 (2) (b) of the TRIPS is potentially attracted. The use of the GI tag ‘Tangail Saree of Bengal’ constitutes an act of unfair competition in the sense of the Article 10bis of the Paris Convention (1967). Article 10 bis (2) of this Convention prohibits any acts ‘contrary to honest business or industrial practices.’ Article 10bis (3) outlines three typical (non-exhaustive) situations of unfair competition. In this case, most relevant is the third category. The use of ‘Tangail Saree of Bengal’ as an indication “...in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics ... of the goods.”

In both cases, India may reply that the suffix ‘Bengal’ in the name is sufficient to indicate true origin and to prevent ‘misleading of the

public’ and the use is not unfair. The balance of arguments would indeed be based on the factual and historical analyses and the evidence-based application of ‘misleading of the public test’.

The Migration Argument

The most complex issue in this case is the migration argument. Indian GI application stressed on the migration of ‘Tangail Saree’ weavers (Basak Community) from the territory (now Bangladesh) to the West Bengal. Thus, they are entitled to use the name ‘Tangail Saree’. The migration claim should be viewed and answered through historical lens and documents. Unfortunately, there is no clear rule on the migration of GI communities. It is still an unsettled area. However, question could be raised as to whether ‘migrated community’ have used the name ‘Tangail Saree of Bengal’ continuously over a long period of time. What is the ratio of the weaving population and production of the ‘Tangail Saree’ within Bangladesh and West Bengal? Could there be any difference because of the ‘majority versus minority’ rule? Which versions of Sarees are in fact famous? Why does India use the name of the specific geographical location of

Bangladesh (Tangail) instead of using its own geographical territory? Is it to gain from the reputation that Tangail Saree possesses?

The Homonymous GI Argument

The homonymous GI indicates the names that are similarly spelled or pronounced but they are used to refer different product origins. This can be domestic as well as cross-borders. Section 10 of the Indian GI Act and Section 7 of Bangladeshi GI Act provide the scope of domestic protection of homonymous GIs. There are some conditions: the sufficient differentiation of the names, the equitable treatments of the producers, and the prevention of consumer misleading or confusions. Bangladesh must show how these conditions are met. This can only be argued under the Indian domestic law. The TRIPS establishes a minimum standard for GI and leaves the homonymous protection of GI to the member states. The additional protection for the homonymous GI under article 23 of the TRIPS only applies to the wine and spirits products. Thus, Bangladesh cannot argue that India has violated the TRIPS provisions in this respect.

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JUDGMENT REVIEW

# Women’s inheritance rights under Hindu Law

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In a landmark judgement handed down in December 2022, the Appellate Division of the Supreme Court of Bangladesh applied the constitutional principle of equality to protect the rights of daughters and granddaughters in matters of succession under the Hindu law. The case is significantly associated with the concept of women’s property or stridhan under Hindu law. Stridhan implies the property acquired by a woman through inheritance or partition, or by way of gifts from her relatives, or the properties acquired through her employment and purchases with stridhan.

In the case Shishubar Dhali v Chitta Ranjan Mondol and others (Civil Appeal No. 55 of 2003), one Rukkhini Dashi had purchased a land through her stridhan and after her death, that property passed to her daughter Hazari Sundory Dashi. Hazari, in turn, passed it on to her daughter Elokeshi Mondol, who lived in a different village. Elokeshi entrusted the land’s documents pertaining to the property with her paternal uncle, however, the land was eventually recorded in the said uncle’s name in the S.A. record.

Therefore, Elokeshi filed a suit against her uncle on the grounds of breach of trust. Main issues of this case were whether the suit property was Rukkhini’s stridhan and whether it could lawfully devolve upon the plaintiff Elokeshi, Rukkhini’s granddaughter. The arguments of the defendants were that the land in question was not Rukkhini’s stridhan rather it was their joint family property and Elokeshi could not have any lawful rights in the land. The trial court ruled in Elokeshi’s



favor by holding that the suit land was Rukkhini’s stridhan and cited the Hindu Law of Inheritance (Amendment) Act, 1929 recognising a granddaughter’s legal rights to inherit her grandmother’s stridhan. This judgement was reaffirmed by the District Judge’s Court in the appeal filed by the defendants, which prompted another appeal preferred to the High Court Division and the Appellate Division of the Supreme Court of Bangladesh.

The appellants argued that the Act of 1929 is applicable only to the followers of Mitakshara school and highlighted that women’s property or stridhan has no relevance with the Act. Moreover, they argued that according to the Dayabhaga school, which is followed by the respondents, a woman’s inherited property does not become her stridhan, she only

holds a limited interest in it and after her death, it passes on to the next heir of the person from whom she had inherited the property.

The respondents, on the other hand, emphasised on Elokeshi’s inheritance referring various sources of Hindu Law. They referred ‘the Dayabhaga’ by Jimuta Vahana, and argued that daughters inherit stridhan absolutely, similar to the sons. There is no express text which prevents a woman from disposing of her stridhan property as she wishes. Thus, Elokeshi lawfully inherited her grandmother’s land after her mother’s death.

Mr. Prabir Neogi, involved in this case as Amicus Curiae of the Court, suggested that constitutional principles should be applied to address the ambiguities in the interpretation of personal laws. When an ambiguity

arises in a particular segment of law, all relevant sources of that law (i.e., statutes and customs) should be read together to find out the correct stance. Thus, the court emphasised the need for uniform interpretation and referred to relevant texts of Hindu law and some notable precedents.

To maintain harmony between the texts of Hindu law, if all the nuances of the Dayabhaga law are read together, it can be perceived that a daughter inherits her mother’s stridhan absolutely like her sons. It does not become her widow’s estate or any other kind of property on which she only has a limited interest. Hence, the notion of equality can be found within the tenets of Hindu Dayabhaga law regarding the devolution of women’s property or stridhan. Again, if the Hindu Succession Act, 1956 of India is analysed, it can be understood that

the principle of ‘equality’ between male and female has been ensured as it declares that property of a Hindu female will be her absolute property, including stridhan or women’s property. As there is no such law in Bangladesh, the court interpreted the Constitution which is the supreme law of the land.

The Bangladesh Constitution guarantees equality before law and equal protection of law as the fundamental rights under article 27. Through article 28, it prohibits discrimination on any grounds, such as race, religion, caste, sex or place of birth and states that women should have equal rights as men in every sphere of State and public life. Article 19 of the Constitution also enshrines the significance of equitable distribution of wealth among citizens and equality of opportunity and participation of women in all spheres of national life as a fundamental principle of state policy.

After interpreting all relevant sources of Hindu law, constitutional principles of equality and scholarly opinions with the facts and circumstances of the case, the Appellate Division finally observed that the disputed land was in fact Rukkhini’s stridhan, and it will lawfully devolve upon Elokeshi and that daughter’s daughters, are equally eligible to inherit stridhan or women’s property. This decision sets a landmark precedent for gender-inclusive interpretations of personal laws, in line with the constitutional principles of equality which paves the way for more equitable inheritance rights for women within the legal framework.

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