

## **A high time to endorse GI legislation: Protect what ‘you’ have. Promote your country, help your community.**

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When it comes to the ‘Branding of Bangladesh’, one would promptly and logically link it to Cox’s Bazar – world’s longest natural sandy unbroken sea beach, or to the Sundarbans - the largest single block of mangrove forest in the world! Well, this makes sense. Cox’s Bazaar and Sundarbans are names of a place that have now become Bangladesh’s identity to the rest of the world. There are other names too, such as ‘Tequila’ or ‘Champagne’, which identify their respective country of origin to the rest of the world too. Of course tequila or Champagne are names of distill beverages, while Cox’s Bazar and Sundarbans are the two natural heritages site that place Bangladesh among the Seven Wonders of Nature list.

Tequila, Champagne, Scotch whisky, Roquefort Cheese, Darjeeling Tea, Kolapuri Chappal, Cashmere Wool, Havana Cigar are some of the popular examples of world’s Geographical Indications. So what are the Bangladeshi products or goods that could belong to the same league of Tequila or Champagne and would successfully identify or represent Bangladesh as a brand to the global market? Dhakai Jamdani, Nakshikantha, Fazlee Aam (Mango) from Rajshahi or Hilsha fish from Chandpur, etc. could be the ones that would exclusively identify or represent Bangladesh exactly in the same manner Tequila or Champagne did for their respective country of origin.

So where does the disparity lie? Conceptually there is no disparity. Tequila, Champagne, Havana Cigar, Darjeeling Tea, etc. and the Dhakai Jamdani, Nakshikantha, Fazlee Aam (Mango) do belong to the same league. Legally, the disparity does exist. Tequila, Champagne, Havana, Darjeeling Tea, etc. are the examples of registered and protected Geographical Indications while the Dhakai Jamdani, Nakshikantha, Fazlee Aam (Mango), etc. are not – thanks to our think leaders wisdom for not enacting the much needed Geographical Indications Act in the name of avoiding the implementation of the TRIPS Agreement in Bangladesh.

GIs always associate a good or product to a certain territory, region or locality in that territory. GIs identify a certain good or product originating in a certain locality and always establishes a qualitative link, e.g. certain quality, reputation or characteristics, between the goods or product and the locality. Geographical indications, therefore, are indications or signs for a good or product or service associated to its geographical origin.

GIs fundamentally are a kind of intellectual property rights that are associated with culture, geography, heritage and traditional practices of people and countries. The protection of GIs necessarily refers to the protection of goods or products originating from a certain geographical area. The foremost reason for securing property rights for GI goods or products is based on the fact that they are produced in a certain geographical region, which has unique geo-climatic characteristics. The geo-climatic characteristics coupled with the traditional practice and skills create a unique value to the goods or product and thus goods or products originated from another region is bound to be different.

However, the predominant idea behind providing protection to GIs is to allow the producers of the GI goods or product, which are located in that designated territory, to exclude others from using the same. It may be stated that GI goods and products are obvious to have certain quality, reputation and exclusivity. Thus considering the commercial potential, GIs require adequate legal protection.

Otherwise the risk of misrepresentation or being falsely used by dishonest commercial entities will exist. Absence of appropriate legal protection would encourage illegitimate competitors to have a free ride on their reputation too. Such unethical and unfair business practices are always detrimental for the legitimate producers' interest. It results in loss of revenue and deprives them of their valuable business. Such practice in addition, deceives the consumers and damages the established reputation of the goods or products associated to the GI. To this extent, the need for protection of GIs is very significant.

GIs however are subjected to both national and international laws. The Paris Convention, 1883 was the first international treaty that attempted to restrict false indications of the source of the goods or the identity of the producer or manufacturer. Subsequently the Madrid Protocol 1967 and the Lisbon Agreement 1979 were introduced, that too restricted the false or deceptive use of goods and emphasized on the 'appellations of origin' respectively. Later on, the World Trade Organization's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) 1994 was introduced. TRIPS laid down the requirement of maintaining the minimum standard of protection which the WTO member states are bound to comply within their respective national legislation.

The TRIPS provisions a single identical definition that generally applies to all GIs. The TRIPS however suggests a two-tier system of protection, (i) basic protection, under Article 22- generally applicable to all GIs, and (ii) additional protection, under Article 23 – applicable only to wines and spirits. The TRIPS system to some extent is challenging and detrimental to the extent that a producer not belonging to the geographical region indicated by a GI may use the indication as long as the goods or product's true origin is indicated on the label. This will allow free-riding on a product's reputation and goodwill.

During the Doha Declaration 2001, a number of countries including India craved to extend the scope of Article 23 beyond wines and spirit to all products on the ground of improving the marketing of their products. This was strongly opposed by countries like United States, New Zealand, Canada, Argentina, Chile, Uruguay and Guatemala and remains as an outstanding issue till date. Article 23 offers blanket protection for wines and spirits. However the extra cushion offered by Article 23 of the TRIPS led to dissection between the signatory countries of the TRIPS. The disparity between Article 22 and 23 however leads to a situation where GIs can be misappropriated without violating the law.

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