

1. CHALLENGES FOR 'JAMDANI SAREE' AND 'BANGLADESH ILISH', THE TWO REGISTERED GEOGRAPHICAL INDICATIONS FROM BANGLADESH IN THE POST-REGISTRATION EPOCH

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ABSTRACT

Bangladesh enacted the '*Geographical Indications of Goods (Registration and Protection) Act*' in 2013 to protect the exclusive goods of Bangladesh. The enactment is seen as an important implementation on the demand of the traditional knowledge-holders of Bangladesh. After the enactment of the Act, three products have been registered as geographic indications (GIs) from Bangladesh. This paper examines challenges faced by the first two registered GIs: namely, the *Jamdani Saree*, (a woven fabric), and *Bangladesh Ilish* (a fish variety) in the post registration epoch. The economic potential of these two registered GIs depends on efficient post-registration mechanism, namely quality management, price control, fair competition, etc. Factors like industrialization, responsible for declining the handloom *saree* industry, increase of prices, widespread generic use, and the influence of intermediaries etc., have reduced the success of the *Jamdani Saree* and increased its vulnerability. A similar fate is apprehended for *Bangladeshi Ilish* due to factors such as environmental degradation, absence of quality surveillance, construction of development works, etc. The paper critically analyzes steps taken by Bangladesh to combat the challenges mentioned above. Successful GIs contribute to a country's economy, culture, and community development. The apathy of a state in constructing an effective ecosystem for fostering GIs on a national level may reduce the GIs' benefits to mere theoretical rhetoric. This paper concludes with the view

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¹ "GI" includes Geographical Indications as defined under the Agreement on Trade-Related Aspects of Intellectual Property

that, in the overall reality of Bangladesh, the success of the two registered GIs that are examined in this paper, will be a challenge.

Keywords: *geographical indications, registration, Jamdani Saree, Bangladesh Ilish, challenges*

1. INTRODUCTION:

A geographical indication (GI) is a sign that denotes the distinctive characteristics of a product it refers to, in terms of the place of origin.¹ The protection of GIs in Bangladesh is through the adoption of a specific statute or sui generis law, following obligations in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The journey of GI protection began in Bangladesh through the adoption of the *Geographical Indications of Goods (Registration and Protection) Act* in November 2013 (GI Act of 2013). The GI Act of 2013 was the first legislative effort of the country to provide specific protection to signs connoting a place's essence in the product's quality. Section II of this chapter discusses briefly the background of the GI Act of 2013, which is in my opinion, in a context typical to Bangladesh. In this section, I personally hold the view that the enthusiastic response of a country like Bangladesh is not a realistic approach, keeping in mind the global GI scene. However, this position might have lost its relevance after the adoption of the GI Act of 2013. This section also provides a brief reflection upon the GI Act of 2013. This section draws the view that the GI Act of 2013 mostly replicates the TRIPS setting to protect GI with some provisions added to widen the scope of GI protection. The adoption of the GI Act of 2013 was followed by the registration of three products, namely, *Jamdani Saree* (a woven fabric), *Bangladesh Ilish* (a fish variety) and *Khirshapat* Mango (a mango variety). All these products

Rights - "Geographical indications are, for the purpose of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin", Agreement on Trade-Related Aspects of Intellectual Property Rights (Apr. 15, 1994) 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994), art. 22.1 (TRIPS Agreement)

have economic importance in Bangladesh. The central focus of this paper is to assess the GI law of Bangladesh in the post registration regime of the first two registered GIs. The *sui generis* system, the path that Bangladesh has followed to comply with its TRIPS obligations, has now been characterized as a scheme to bring GI related benefits. To that end, the state's involvement — from taking initiatives for pursuing registration to build up a GI friendly environment — is largely commendable. However, the achievement of GI related benefits is subject to some extraneous factors that may decide the destiny of a given GI. Section III addresses the challenges that are being faced by *Jamdani Saree* and *Bangladesh Ilish*, the two registered GIs. This section reviews the policies and initiatives taken by different stakeholders and the government, before and after registration. The paper believes that, if implemented, these initiatives and steps may contribute to the ecosystem building for GIs in Bangladesh. However, the fate of these two registered GIs is still uncertain and remains a challenge. The paper concludes with the view that the state's failure to build up a good ecosystem may limit the economic potential of the registered GIs of Bangladesh.

2. JOURNEY OF GI PROTECTION IN BANGLADESH

A. THE BACKGROUND AND RATIONALES OF GI PROTECTION IN BANGLADESH

Trade implications of GI has made it one of the most contentious among all the different types of intellectual property comprised in the TRIPS Agreement. It reflects the circumstances before and after a GI's incorporation within TRIPS.² The European Union (EU) pushed for GIs' inclusion

in the TRIPS Agreement to create an evocative market of European GIs worldwide.³ The scheme under which GIs are protected in the TRIPS Agreement is a trade-related compromise among the developed nations of the TRIPS membership. More specifically, the TRIPS provisions for GI protection reflect the interests of the wine and spirit producing western nations.⁴ The discussion to equalize the level of protection to GIs for all goods has become dormant at the international level. The practice of protecting GIs without product discrimination is done in domestic statutes adopted in the post TRIPS era. In this regard, the drive of Asian countries is noteworthy.⁵ At its inception, the EU also included arguments of community development and revival of cultural identity of small communities to push the agenda of GIs. Asian countries, mostly in the decades following the adoption of TRIPS, made efforts within their own domestic system of GI protection to bring home the benefits of GIs. It is also to be noted that, many Asian GIs have become internationally prominent and witnessed economic success. Thus, the rationale for protecting GIs in Asia can now be appreciated as a trade tool.⁶ In recent times, the tendency to extend TRIPS-plus protection to all GIs denominated products is considered under the scheme of bilateral Free Trade Agreements (FTA) arranged between the European Union (EU) and other countries.⁷ This advent of GI protection is considered to find suitability of either of the rationales in context of Bangladesh. A piecemeal study (reported from newspaper publication) has reflected that the GI movement in Bangladesh stemmed from the fear that traditional goods having GI implication may be misappropriated if not protected in the country of origin. At

² Kal Raustiala and Stephen Munzer, 'The Global Struggle over Geographical Indications' (2007) 18 Eur J Int Law 337–65

³ Justin Hughes, 'Champagne, Feta, Bourbon: The Spirited Debate about Geographical Indications' (2006) 58 Hast Law J 299-386

⁴ TRIPS Agreement, art 23

⁵ See Geographical Indication of Goods (Registration and Protection) Act, 2013 (Bangladesh) (GI Act 2013); See also the *sui generis* protection system adopted by India, Malaysia, Thailand and Vietnam

⁶ Jeongwook Suh and Alan Macpherson, 'The Impact of Geographical Indication on the Revitalization of a Regional Economy: A Case Study of "Boseong" Green Tea' (2007) 39 Area

518–27; Darjeeling Tea Association, 'Darjeeling Tea – A Geographical Indication (GI)'

<http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_11.pdf> accessed October 2, 2018

⁷ Susy Frankel, 'Geographical Indications and Mega-Regional Trade Agreements and Negotiations' in Irene Calboli and Wee Loon Ng Loy (eds), *Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia Pacific* (Cambridge University Press 2017) 147–67

this point, the GI scheme was seen, by all means, as a tool to protect national pride.⁸ This position has failed to appreciate the potential of GIs to create niche markets for GI denominated goods. Moreover, Bangladesh is not a party to any bilateral or multilateral agreement to date, under which Bangladesh might have any reciprocal obligation to extend protection to GIs from other countries. Currently, the future of GIs from Bangladesh in international trade is difficult to judge.

In some instances, both from Europe and beyond, GIs have proved to bring a price premium for some GI-denominated goods. This economic incentive may contribute towards the survival of communities that preserved the necessary knowledge for building the 'reputation' of GI-denominated products.⁹ Hence, the culture driven benefits of GIs depend on the successful market capture of the GI goods against similar goods not equally reputed.

At the outset of GI talks during the negotiation of TRIPS, Bangladesh did not take any position of either supporting or opposing its inclusion. The realization to introduce the GI scheme is influenced by the drive of other neighboring Asian countries two decades after the adoption of the TRIPS Agreement. However, many developing countries opposed GI systems, out of fear that the maintenance of GIs is a costly process. The establishment of legal framework, maintenance of administrative processes and monitoring compliance of GIs from home and abroad, indeed, involve a considerable economic pressure.¹⁰ After the introduction of GI scheme in Bangladesh, the Department of Patent,

Designs and Trademarks (DPDT) has established a new unit responsible to grant GI registration. This unit is manned by necessary experts and is equipped with necessary infrastructure to execute its tasks. It goes without saying that, the new set up has brought additional costs. However, the probable cost of maintaining a GI system had never been assessed before the system was introduced. Hence, whether a GI scheme will be beneficial or burdensome over the course of time cannot be appreciated precisely at this point. At present, Bangladesh is left with the only option of maximizing GI-related benefits, as the scheme is already in place.

B. *SUI GENERIS* PROTECTION REGIME OF GIs IN BANGLADESH

The journey of protecting GIs began in Bangladesh under a *sui generis* scheme through the adoption of the GI Act of 2013. The Act provides the definition of GI in the paradigm of the TRIPS definition. However, the Act has widened the possibility of protection to a wide range of products including agricultural and natural foodstuff, handicrafts and manufactured goods.¹¹ This section is a brief exposition of the features of the GI scheme of Bangladesh. Any product, on proof of its nexus to a given territory, can secure registration under the GI Act of 2013 upon submission of an application by any association, institution, government body, or authority representing the interest of persons producing geographical indication of goods.¹² The GI Act of 2013 provides certain criteria as preconditions for

⁸ABM Hamidul Misbah, 'Time to Enact Geographical Indication Act' *The Daily Star* (London, 6 December 2012) <<http://archive.thedailystar.net/newDesign/news-details.php?nid=260032>> accessed October 2, 2018

⁹ See Anselm Kamperman Sanders, 'Incentives for and Protection of Cultural Expression: Art, Trade and Geographical Indications' (2010) 13 *JWIP* 81-93

¹⁰ Ulrike Grote, 'Environmental Labeling, Protected Geographical Indications and the Interests of Developing Countries' *Estey Centre J. Int'l Law & Trade Policy* 94, 100-102

¹¹ GI Act 2013, s 2(9) defines "geographical indication of goods" as "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 characteristics of the goods in 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"; GI Act 2013, s 2(8) of defines "goods" as "any natural or agricultural product or any product of handicraft or industry, and shall also include foodstuff"

¹² GI Act 2013, s 9

registration.¹³ An applicant is required to produce necessary documents as proof to be eligible for securing registration, the details of which are provided by the Geographical Indications of Goods (Registration and Protection) Rules 2015 (the GI Rules of 2015). However, unregistered GIs are also given protection under the GI Act of 2013 in order to prevent misleading use of a given GI.¹⁴ The GI Act of 2013 criminalizes certain activities as infringement of registered GIs, such as misleading use of registered GIs, acts constituting unfair competition, false representation of registered GIs, use of the expressions “kind,” “style,” “imitation,” etc. with the registered GIs.¹⁵ The GI unit of DPDT is empowered to grant GI registration to products complying the given standard.¹⁶

3. THE CHALLENGES OF THE TWO REGISTERED GIs: JAMDANI SAREE AND BANGLADESH ILISH

To date, no credible empirical research has been conducted to articulate the realities faced by the registered GIs of Bangladesh in recent times, more specifically in the aftermath of registration. For this paper, a small-scale survey has been conducted among consumers and other stakeholders (weavers, proprietors of shops and fashion designers related to the *Jamdani* industry) to identify some of the challenges that are being faced by the *Jamdani* industry. They have pointed out many problems that have emerged in their practical experience. These problems, along with others, are liable to reduce the expected commercial benefits for the first registered GI of the country. The aim of conducting the survey among consumers was to identify, *inter alia*, the role of GI in consumers’ decision making while purchasing the GI denominated product. The age of the respondents ranges from 20 to 60 years who are involved in different occupations. They are inhabitants of Dhaka and have been selected from an economic class who can purchase luxury goods once or twice a year.

So far, a handful of researchers have embarked upon efforts to find problems and challenges faced by *Bangladesh Ilish*.

They mostly address natural and man-made perils threatening the natural habitats of this fish variety. Some of these researchers have appraised the measures and initiatives taken by government agencies to ameliorate the vulnerabilities of *Ilish* industry. However, these researches did not include some important considerations that might impede the successful commercial exploitation of this fish variety. For example, preservation of consumable food quality, packaging and marketing remain difficult challenges in the way of achieving economic benefits after registration. These factors are not addressed by any comprehensive research endeavour. Hence, the paucity of coherent research itself is a challenge to identify the challenges in precise terms. Though not to be treated as representative of the overall realities, the ongoing paragraphs attempt to shed light on some of the challenges currently rampant in reducing the desired commercial benefits of these two registered GIs.

A. REGISTRATION OF JAMDANI SAREE AND BANGLADESH ILISH: THE REFLECTION OF INEXPERIENCE

Jamdani Saree’ was registered as the first GI of Bangladesh in November 2016. The registration of *Jamdani Saree* was granted to Bangladesh Small and Cottage Industries Corporation (BSCIC) on the basis of their application. BSCIC submitted necessary documents to establish the link of the territory with the product. These documents mainly revealed the natural and human factors — the two elements of GI protection — responsible for the characteristics of *Jamdani Saree*. The name *‘Jamdani saree’* is registered in class 25 for clothing and is used mostly for making *‘saree’*, a traditional garment of Bangladeshi women. Generally, *‘Jamdani’* is a woven fabric known and adored for its intricacy. From time immemorial, its name and fame are associated with a defined territory of Bangladesh. This territorial linkage of *Jamdani* forms the basis for getting GI registration.¹⁷

¹³ GI Act 2013, s 8

¹⁴ GI Act 2013, s 6

¹⁵ GI Act 2013, s 28

¹⁶ GI Act 2013, s 4

¹⁷ Department of Patents, Designs and Trademarks, ‘Geographical Indication Authorized Users Journal’ no. 01, February, 2017 (Jamdani Saree GI)

'*Bangladesh Ilish*' (scientific name: *Tenulosailisha*), a fish variety, was registered as the second GI of Bangladesh in 2017, in classes 29 and 31. In Bangladesh, *Tenulosailisha* comes in three different genus and four different species. Currently this fish variety is found in around 100 rivers of Bangladesh. This fish variety, although found in the different locations around the world, is most abundant in Bangladesh. Its rich food value and distinctive characteristics have made it unique among other varieties of the world. Its contribution is also significant in the national economy of Bangladesh. Among the various species of fish found in riverine Bangladesh, *Hilsa* is most important for its contribution in the total national fish production. *Hilsa* is the source of livelihood for millions of fishers. The livelihoods of 2 to 2.5 million people are directly or indirectly dependent upon different activities of fishing *Hilsa* - selling, processing, exporting, manufacturing of fishing boats, etc. *Hilsa* is the national fish of Bangladesh. The cultural importance of this fish variety can be established from the analysis of historical documents. The cultural acquaintance of *Hilsa* with Bangladesh is reflected in Bengali literature and in beliefs of the community historically associated with *Hilsa* fishing.¹⁸ Facts, figures, statistics and documentation provided by the Department of Fisheries of Bangladesh (DoF) and examined by the GI wing of the DPDT have successfully secured the registration of GI for this fish variety.

Countries with experience of protecting GIs have developed certain mechanisms and practices for the management and commercialization of GIs alongside the legal regime. This trend was largely seen among European nations even before the introduction of GIs under the TRIPS Agreement.¹⁹ The legacy is now followed among members who introduced GI schemes after the TRIPS Agreement came into being. These mechanisms involve quality control mechanisms, strategy for promotion, marketing, etc. The

degree of success of GIs depend largely on the good management of GIs.

In most cases, GIs are registered with a logo that is visually significant. A logo having a visual impression can draw the attention of unwary consumers instantaneously and is also useful when GI denominated products are sold to regions beyond language boundaries.²⁰ At the time of registration of the two GIs, this aspect was not given any regard. There is no legal barrier, in registering the name having geographical significance as per the provision of the GI Act of 2013, as well as in the international instruments containing provisions for GI.²¹ However, the inclusion of a logo with other marketing strategies could have brought better access to market.

'*Jamdani*' fabric is used mostly to produce *saree*. However, its use is not confined to '*saree*' and it can be used for dress material, accessories and home décor items. It has been noted from historical documents that from ancient times, the *Jamdani* fabric was used to make different items. This trend is still seen, and the use of *Jamdani* fabric to make different items is increasing and has been noted in the relevant journals.²² It generates confusion whether the protection extends to any item using *Jamdani* fabric or whether a registered GI can be used only for *saree*. This position cannot be answered precisely, as this issue was never clarified by making any specific note in the relevant journal regarding the products for which the registered GI can be used. The class in which the registration is granted is generally clothing (class 25 of the Nice Classification). However, the registered GI contains the reference of a particular product, namely '*saree*', which refers a type of garment. Now, the question is whether the registered GI, *i.e.* '*Jamdani Saree*', can denote, for example, a home décor item which is not used as a garment? These issues, if not clarified, may give rise to ambiguity while defining the acts

¹⁸ Department of Patents, Designs and Trademarks, 'Geographical Indication Authorized Users Journal' no.02, May 2017 (Bangladesh Ilish GI)

¹⁹ See for example, Law of 6 May 1919 relating to the Protection of Appellations of Origin

²⁰ See for example, case of Darjeeling Tea (n 6)

²¹ GI Act 2013 (n 11), TRIPS Agreement (n 1) art. 22

²² Jamdani Saree GI (n 17)

which might constitute infringement regarding the use of registered GI on products beyond *saree*.

Saree has a very small international market, as this is used as a traditional wear by only a few countries. Moreover, the survey result, conducted among consumers, has established that the overall *saree* market is declining gradually at the local level for the reasons like comfort, convenience, wake of modernization etc. Against this backdrop, the potential market for *saree* bearing the GI denomination is at stake. The stakeholders, including BSCIC have not yet determined the possible use of the registered GI. The paper at this point takes the position that if the registered name was used for the *Jamdani* fabric, used for making any kind of product, it could have achieved a wide market as far as product range is concerned. This paper urges the attention of stakeholders to take a pragmatic stance to achieve good trade opportunities at home and abroad.

Most food products protected as GIs are processed and crafted products, such as wine (Champagne), cheese (Parmigiano Reggiano), and fish sauce (Phu Quo). Processed or manufactured foods contain both the elements of *terroir*, namely – natural factors and the skill of artisans in processing such foods. However, as the GI journal suggests, only fish variety found in natural conditions come under the protective umbrella of the GI. The distinctiveness of this fish variety is the outcome of nature alone. Human intervention, namely the fishermen, is the channel towards consumers and does not contribute directly to ‘reputation’ – a criterion that is gradually becoming prominent in the GI domain. It has been established from different studies that the knowledge of the traditional fishermen can best preserve the conditions of natural breeding.²³ However, this aspect does not contribute to the characteristics of the

product. Maybe, in the future, if the Ilish industry extends to produce processed food from Ilish using traditional culinary recipes and art, the registration can be extended to processed products based on reputation, along with the natural conditions as an outcome of human intervention, generating greater price in international markets.

B. MARKETING OF REGISTERED GIS: ABSENCE OF STRATEGIC APPROACH

Jamdani is marketed in various manners, such as wholesale and retail sale, home delivery, export etc. Traditionally, *Jamdani* is sold in wholesale markets, locally known as *Jamdani haat*. The weavers sell their products to dealers and shopkeepers from around the country and also to other retailers. Individual customers can also purchase from wholesale markets installed at the area named ‘*Demra*’, situated near the place where *Jamdani* is produced. This age-old marketing strategy is very popular among producers, for they can sell their products directly to consumers, and dealers and individual customers can buy products for a relatively lesser price. The price is fixed by bargain. The producers have expressed, with a dissatisfactory note that products are sold in big stores by dealers sometimes at double price. *Jamdani Sarees* are also exported to foreign markets, especially India. However, as per one source, cross-border black marketing is also rampant.²⁴ Renowned retail shops apply their own marketing strategies as the respondents confirm. They use their trademarks and other branding strategies to reach their customers, and the sarees are sold at a much higher price than those bearing no trademarks. A new trend of marketing and sale through online shops and social

²³ Sushmita Mandal, et al, *Conserving ilish, Securing Livelihoods: Bangladesh-India Perspectives* (International Water Association, 2018) 6

²⁴ Henry Glassie and Mahmud Firoz, ‘Living Traditions in Weaving’ in Firoz Mahmud (ed), *Cultural Survey of Bangladesh, vol 11* (Asiatic Society of Bangladesh 2007) 360; Iftekhar Iqbal, ‘A Research Report on Protection of Jamdani as a Geographical Indication in Bangladesh’ in Centre for Policy Dialogue (CPD) and National Crafts

Council of Bangladesh (NCCB), *Protecting Bangladesh’s Geographical Indication Interests: The Case of Jamdani* (2014) 46; M.H. Haider, ‘Sights and Sound of a Jamdani Haat’ *The Daily Star* (Dhaka, May 26 2015) <<https://www.thedailystar.net/lifestyle/Is-pick/sights-and-sounds-jamdani-haat-86626>> accessed September 27, 2018

networking sites is getting popular very quickly.²⁵ It has also been noted from the experience of many countries that, additional information provided by vendors, such as the story behind the products, can help immensely to persuade consumers to buy GI labeled goods. As a strategy for better marketing, studies have shown that consumers see GI labels as a quality guarantee and are willing to buy the products in the belief they are supporting the local economy.²⁶ However, no specific strategy is fixed in the case of *Jamdani Sarees* by the authorities concerned. Some private dealers and entrepreneurs, especially those who sell their products through social networking sites, put the history of the fabric in the page as a strategy to sell their own products.

Generally, GIs are symbols or names affixed on the package of a product and are visually perceptible so that consumers can recognize a product before making their purchasing decision. In this case, however, there are no specific mentions in the journal nor other official documents of the conditions and manner of use of the name on the products and packaging. Hence, as of the present date, the consumers see no indication of the registered GI on the product and packaging. Some consumers have expressed that in the absence of any indication, they are confused whether they are purchasing an authentic product or similar subpar product entering markets from beyond the GI delimited territories. Only those who have long prior experience of using the fabric can identify the real one. However, consumers from distant locations having no prior experience of use have no scope of identifying the spurious products if sold through any unscrupulous practice.

Bangladesh Ilish involves different layers of value chain in the market place. They are the fishermen, owners of warehouses (locally known as *aratdar*), wholesalers, retailers and consumers. The fishermen are poor and, in many cases, do not have fishing gear of their own and are crew members on a fishing fleet. Owners of warehouses

usually stock and sell fish to the market. The warehouse owners are middlemen between the fishermen and the market. They provide loans and fishing gear to poor fishermen who in return pay a certain amount as repayment of loan. Wholesalers buy in bulk and sell to retailers. They play the role of intermediaries in the distribution channel. Retailers buy small bulk and sell to consumers.²⁷ Like *Jamdani Saree*, the conditions and manner of using the registered GI, "*Bangladesh Ilish*" is yet to be decided. The relevant journal does not provide any clarification regarding any special marketing strategy for *Bangladesh Ilish*.

C. QUALITY CONTROL OF REGISTERED GIS: ABSENCE OF EFFICIENT MANAGEMENT

One of the purposes of the survey was to find out the perception of GIs among consumers as a marketing tool. Most consumers only appreciate the emblematic value that of *Jamdani*, that is national pride. The consumers lack knowledge that it may serve as a tag of authentication of consistent quality. The other factors that consumers observed are:

- Confusion regarding price and quality.
- Widespread design and trademark infringement.
- Widespread generic use of the name *Jamdani*.

The economic value of GIs lay in consumers taking GI as information and by prioritizing GI labeled goods over other competing goods. However, it is observed that, *Jamdani* has failed to perform its desired role. The destiny of GIs largely depend on efficient quality control mechanisms. 'Quality' means the attributes of a GI, i.e., whether the given GI has the necessary *terroir* to get and renew registration. Any change in *terroir*, i.e. use of raw material not from the designated territory, change in production method (reputation) etc. is devoid of registration. On one hand, quality issues may bring consumers' rejection of authentic

²⁵Md. Saifuddin Khalid and Md Saiful Alam Chowdhury, 'Representation of Intangible Cultural Heritage of Bangladesh through Social Media' (2018) 29 *Anatolia* 194- 203

²⁶ European Commission, 'The Traders: How to best exploit GIs in National, Regional and International Markets', in *Workshops on*

Geographical Indications, Development and Use of Specific Instruments to Market Origin-based Agricultural Products in African-ACP Countries (2013) 22.

²⁷ Mandal (n 23)

goods, demeaning the value of a GI, and on the other hand, widespread use of registered a GI will convert the term into a generic term. This tendency is experienced in case of *Jamdani* as consumers, dealers, and weavers have accounted. Generic use in many cases is not deliberate, but a result of lack of proper knowledge about the use of GIs. Generic terms are disqualified from availing registration²⁸ and registered GIs, if used as a generic term may bring about cancellation of registration.²⁹ Hence, it follows that quality assurance is very crucial to remedy market failure. The GI Rules of 2015 require an applicant to name the body responsible for quality inspection in the application.³⁰ For *Jamdani*, a private body named 'SGS Bangladesh Limited' is named as the body for inspection of quality.³¹

Consumers do regularly complain of the quality. This fact is admitted by the weavers with an aggrieved note that certain unscrupulous weavers either use the actual raw materials or do not comply with actual production methods for lower costs. However, subpar products are sold for high prices in the absence of price fixing mechanisms. The price of *Jamdani* generally depends on the quality of raw material (80–120 count thread at the present) and intricacy of designs. Weaving of fine quality *Jamdani* requires two weavers working for two weeks to six months to make it a luxury item.³² Some fashion houses invest a considerable amount for creation of new designs. New investors attracted by the market response to *Jamdani* are infringing designs to achieve success through short-cut mechanisms, as expressed by some business dealers. The legal remedy for such clandestine activities has been addressed under the Patent and Designs Act of 1911. However, the remedy is rather compensatory in nature to the registered owners of the design and does not speak of anything to remove

consumers' confusion.³³ This practice dilutes the image of reputed sellers and will eventually discourage further investment in innovation and reputation building. Above all, consumers' dissatisfaction as a result of information asymmetry may frustrate the whole purpose of the scheme and producers' benefits will be at stake.

The Bangladesh Agricultural Research Council is named as the quality inspection body for *Bangladesh Ilish*.³⁴ However, the modality as to how these designated bodies will function is not defined. Apart from the GI quality (natural and human factors responsible for distinctiveness), a product, especially foodstuff, must possess consumable quality. To put it simply, for consumers, foodstuff must be safe for consumption. Even after so many mechanisms have been put in place to ensure quality and safety of food in Bangladesh, assurance thereof remains a challenge for food sectors.³⁵ The export market is even more vulnerable. At the international level, market access for GI denominated products largely depend on an importing country's quality standard, namely sanitary, phytosanitary and other quality regulations.³⁶

D. THE VULNERABLE CONDITIONS OF 'TERROIR' OF THE REGISTERED GIS

The rationale for GI protection emanates from the concept of *terroir*. This French concept underpins that a product's distinctiveness results from a combination of natural factors, like soil and other climatic conditions, and human factors, such as the skill and knowledge of the community in producing and manufacturing the products.³⁷ Preservation and protection of these two elements of *terroir* are the preconditions for building an ecosystem for a defined GI. Depending upon necessity and requirement, a

²⁸ GI Act 2013 s 8(g)

²⁹ GI Act 2013 s 23(a)

³⁰ Geographical Indications of Goods (Registration and Protection) Rules 2015 (Bangladesh) (GI Act 2013) rule 9(L)

³¹ *Jamdani Saree GI* (n 17)

³² *Glassie* (n 24) p. 357

³³ The Patents and Designs Act 1911 (Bangladesh) s 53(2)

³⁴ *Bangladesh Ilish GI* (n 18) 46

³⁵ See *The Fish and Fish Products (Inspection and Quality Control) Ordinance 1983*; *The Consumers Protection Act 2009*; *The Food Safety Act 2013*, *The Formalin Control Act 2015*; See also Md. Kamruzzaman, 'Formalin Crime in Bangladesh: A Case Study' (2016) 2 *European J. Clinical & Biomedical Sciences* 39-44

³⁶ United Nation Economic Commission for Africa, *Innovation, Competitiveness, and Regional Integration: Assessing Regional Integration in Africa VII* (2016) 68.

³⁷ See *Justin Hughes* (n 3)

given state may adopt suitable initiatives aiming for protection of the climate and people. For a manufactured product, especially in the case of textile goods, reputation as the basis of GI protection follows from human intervention. *Jamdani* is a woven fabric. Historical documents have revealed that the nexus of the fabric with the defined territory is the result of the special skill of a community that is historically associated with the production of *muslin*, another traditional fabric of Bangladesh. At present, the descendants of that community are continuing the traditional ancestral occupation. Scientific analyses revealing *Jamdani's* particular characteristics due to climatic conditions are still dubious and need further scientific research. Reputation is more of a human contribution than natural factors. Historical documents have also shown that the existence of *Jamdani* was at stake following political and economic crises. *Muslin*, the predecessors of *Jamdani*, was obliterated many years ago following the extinction of the community. During the colonial era, the industry declined and witnessed a gradual decline of weavers; but in the post-colonial time, it started increasing again. In the 1990s, the number of the weavers was 1600; and within a decade, the number increased to 15000 from around 3000 families. Production and export increased on a significant scale.³⁸ The expectation is that the engagement of the state will increase to exploit the value of GIs after registration thereof. From drafting of GI applications to economic patronization, the state extended facilitation through Governmental machinery. For example, BSCIC, an autonomous body under the supervision of the Ministry of Industry, secured the GI registration on behalf of the community. The Ministry of Industry has also provided special provisions for overall amelioration of this sector through the adoption of policies, namely the National Craft Policy 2015 and the National Industrial Policy

³⁸ Iftekhar Iqbal, 'A Research Report on Protection of Jamdani as a Geographical Indication in Bangladesh' in Centre for Policy Dialogue (CPD) and National Crafts Council of Bangladesh (NCCB), *Protecting Bangladesh's Geographical Indication Interests: The Case of Jamdani* (2014) 20.

2016. These policies mention schemes and measures for building good governance in the industrial sector, including the *Jamdani* industry.

Over the course of the survey, members of the community showed their dissatisfaction, especially towards the comparatively lower economic incentives in this industry, the corroboration for which is found vividly in a documentary made by the UNESCO. They also wished their posterity not to take up the ancestral occupation.³⁹ *Jamdani* weaving being time consuming and labour intensive in nature, demands rational economic incentives. However, it is unfortunate that no minimum wage has been fixed for this particular sector yet. This sector does not adhere to other labour standards either. For example, the involvement of child labour is very common in the *Jamdani* industry. The Bangladesh Labour Act, 2006 (BL Act of 2006) prohibits child labour. Adolescent labour is allowed under some special circumstances upon following prescribed procedures.⁴⁰ The BL Act of 2006 provides minimum standards to be followed by the industrial establishments. The possible application of the BL Act of 2006 to the cottage industry is not exactly known in the absence of any specific mention to that effect in the said Act. Moreover, the economic patronizations promised by the policies are still to be executed. The due execution of measures mentioned in the policies involve expenditure and expert institutional capacities. These uncertainties have made the *Jamdani* industry less attractive to new generations of weavers. The preservation of the *terroir*, in case of *Jamdani*, and survival of the weavers depends largely on the overall efficient governance of this industry.

Bangladesh is geographically blessed as a natural habitat for *Ilish*. From time immemorial, a traditional fishing community locally known as '*Matsajibi*' preserved the

³⁹ International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region, 'Jamdani: The Art of Weaving (Bangladesh)' <https://www.youtube.com/watch?v=abf59_sD99w-> accessed May 21 2019.

⁴⁰ See The Bangladesh Labour Act 2006 ch. III

natural habitat of *Ilish* with their traditional and keen knowledge of river biodiversity and character of *Ilish*. The community observed their preservation ethics by catching and consuming *Ilish* only in specific months and seasons. After its birth as an independent nation in 1971, Bangladesh became the largest *Ilish* producing and consuming country; being blessed by the two components of *terroir*, namely the nature and its men. The cultural acquaintance of the nation with this fish variety is reflected in its literature and cuisine.⁴¹ However, in the following years, specifically after 1972, Bangladesh witnessed a decline in *Ilish* production. *Ilish* is an anadromous fish that lives in fresh water and estuarine zones during the juvenile stage, and inhabits saline waters as an adult. It moves upstream into rivers for spawning. Hence, the preservation and management of *Ilish* necessitates preservation and management of the entire ecosystem. The natural habitat of *Ilish* had largely been affected by man-made activities. Till the construction of the Farakka barrage in India in 1972, the upstream rivers of Bangladesh were the principal habitat of *Ilish*. After the construction of the barrage, fisheries declined in the upstream areas and now the downstream rivers, estuaries, coastal areas and the sea are the main habitat grounds.⁴² Movement of the fish is also affected by the siltation of riverbeds and construction of infrastructure. Other factors responsible for the *Ilish* decline in the years following are overfishing in the estuarine regions, fishing during spawning time, fishing of juvenile fish by seasonal fishermen, fishing without knowledge of the characteristics of this fish variety and use of fishing gear not conducive to fishing of *Ilish*. Different statistics have shown that during 1980s and 1990s the *Ilish* catch fluctuated. Taking the issue in concern, the Government recently took initiatives to increase *Ilish* production. For example, under the provisions of the Protection and Conservation of Fish Act of 1950, the Government declared certain rivers and coastal areas as *Ilish* sanctuaries. As per the provisions of the Marine Fisheries Ordinance of 1983, the Government bans fishing

in conserved sanctuaries during spawning seasons and movement of all types of fishing trawlers to allow the free movement of *Ilish*.⁴³ The DoF also bans fishing, transportation, marketing and selling of juvenile *Ilish* during the ban periods of the year. The use of certain fishing gear is also declared as illegal. Due implementation of these bans is generally executed through the involvement of law enforcement agencies. The Government also initiates awareness building programs with support and coordination from other stakeholders. In some instances, members of local Governments take part in these awareness building programs.⁴⁴

These banning activities, however, sometimes have adverse effects on fishing communities whose only source of income is fishing. A large number of traditional fishermen migrated to other professions and a new community replaced them. They started indiscriminate fishing during the spawning seasons, lacking proper knowledge. To remedy this position, the Government introduced alternative income generating activities during the ban period. However, the successful coordination of fishing bans and economic support to fishing communities during ban periods has resulted in a dramatic increase of *Ilish* production in the years 2000 - 2017, as reports and statistics show. In the last couple of years, *Ilish* has been sold at exorbitant prices. Nevertheless, consumers have shown their deep affection for *Ilish* by prioritizing *Ilish* over other common varieties of fish in the country.⁴⁵ The national fish gained its glory again and the market boom has brought hope of economic revival for millions of people associated with this fishing industry. Would GI registration of this fish variety accelerate international market access? The answer to this question is left for future days. At this stage, the coordination of various Government agencies is required for building up a GI friendly environment.

However, some recent Government initiatives in the name of development works have again put the *Ilish* industry in

⁴¹ Mandal (n 23)

⁴² Masud Ara Mome, 'The Potential of the Artisanal Hilsha Fishery in Bangladesh: An Economically Efficient Fisheries Policy', *Fisheries Training Programme* (The United Nations University, 2007)

⁴³ Marine Fisheries Ordinance of 1983 (Bangladesh) s 5(2)

⁴⁴ Md. Nahiduzzaman *et al.* 'Impacts of Fishing Bans for Conservation on Hilsa Fishers Livelihoods', in Nishat, B *et al* (eds), *Conserving Ilish, Securing Livelihoods: Bangladesh-India Perspectives* (New Delhi: Academic Foundation Press, 2018)

⁴⁵ Mandal (n 23)

jeopardy. These development works include construction of power stations, seaports, industrial areas and highways near *Ilish* sanctuaries. As per research conducted by the Bangladesh Fisheries Research Institute jointly with United Nations University and International Institute of Environment and Development, proposed development works will bring a huge detrimental effect to the overall climatic conditions of *Ilish* sanctuaries. These locations, being less polluted and replete with food particles for fishes, have become the most important sanctuaries for collection and reproduction of *Ilish*. In recent years, these sanctuaries have become the principal source of supply to meet local demands.⁴⁶ Vast amounts of land have been acquired by local and foreign companies to establish power stations near areas rich in fish and plant bio-diversity. The Environmental Impact Assessment Reports prepared in this backdrop have already reported that harmful waste and effluents from these power companies will endanger the overall biodiversity of the area. The power companies have also proposed the rehabilitation of local communities in these areas to accommodate the new labour force required by these companies.⁴⁷

Almost four decades ago, the construction of barrages, dams and embankments had the consequence of pollution and siltation, destroying the largest natural habitat in the river *Padma* - the principal source of *Ilish* from time immemorial. This experience has driven the Government to adopt measures and steps, as noted in preceding

paragraphs. The successful implementation and good governance in this particular sector for the last couple of years has contributed to a dramatic increase in the total catch of the country. However, recent development works, as reports establish, have put the new abode in danger again.

4. CONCLUDING REMARKS

Some of the problems discussed above have already grabbed the attention of DPDT; and last year, it has passed 13 directives to the two concerned bodies namely, BSCIC and the DoF for maximizing commercial exploitation of the two registered GIs. These directives involve, *inter alia*, the innovation of a logo, invention of appropriate quality control, devising marketing and promotional strategies, adoption of codes of conduct, enforcement of GI registration, etc.⁴⁸ BSCIC has already shown their urge for quick implementation of these directives.⁴⁹ It goes without saying that, in some practical instances GIs have proven beneficial in bringing trade related benefits, community development, and cultural revival of marginalized communities.⁵⁰ However, the contrasting picture is also correct when GIs hardly brought any significant benefits, mostly in developing economies.⁵¹ Countries with a long history of GI protection have experienced different degrees of success for same or similar products for diverse reasons.⁵² To put it simply, GIs cannot be taken for granted as a development actor. Some of the observations made in

⁴⁶ Iftekhar Mahmood, 'Ilisher Path Atke Bidyut Kendrer Dhol' *Daily Prothom Alo* (April 16, 2018) 1

⁴⁷ Environmental Impact Assessment (EIA) Study Report for Payra 1320 MW Thermal Power Plant Project, 2015, Environmental Quality and Management System; EIA of 2x660 MW Coal Based Thermal Power Plant to be Constructed at Kalapara, Patuakhali, 2017, CGIS

⁴⁸ DPDT Memo No. 89.00.0000.001.10.376/ 2017/2107

⁴⁹ Meeting Resolution of BSCIC on Actions in the Aftermath of Registration of Geographical Indication *Jamdani* (December 7, 2019)

⁵⁰ See Irene Calboli, 'Of Markets, Culture and Terroir: The Unique Economic and Culture Related Benefits of Geographical Indications

of Origin' in Daniel Gervais (ed), *International Intellectual Property: A Handbook of Contemporary Research* (Cheltenham: Edward Elgar, 2015) 433-64

⁵¹ Justin Hughes, 'The Limited Promise of Geographical Indications for Farmers in Developing Countries', in Irene Calboli and Wee Loon Ng Loy (eds), *Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia Pacific* (Cambridge University Press, 2017) 61-86

⁵² Giovanni Belletti, Andrea Marescotti and Jean-Marc Touzard, 'Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors' Strategies and Public Policies' (2017) 98 *World Development* 45-57

this paper show the inexperience of a state in building a good ecosystem for the management and commercialization of GIs. The practice of protecting goods reputed from a territory through statutory mechanism is a new experience for Bangladesh. Due expertise to address aspects of GI are yet to develop. Moreover, factors that are responsible minimizing commercial benefits of GIs are external to the GI scheme. A good ecosystem and governance may accelerate the opportunity for a given GI. Otherwise, GIs' potential benefits would remain a theoretical rhetoric and practical absurdity.

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