

The Geographical Indication Act 2013: Protection of Traditional Knowledge in Bangladesh with Special Reference to *Jamdani*

Mahua Zahur^{*}

1 INTRODUCTION

Geographical indications (GIs) refer to signs or symbols that are used to denote a product, the distinctive characteristics of which are linked to its place of origin. GIs are different from other intellectual property rights because of their unique characteristics, namely, the fact that they can be collectively owned by a group of producers. Additionally, GIs have a connection to the territory from which the products originate, both in terms of geographical origin as well as quality and characteristics of the products.¹ The inclusion of GIs in the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)² was controversial precisely due to the differences between “old world” and “new world” countries, with respect to some of the theories supporting GI protection.

After a long debate, GI protection was nevertheless introduced into TRIPS, and subsequently had to be protected in most countries worldwide.³ Nevertheless, although TRIPS requires for the protection of GIs, it does not provide for the specific mechanism that members of TRIPS should adopt to protect GIs under their national laws.⁴ Consequently, individual countries

^{*} Senior Lecturer, Department of Law, East West University.

¹ See generally Steve Stern, *Are GIs IP?*, 29 EUR. INTEL. PROP. REV. 39–42 (2007).

² Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS].

³ Elizabeth Barham, *Translating Terroir: The Global Challenge of French AOC Labeling*, 19 J. RURAL STUD. 127, 128–129 (2003); Irene Calboli, *Of Markets, Culture and Terroir: The Unique Economic and Culture Related Benefits of Geographical Indications of Origin*, in INTERNATIONAL INTELLECTUAL PROPERTY: A HANDBOOK OF CONTEMPORARY RESEARCH 433 (Daniel J. Gervais ed., 2015).

⁴ TRIPS, *supra* note 2, at art. 22.2.

have chosen their own modality for the protection of GIs within their domestic system. Some countries have preferred to protect GIs under their existing trademarks law, whereas others have enacted a *sui generis* mechanism for GI protection, largely based upon the system currently adopted by the European Union (EU). In response to TRIPS' obligations, many Asian nations have also enacted ad hoc legislations for the protection of GIs, keeping in mind the socioeconomic conditions of their countries.⁵

In this respect, Bangladesh has recently enacted the Geographical Indication (Registration and Protection) Act 2013 (GI Act of 2013) (Act No. 54 of 2013).⁶ Law makers and relevant business sectors hoped that through the enactment of the GI Act of 2013, Bangladesh would be able to protect traditional domestic goods that utilize the intellectual ingenuity and traditional knowledge of local producers, which previously fell outside the conventional type of intellectual property protection in Bangladesh.

This chapter aims to analyze GI protection from a Bangladeshi perspective. Furthermore, Section 2 will briefly revisit the provisions which relate to GI protection under TRIPS and how the notion of GIs is articulated within TRIPS' construction. Section 3 will project light upon the background of the newly enacted GI Act of 2013 and the practicalities of GI protection in Bangladesh. Briefly, the GI Act of 2013 is designed to conform to TRIPS while simultaneously seeking to accommodate the domestic needs of the country with respect to GI protection. Building on Section 3, Section 4 will review the salient features of the GI Act of 2013. This section will also mention some of the provisions of the Trademarks Act of Bangladesh of 2009 (TM Act of 2009) (Act No. 19 of 2009)⁷ that provide indirect protection to GIs. The TM Act of 2009 was the only law applicable to GIs in Bangladesh before the passing of the GI Act of 2013.

Bangladesh is the home of many traditional place-based products. The GI Act of 2013 thus represents the normative framework for a potentially beneficial new model for the protection of domestic place-based local products. Among many other traditional products, one geographical name that has garnered particular attention in Bangladesh is *Jamdani*. The name *Jamdani* refers to an intricate woven fabric that has historically been associated with

⁵ See generally N.S. Gopalakrishnan, Prabha S. Nair, & Aravind K. Babu, *Exploring the Relationship between Geographical Indications and Traditional Knowledge: An Analysis of the Legal Tools for the Protection of Geographical Indications in Asia* (Geneva: International Centre for Trade and Sustainable Development, Working Paper, 2007).

⁶ The Geographical Indication (Registration and Protection) Act 2013 (Bangladesh) [hereinafter GI Act 2013].

⁷ Trademarks Act 2009 (Bangladesh).

a particular region of Bangladesh. The process by which the fabric is created has also been recognized as an intangible cultural heritage of humanity by the United Nations Educational, Scientific, and Cultural Organization (UNESCO).⁸ In November 2016, *Jamdani* became the first GI to be registered in Bangladesh under the GI Act of 2013. Section 5 of this chapter will explore the history of this woven tradition and will argue that *Jamdani* deserved be protected as a GI in Bangladesh. It is recognized, however, that the long-term protection of *Jamdani* and other traditional goods of Bangladesh does not only depend on the registration of their names as GIs under the GI Act of 2013. Instead, building an effective framework for GI protection in practice also requires that GIs are managed wisely by their producers and the communities. Only in this way can Bangladesh reap the benefits of the adoption of GI protection.

2 TRIPS AND GEOGRAPHICAL INDICATIONS: A BRIEF REVISIT

In 1994, the protection of GIs became globally accepted due to its inclusion into the widely ratified TRIPS agreement.⁹ Nevertheless, this development did not come easily. During TRIPS' negotiations, the United States (US), Canada, Japan, and Australia opposed the inclusion of GI protection within TRIPS. However, the EU came forward to support GI protection as it had a strong interest to protect traditional foods and wine in the international market.¹⁰ Notably, various similar concepts, aimed at protecting "indications of origin" and "appellations of origin," had previously been incorporated in other international agreements, but with less success than TRIPS.¹¹

⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO), www.unesco.org/culture/ich/index.php?RL=00879 (last visited April 15, 2016). Inscribed in 2013 on the Representative list of the Intangible Cultural Heritage of Humanity.

⁹ Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPS: "Old" Debates or "New" Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 182, 189 (2006).

¹⁰ Stacy D. Goldberg, *Who Will Raise the White Flag? The Battle between the United States and the European Union over the Protection of Geographical Indications*, 22 U. PENN. J. INT'L L. 107, 109 (2001).

¹¹ Irene Calboli, *supra* note 9, at 189; see Paris Convention for the Protection of Industrial Property, March 20, 1883, *as revised* July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305 [hereinafter Paris Convention]; Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, April 14, 1891, 828 U.N.T.S. 163 [hereinafter Madrid Agreement]; Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, October 31, 1958, *as revised* July 14, 1967, 923 U.N.T.S. 205 [hereinafter Lisbon Agreement]. In May 2015, a Diplomatic Conference was convened in Geneva, Switzerland, to review the Lisbon Agreement. See WIPO, *Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement – The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications* (2015), www.wipo.int/meetings/diplomatic_conferences/2015/en/. The Geneva Act of the Lisbon Agreement on

One of the most relevant aspects of TRIPS is that it provides a detailed definition of GIs. This is a step forward from the vague and ambiguity-ridden definitions one may find in the predecessors of the TRIPS agreement.¹² TRIPS defines GIs in Article 22(1) in the following terms:

Appellations of Origin and Geographical Indications, May 20, 2015, WIPO Lex. No. TRT/LISBON/009, available at www.wipo.int/wipolex/en/details.jsp?id=15625 [hereinafter Geneva Act]. The term “indication of source” is used in the Paris Convention and in the Madrid Agreement, even though the term is not defined in neither agreement. *See also* David Vivas Eugui, *Negotiations on Geographical Indications in the TRIPS Council and Their Effect on the WTO Agricultural Negotiations: Implications for Developing Countries and the Case of Venezuela*, 4 J. WORLD INTELL. PROP. 703, 704, 705 (2001). Generally, the term “indication of source” does not require that the products have any unique quality, characteristic, or reputation attributable to its place of origin, but nevertheless includes within the definition also the geographical origin of the products. On the other side, Article 2.1 of the Lisbon Agreement defines “appellation of origin” as “the geographical denomination of a country, region, or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.” This definition clarified that products not only have to originate from a specific place but must have the quality and characteristics that are due exclusively or essentially to the geographical environment inclusive of natural and human factors. Mere “reputation” is not sufficient to get protection through “appellations of origin”; specific qualities and characteristics need to be proved in the particular product. They stand for direct geographical names of countries, regions, or localities and any symbols or emblems indirectly signifying geographical origin are not enough. However, Article 2 of the Geneva Act regarding the definition of “appellations of origin and geographical indications” defines “denominations of origin” as “any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation.” The same provision defines “geographical indications” as “any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.” Geneva Act, at art. 2(1).

¹² *See* Felix Addor & Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5 J. WORLD INTELL. PROP. 865, 868 (2002). The expression “geographical indication” used in TRIPS includes “appellations of origin” but in a wider scope. TRIPS allows “reputation” to be an independent criterion, sufficient to grant protection under the GI regime. TRIPS emphasizes the significance of a geographical area, as opposed to the name of the area, to be eligible for GI protection and requires the applicant to establish a link between the product and its particular characteristics, quality, or reputation attributable to the place of origin of the product. TRIPS does not necessitate that all these conditions should be coexisting. It is sufficient to prove only one of the above conditions. The expression “other characteristics of goods” connotes that the designated goods have some distinctive features from other related products in their characteristics. Natural factor is not the only test for the “indication” to be protected. Indications can qualify for GI protection if quality, reputation, or other

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.

Article 22(2) of TRIPS¹³ provides a general threshold against the use of GIs that would result in consumers being misled or which may amount to unfair competition. This general rule, however, finds an exception in the case of GIs for wines and spirits, for which a higher standard is required. Notably, TRIPS protects these GIs also when unauthorized uses of these GIs or similar terms do not mislead the public. Moreover, Article 23 of TRIPS¹⁴ prohibits the use of these GIs in association with expressions like “kind,” “type,” “style,” or other similar expressions.

This differentiated treatment was an issue of debate within the World Trade Organization (WTO) as many WTO members requested the same “higher” level of protection to products beyond wines and spirits. However, a group of countries led by the US opposed such an extension.¹⁵ These countries opined that the GIs other than wines and spirits were already sufficiently protected¹⁶ under Articles 22 and 24 of TRIPS.¹⁷ The reason for their objection against equal treatment of all GI products was, *inter alia*, that developing countries would not be able to bear the cost of implementing a higher level of GI protection for all products.¹⁸

Nevertheless, Article 24 of TRIPS¹⁹ provides for a built-in agenda for future GI negotiations precisely to discuss the possibility of extending a higher level of GI protection beyond wines and spirits. As of this date, there has been no international consensus as to the expansion of higher level of protection to all other products that are currently given to wines and spirits;²⁰ the creation of

characteristics of a product is the contribution of other factors, namely, human factors, quality of the materials, etc. Gopalakrishnan, Nair & Babu, *supra* note 5, at 15.

¹³ TRIPS, *supra* note 2, at art. 22.2. ¹⁴ TRIPS, *supra* note 2, at art. 23.

¹⁵ Ritika Banerjee & Mohar Majumdar, *In the Mood to Compromise? Extended Protection of Geographical Indications under TRIPS Article 23*, 6 J. INTELL. PROP. L. & PRAC. 657, 659 (2011).

¹⁶ Gail E. Evans & Michael Blakeney, *The Protection of Geographical Indications after Doha: Quo Vadis?*, J. INT'L ECON. L. 575, 578 (2006).

¹⁷ TRIPS, *supra* note 2, at arts. 22, 24.

¹⁸ Marsha A. Echols, *Geographical Indications for Foods, TRIPS, and the Doha Development Agenda*, 47 J. AFR. L. 199, 208 (2003).

¹⁹ TRIPS, *supra* note 2, at art. 24.

²⁰ *Members “Not Ready to Move Forward Yet” on Wines and Spirits Register Negotiations*, WORLD TRADE ORG. (April 14, 2014), www.wto.org/english/news_e/news14_e/trip_01apr14_e.htm.

a multilateral registry for GIs also seems unlikely to take place in the near future.²¹ However, most international negotiations on GIs are currently taking place outside the TRIPS/WTO framework, and a new generation of TRIPS-plus GI standards has been negotiated through regional and bilateral international free trade agreements (FTAs).²²

Despite these stated controversies, TRIPS is still praiseworthy for defining GIs beyond all ambiguities, its wide acceptance throughout the world,²³ providing provisions relating to interplay between trademarks and GIs,²⁴ and paving the way for future negotiations toward increasing protection of GIs bilaterally or multilaterally.²⁵ Still, while TRIPS mandates for specific minimum standards for GI protection, it does not provide for a single particular mechanism of protection. Accordingly, TRIPS members are at liberty to protect GIs within their national boundaries by adopting *sui generis* law or through trademarks law or under unfair competition law. In this respect, Bangladesh, a member of the WTO since 1995, has decided to adopt a *sui generis* system of protection for GIs. The outcome of this decision is the enactment of the Geographical Indication (Registration and Protection) Act 2013.²⁶

3 THE RATIONALE FOR PROTECTING GEOGRAPHICAL INDICATIONS IN BANGLADESH

Theoretically, the fundamental rationale for protecting GIs within an intellectual property regime is akin to that of trademark, that is, to protect signs that link products to certain places of origin or products that have certain characteristics. Protecting GIs will thus prevent consumers from being misled by third parties not authorized to use the GIs. In turn, this protection will grant legitimate producers the right to prevent the misappropriation of their valuable property.²⁷ GIs can also potentially play a relevant role in promoting development for local (generally small) communities as well as preserving local culture. These pro-development and pro-culture arguments have attracted the attention of GI scholars,²⁸ and have been brought to the forefront

²¹ Banerjee & Majumdar, *supra* note 15, at 659. ²² See chapters cited *supra* Section 2.

²³ There are 161 members to TRIPS as of April 2015. World Trade Org., List of Members and Observers www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited May 23, 2016).

²⁴ TRIPS, *supra* note 2, at arts. 22.3, 24.5; see also *infra* Section 4.3.

²⁵ See TRIPS, *supra* note 2, at art. 24. ²⁶ GI Act of 2013, *supra* note 6.

²⁷ Dev S. Gangjee, *Geographical Indications and Cultural Heritage*, 4 WIPO J. 92 (2012).

²⁸ See generally Calboli, *supra* note 3.

of the international debates – even though many remain doubtful.²⁹ Even though these arguments in support of GI protection may be beyond the practical reasons proffered for the protection of GIs at the domestic level, it is important to consider these arguments to better understand the reasons why GI protection can benefit national economies.

Yet, the arguments related to the value of GIs for community development and the preservation of cultural heritage did not appear to be as important during the discussion on GI protection as part of the adoption of TRIPS. Instead, GIs have been viewed, for a long time, as a European phenomenon within the TRIPS negotiations. The EU possesses most of the GI registrations, even outside wines and spirits,³⁰ and had argued strongly for the inclusion of GI protection within TRIPS.³¹ In particular, the EU took the stance that GI-denominated products should be protected for their unique characteristics, while the US, Australia, and other countries opposed GI protection saying that, *inter alia*, most products can be replicated anywhere in the globe today by virtue of technological advances. In essence, this apparently theoretical debate was prompted from the respective trade interests of the “old world” and the “new world.” GI protection was finally included into TRIPS as a trade compromise between these nations.³² These nations also agreed on a higher level of GI protection for wines and spirits because they shared considerable economic interests in this area as producers and exporters of wines and spirits.

In the Asian context, this trade-based reality is not as clear as in the West. Nevertheless, the recent years have witnessed the proliferation of *sui generis* legislative endeavor toward GI protection in Asia.³³ Asian countries mostly relied on culture-based justifications to support the protection of GIs at the domestic level.³⁴ For example, India currently possesses more than two hundred registered GIs for different ranges of products, including foodstuff, fabric, jewelry, and furniture,³⁵ the trade importance of which is yet to be established.

²⁹ Gangjee, *supra* note 27, at 92.

³⁰ Massimo Vittori, *The International Debate on Geographical Indications (GIs): The Point of View of the Global Coalition of GI Producers-origin*, 13 J. WORLD INTELL. PROP. 304, 306 (2010).

³¹ Tomer Broude, *Taking “Trade and Culture” Seriously: Geographical Indications and Cultural Protection in the WTO*, 26 U. PENN. J. INT’L ECON. L. 623, 627 (2005).

³² Barnum, *supra* note 3, at 128–29.

³³ In recent years, many Asian countries, such as India, Malaysia, Thailand, and Sri Lanka, have adopted *sui generis* legislative protection within their domestic legal systems.

³⁴ See generally Gopalakrishnan, Nair, & Babu, *supra* note 5.

³⁵ GI registrations listed in this article can be found in the Geographical Indications Registry, published by Intellectual Property India, available at <http://ipindia.nic.in/girindia/> (last visited May 19, 2016). Hyderabad Haleem, Registration No. 132; Sandur Lambani

It goes without saying that if the rationale for GIs was *solely* to preserve culture, such justification would simply be impractical. In this regard, the approach of Singapore is worth a mention. Initially, Singapore enacted GI laws which provided for automatic protection of GIs without any need for registration.³⁶ The law was designed in accordance with TRIPS.³⁷ However, in April 2014 the parliament of Singapore passed the new Geographical Indications Act which, when it comes into force, will replace the earlier Act.³⁸ This new enactment provides for the registration of GIs, in pursuance of EU-Singapore Free Trade Agreement.³⁹ This new enactment provides that a registry for GIs be set up.⁴⁰ Consequently, there would be an increase of costs required to set up and maintain this registry. If Singapore does not rely on strong domestic culture-based justification like most other Asian countries, then why is Singapore willing to shoulder this additional economic burden? Perhaps future trade implications under its trade agreements with the EU have persuaded Singapore to enact this new piece of law. In general, the practical rationale of protecting GIs at a domestic level may differ from place to place.

What prompted Bangladesh to enact the GI Act of 2013? Bangladesh can be viewed as the home of various agricultural and traditional products. Its GI legislation can thus be rationalized by cultural justification, which is the justification that most Asian developing nations cite as justification for GI protection. As per one research, 73 products have been identified, including foodstuffs, handicrafts, and weaving patterns from Bangladesh as having the traits linked to their place of origin.⁴¹ Alongside this reason is the pragmatic rationale that Bangladesh, as a member of TRIPS, is under an obligation to implement the bulk of TRIPS' minimum standard. This international obligation has caused Bangladesh to replace their old trademark and copyright laws with new enactments in accordance with TRIPS. As a "least developed country," Bangladesh was originally granted a concession of ten years, which

Embroidery, Registration No. 128; Temple Jewellery of Nagercoil, Registration No. 36; Kashmir Walnut Wood Carving, Registration No. 162.

³⁶ Interested parties may bring actions under section 3 of the act without registration. Geographical Indications Act 1999 (Singapore).

³⁷ *Id.*

³⁸ Dedar Singh Gill & Yvonne Tang, *Singapore – Geographical Indications Act 2014 to Enhance Protection for Businesses and Consumers*, COVENTUS LAW (June 24, 2014), www.conventuslaw.com/archive/singapore-geographical-indications-act-2014-to-enhance-protection-for-businesses-and-consumers/.

³⁹ EU-Singapore Free Trade Agreement, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>.

⁴⁰ Geographical Indications Bill 2014 (Singapore), Part IV §§ 17–20.

⁴¹ A.B.M. Hamidul Mishbah, *Time to Enact Geographical Indication Act*, THE DAILY STAR (December 6, 2012), <http://archive.thedailystar.net/newDesign/news-details.php?nid=260032>.

was extended twice, up to 2021.⁴² However, it fulfilled its obligation in 2013 with the enactment of the GI Act of 2013.⁴³

On a related issue, it is a matter of concern whether Bangladesh can shoulder the economic expense of setting up the registry provided under the newly enacted GI Act of 2013. Unless GIs are proven to be economically viable at a domestic level (which must be assessed in the reality of every individual country), the adoption of GI protection may prove to be futile. In Bangladesh, the extent to which GIs may contribute toward the development of small communities and protection of cultural heritage can only be assessed once the newly enacted GI Act of 2013 law will come to its successful implementation. It may therefore be too early to reach an opinion on this particular matter.

It is worth mentioning the background that led to the enactment of the GI Act of 2013. In 2012, some location-based products of Bangladesh, such as *Jamdani*,⁴⁴ *Fazli* mango,⁴⁵ and *NakshiKantha*⁴⁶ (a weaving pattern) were registered as GIs in India under Indian GI law. As these products are generally regarded as flag bearers of the Bangladeshi national identity, the fact that these names had been registered as Indian GIs on the Indian GI Registry led to the fear of misappropriation of Bangladeshi cultural distinctiveness by other countries. Particularly, this event raised resentment among the stakeholders of the location-based products in Bangladesh. The *Jamdani* weavers along with other concerned parties claimed that this represented a cultural misappropriation. This incident may thus have contributed to the enactment of the GI Act of 2013 in Bangladesh.⁴⁷ In other words, policy makers may have found that this enactment was the only available option to “console” the resentment among local producers as opposition to the registration of GIs in other countries has to be based on the fact that these GIs are protected in their country of origin under the principles of TRIPS.

Generally, GI proponents have always supported that GI protection constitutes a system of protection that can promote the development of small communities in developing countries. If Bangladesh confines the use of the

⁴² *Responding to Least Developed Countries' Special Needs in Intellectual Property*, WORLD TRADE ORG. (October 16, 2013), www.wto.org/english/tratop_e/trips_e/ldc_e.htm.

⁴³ GI Act 2013, *supra* note 6. ⁴⁴ UppadaJamdani Sarees, Registration No. 106 (India).

⁴⁵ Fazli Mango grown in the district of Malda, Registration No. 96 (India).

⁴⁶ NakshiKantha, Registration No. 49 (India).

⁴⁷ India's stance in registering these products is not judged here as legal or otherwise; rather this chapter focuses on the reaction which came after the registration of the above-named products which may have, to some extent, contributed to the prompt adoption of the GI Act of 2013. *Dhaka to Contest India's GI Claim over Jamdani Sarees, Fazli Mangoes*, BUSINESS LINE (November 30, 2012) www.thehindubusinessline.com/news/dhaka-to-contest-indias-gi-claim-over-jamdani-sarees-fazli-mangoes/article4150532.ece.

GIs only for the prevention of misappropriation of their cultural goods, the spirit of the GI Act of 2013 may be undermined. Accordingly, we should not concentrate all our attention to these three products. Instead, it is important to assess the overall benefits that GIs may bring about for Bangladesh in general.

As a matter of clarification, I do not seek to use this platform to hold India or Bangladesh as having done any wrong to each other. As a proponent of GI protection myself, my contention is that GIs must be appreciated for their features as a general matter, in the hope that GI protection will have a positive impact on national development. Thus, as Bangladesh now has laws protecting GIs, I look forward to seeing the benefits that GIs may bring in future to local and national development in Bangladesh.

4 SALIENT FEATURES OF THE GEOGRAPHICAL INDICATION ACT 2013 AND ITS COMPATIBILITY WITH TRIPS

The GI Act 2013⁴⁸ has recently been adopted in Bangladesh. Over the course of the last few years, especially in 2012–2013, GI protection for local products has become one of the most discussed issues in Bangladesh. As mentioned in the previous section, the debate started when Bangladesh started to fear that its traditional goods might not be able to get protection abroad considering the cross-border journey of these well-reputed products, especially *Jamdani*. The protection of other goods was also pertinent for similar reasons.⁴⁹

4.1 *The Definition of Geographical Indications*

In accordance with the definition of GIs given in TRIPS, the GI Act of 2013 states that GIs can be used to denote the origin of goods where the quality, reputation, or other characteristics of such goods is essentially attributable to the place of origin of the said goods.⁵⁰ As per the definition, agricultural and natural goods can be protected as GIs, where the soil and climate play the key roles for the distinctive characteristics of the goods. The definition under the GI Act of 2013 goes beyond the TRIPS and specifically states that GIs can be used to designate manufactured goods as well.⁵¹ It is thus implied that GIs can be used to designate a product, even where the characteristics of the product are the *sole* outcome of human factors, as long as it has developed reputation from

⁴⁸ GI Act 2013, *supra* note 6.

⁴⁹ Mishbah, *supra* note 41; Mahua Zahur, *GIs Protection: Where Do We Stand Legally?*, THE DAILY STAR (August 5, 2013), www.thedailystar.net/news/gis-protection-where-do-we-stand-legally.

⁵⁰ GI Act of 2013, *supra* note 6, ch. I § 2(g). ⁵¹ *Id.*

a particular place. For the protection of GIs that relate to manufactured goods, any of the activities relating to the production, processing, or preparation of the designated goods must take place in a particular territory and the reputation and the characteristics of those products should be attributable to that territory.⁵²

4.2 Protection of Geographical Indications under the Geographical Indication of Goods (Registration and Protection) Act 2013 in Bangladesh

TRIPS requires that members provide legal means to prevent the use of GIs in a way that can mislead the public as to the geographical origin of the goods,⁵³ but it does not suggest the means of protection. As was mentioned earlier, the members of TRIPS may comply with this obligation by adopting various measures, such as through the adoption of a *sui generis* system,⁵⁴ through the adoption of provisions under trademark laws that have the effect of protecting GIs,⁵⁵ or through unfair competition law.⁵⁶

⁵² Section 2(g) of the GI Act of 2013 reads:

[G]eographical indication of goods means any agricultural, natural and manufactured goods having geographical indication that indicates that such goods is originated or manufactured in a country or territory or a locality or region of such country or territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case such goods is manufactured goods one of the activities of either the production, processing or preparation of such goods takes place in such territory, region or locality.

Section 2(8) of the GI Act of 2013 reads: “Goods mean any agricultural or natural goods or goods of handicraft and industry and includes food stuff.”

⁵³ Article 22.2 of TRIPS reads,

In respect of geographical indications, Members shall provide the legal means for interested parties to prevent: (a) the use of any means in the designation and presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. TRIPS, *supra* note 2, art. 22.2.

⁵⁴ The term *sui generis* is not defined in the TRIPS agreement. It literally means “of its own kind” and consists of a set of laws and ways recognized nationally for the protection of intellectual property rights. The definition and implementation of *sui generis* systems may vary from country to country. STEPHEN A HANSEN & JUSTIN W. VANFLEET, *TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY: A HANDBOOK ON ISSUES AND OPTIONS FOR TRADITIONAL KNOWLEDGE HOLDERS IN PROTECTING THEIR INTELLECTUAL PROPERTY AND MAINTAINING BIOLOGICAL DIVERSITY* (2003). Many Asian countries have adopted *sui generis* systems for the protection of geographical indications within their municipal system. For example, see the relevant laws of India, Malaysia, Singapore, Thailand, and Sri Lanka.

⁵⁵ Some countries protect geographical indications under trademark law as collective marks or certification marks. For example, see the trademark laws of China, Australia, Canada, and the United States of America.

⁵⁶ See Unfair Competition Prevention Act of Japan 1993.

The GI Act of 2013 provides for registration as a means of protection of GIs under Chapter IV of the Act, but unregistered GIs are also protected under the GI Act if the indication is true as to its place of origin.⁵⁷ The registration of geographical indications may be sought by the producers of the goods or any association, institution, government body, or authority of any group which represents the interest of persons producing geographical indication of goods.⁵⁸ Any individual or group of individuals that are related to the production, collection, preparation, or processing of the goods registered under the Act may also be registered as authorized users of the goods so indicated.⁵⁹ The term of registration is for five years,⁶⁰ subject to renewal.⁶¹ Compared to the GI laws of other Asian countries, this initial term of protection appears to be shorter.⁶² To my mind, this provision may discourage the registration of many goods as the registration process is complex and requires intense scrutiny. However, if this provision was intended by legislators to ensure consistent quality of a given product before renewal, then it should nevertheless be appreciated.

Once validly registered, an authorized user of the registered geographical indication is entitled to use it in connection with his goods. He is also entitled to the remedies provided under the Act for the infringement of geographical indication.⁶³ However, the rights acquired through registration cannot be alienated in a way of transmission, assignment, licensing, etc.⁶⁴

The GI Act of 2013 does not provide for any “misleading test” as a condition for registration or protection of GIs within the Act. The GI Act provides for equal levels of protection to all products for which GIs can be used. In other words, it does not provide for any enhanced level of protection to any particular products like wines, spirits, etc. However, the provision for the protection of homonymous⁶⁵ GIs has been incorporated within the Act following TRIPS,⁶⁶ but with a wider scope. The GI Act makes provision for the

⁵⁷ GI Act of 2013, *supra* note 6, ch. I § 6(1). ⁵⁸ *Id.*, ch. I § 9. ⁵⁹ *Id.*, ch. I § 10.

⁶⁰ *Id.*, ch. I § 16(2). ⁶¹ *Id.*, ch. I § 16(3)–(4).

⁶² See Section 18(1) of the Geographical Indication of Goods (Registration and Protection) Act of 1999 (India); see also Section 19(2) of the Geographical Indications Act of 2000 (Malaysia).

⁶³ GI Act of 2013, *supra* note 6, ch. I § 18. ⁶⁴ *Id.*, ch. I § 19(1).

⁶⁵ Section 2(16) of the GI Act of 2013 defines homonymous geographical indications as the geographical indications of those goods which have the similar names.

⁶⁶ TRIPS, *supra* note 2, at art. 23.3. This provision provides for the protection of homonymous geographical indications for wines only. In this regard Members shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. An identical provision is spelled out in section 7 of the GI Act of 2013, but unlike TRIPS, such protection has been extended past wines and spirits and applies to all products.

registration of homonymous GIs for all products.⁶⁷ So it follows that, unlike TRIPS, the protection of homonymous GIs is not limited to wine or any other particular product. However, the registration of certain GIs is prohibited under the GI Act. Consumer deception or confusion and public morality, *inter alia*, are set as criteria for which the registration of GIs is prohibited.⁶⁸ The GI Act also prohibits the registration of GIs that are generic, or that are not protected or ceased to be protected or have fallen into disuse in the country of origin.⁶⁹ This provision is enshrined within the GI Act in consonance with Articles 24.6 and 24.9 of TRIPS. Article 24.9 provides that

[t]here shall be no obligation under this agreement to protect geographical indications which are not or ceased to be protected in their country of origin, or which have fallen into disuse in that country.

This provision implies that a member state of TRIPS cannot protect its GIs in the territory of other WTO members, unless the GIs are protected in their country of origin.⁷⁰ Accordingly, this provision may lead many countries to adopt their own GI protection regime, within their municipal law, for the purpose of reciprocal protection of GIs in international level. By the virtue of this provision, Bangladesh is now in a position to claim protection of its protected GIs in foreign territories and vice versa.

Apart from the reasons mentioned above, for which registration is prohibited within the GI Act of 2013, protection may also be denied if a third party can prove that the proposed registration should not be proceeded with for any justifiable cause spelled out in the GI Act of 2013.⁷¹ This part of the Act is designed to provide for procedural safeguards so that the rights of all concerned are not impaired. At this stage, the Registrar is empowered with the discretion to either allow or deny the registration. The GI Act of 2013 is silent as to whether any party aggrieved from the Registrar's decision can move to the court of law following the dissonance. Thus, it may reasonably be inferred that the conclusion that the Registrar arrives at is final. This feature of the Act may thus curtail the possibility of judicial scrutiny, and should therefore be a point of reconsideration for the legislature.

As a means of protecting the interests of legitimate right holders, the GI Act of 2013 enables the same to institute infringement actions against any illegal use of GIs. The Act defines certain acts as infringement of GIs for which imprisonment and monetary fine is provided as punitive punishment.⁷² Any

⁶⁷ GI Act of 2013, *supra* note 6, ch. I § 7. ⁶⁸ *Id.*, ch. III § 8, (b), (d). ⁶⁹ *Id.*, ch. I § 8(g).

⁷⁰ TRIPS, *supra* note 2, at art. 24.9. ⁷¹ GI Act of 2013, *supra* note 6, ch. I §§ 13, 14.

⁷² See details accompanying GI Act of 2013, *supra* note 6.

use of GI that causes confusion among the consumers regarding its true origin⁷³ or any act of unfair competition or passing off⁷⁴ would constitute infringement under the Act. The use of GI in translation of the true place of origin or GI accompanied by expression such as “kind,” “type,” “imitation,” or like expression would also constitute infringement.⁷⁵ All of these provisions encompassed in the GI Act of 2013 are in line with the provisions of article 22.2 (a), 22.2(b), and article 23.1 of TRIPS. Within TRIPS, unfair competition is an act that constitutes unfair competition as per article 10bis of the Paris Convention.⁷⁶ The present Act provides the definition of unfair competition with a list of activities that constitute unfair competition, in line with the relevant provisions of the Paris Convention.⁷⁷ The scope of section 28(d) of the GI Act of 2013⁷⁸ is wider than article 23.1 of TRIPS.⁷⁹ Unlike TRIPS, the section does not provide for any discrepancy among the type of products in evaluating the infringement of GIs, even if they are accompanied with expressions like “kind,” “type,” “style,” etc. In other words, the enhanced protection that is granted to wines and spirits only within TRIPS is extended to all products under the Act.

4.3 Relationship of Geographical Indications with Trademarks

Following the adoption of TRIPS, GIs are recognized as an intellectual property right and are on the same footing with other branches of intellectual property, namely, patent, trademark, copyright, etc. This includes that GI protection is subjected to the application of the general provisions of TRIPS,

⁷³ *Id.*, ch. I § 28(1)(a). ⁷⁴ *Id.*, ch. I § 28(1)(b). ⁷⁵ *Id.*, ch. I § 28(1)(d).

⁷⁶ Article 21.2 of TRIPS reads, “members shall provide the legal means for interested parties to prevent: . . . (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).”

⁷⁷ Section 28 (2) of the GI Act of 2013 defines the term “unfair competition” as any act of competition contrary to honest practices in relation to industrial and commercial matters. The following acts will be considered as unfair competition, namely:

- (a) any act of such a nature as to create confusion among the public by any means whatever with the establishment, the goods, the industrial or the commercial activities of the competitor;
- (b) false allegation in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;
- (c) geographical indications, the use of which in the course of trade is liable to mislead public as to the quantity, the nature, the manufacturing process, the characteristics, the suitability of their purpose, of the goods;

The Paris Convention under article 10bis (3) provides an identical list of activities that constitute unfair competition in connection to GIs.

⁷⁸ GI Act of 2013, *supra* note 6, ch. I § 28(1)(d). ⁷⁹ TRIPS, *supra* note 2, art. 23.1.

and thus to the principles of “national treatment”⁸⁰ and “most favored nation treatment.”⁸¹ In general, GIs can be protected with *sui generis* rights or through trademark protection as indicated in TRIPS, or rather due to the silence in TRIPS, as the means to protect GIs. Yet, despite the similar nature of trademarks⁸² and GIs, the relationship between these two types of protection is contentious.⁸³

In Bangladesh, the GI Act of 2013 redefines their relationship between the two types of intellectual property rights, but, of course, in a very narrow way. It provides that the registration of certain trademarks may be canceled or denied if they are in conflict with the GIs, and if the said trademark is comprised of a GI and the goods or services so indicated are not produced in the place they indicate,⁸⁴ or, the trademark is used in such a manner that

⁸⁰ National treatment is one of the fundamental principles in the international conventions protecting intellectual property. The principle is enshrined in most of the important treaties dealing with intellectual property, namely the Paris Convention, the Rome Convention, the Berne Convention, the Universal Copyright Convention, TRIPS, etc. It means that a treaty member must accord nationals of other member states the same treatment it accords to its own nationals. Ulrich Loewenheim, *The Principle of National Treatment in the International Conventions Protecting Intellectual Property*, in PATENTS AND TECHNOLOGICAL PROGRESS IN A GLOBALIZED WORLD (Straus ed., 2009). Within TRIPS the provision of national treatment is incorporated under Article 3. Article 3(1) provides that “Each member shall accord to the nationals of other members treatment no less favourable than that it accord to its own nationals with regard to the protection of intellectual property . . .” *TRIPS Part I – General Provisions and Basic Principles*, WORLD TRADE ORG., www.wto.org/english/tra_top_e/trips_e/t_agm2_e.htm (last visited May 19, 2016).

⁸¹ Under WTO Agreements, countries cannot normally discriminate between their trading partners. A member state has to treat all other WTO members equally. This principle is generally known as the “most favoured nation treatment.” This principle has been incorporated in many WTO agreements including GATT, TRIPS, etc. but it is noted that the principle is handled slightly differently in the various instruments. This principle is incorporated in TRIPS Agreement under Article 4. Article 4 provides that “With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a member to the nationals of any other country shall be accorded immediately and unconditionally to the national of all other members . . .” *Principles of the Trading System*, WORLD TRADE ORG., www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited May 19, 2016).

⁸² Article 15(1) of TRIPS defines trademarks as “any sign and any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.” This definition of trademark necessitates that the distinguishing feature of a sign makes it capable to serve as a trademark, whereas the definition of GIs as stipulated in TRIPS emphasizes the identifying feature of the GI for being so capable. For the consumers, both these distinctive signs serve as source identifiers. Trademark identifies the source in a sense that it indicates the trade source from which the goods come. GI indicates the place of origin of the goods. See Dev S. Gangjee, *Quibbling Siblings: Conflicts between Trademarks and Geographical indications*, 82 CHICAGO-KENT L. REV. 1253, 1254.

⁸³ See Gangjee, *supra* note 82. ⁸⁴ GI Act of 2013, *supra* note 6, ch. I § 21(1)(a).

can create confusion among the consumers as to the place of origin of the goods or services.⁸⁵ The equivalent of this section in TRIPS is Article 22.3,⁸⁶ which requires that members refuse and invalidate the registration of the trademarks consisting of GI relating to goods, if the trademark is used in a way that misleads the public. The members will be required to do so either at the request of the interested party, or in any manner which is provided for in the legislation of the member.⁸⁷ Before the enactment of the GI Act, a similar sort of protection was granted to GIs against trademarks under the Trademark Act of 2009, where it is said that a trademark shall not be registered if the word proposed as a trademark is a geographical name.⁸⁸

However, TRIPS does not bind members to protect GIs against identical or similar trademarks in a way that is unilaterally advantageous to the GIs and to the detriment of trademarks. As a result, under the GI Act of 2013, trademarks have been given protection against GIs under certain circumstances. In particular, the GI Act provides that the registration or validation or the right to use a trademark consisting of GIs will not be prejudiced if the said trademark is registered or used with bona fide belief before the GI Act came into being or before an application for registration of a GI in question is submitted. These provisions for the protection of trademarks embody the so-called principle of “first in time, first in right” in light of Article 24 of TRIPS. Article 24.5 of TRIPS⁸⁹ states that 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. Article 24.8 of TRIPS⁹⁰ also protects the right of a person to use his name or the name of his predecessor in the course of trade. Accordingly, the GI Act of 2013 follows the TRIPS’ provision and provides that GI protection does not prejudice the right of a person to use his personal name or the name of his predecessor in connection with his business, unless such use is misleading.⁹¹

⁸⁵ *Id.*, ch. I § 21(1)(b). ⁸⁶ TRIPS, *supra* note 2, at art. 22.3.

⁸⁷ Article 22.3 of TRIPS reads

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.

⁸⁸ Section 6 of the Trademark Act 2009 provides that “A trademark shall not be registered in the Register, unless it contains or consists of (d) one or more words . . . not being . . . a geographical name..”

⁸⁹ TRIPS, *supra* note 2, art. 24.5. ⁹⁰ *Id.* at art. 24.8.

⁹¹ GI Act of 2013, *supra* note 6, ch. I § 22.

5 PROTECTING JAMDANI AS TRADITIONAL KNOWLEDGE

At the international level, the possibility to protect traditional knowledge (TK) through GI protection has been recognized⁹² by some scholars who have pointed out that TK and GIs both share a common characteristic, namely, the connection to a given territory. This connection is often articulated in the notion of “*terroir*,” a concept that was originally born in France and refers to a terrain, place, or soil of a particular region that contributes to the unique characteristics of the products originating from the region. In particular, these unique characteristics linked to the *terroir* are the biophysical features of a particular place as well as the contribution of the people who are traditionally associated with the place and who have preserved and nurtured knowledge relating to the place, and in turn the place–quality relationship with respect to the products manufactured in the place.⁹³

Nevertheless, despite the positions supporting that GI protection could serve to also protect TK, some doubts have been expressed as to whether GIs are a suitable mechanism to ensure this protection.⁹⁴ In particular, it has been said that TK is a generic notion, which covers traditional cultural expression, folklore, etc. It stands for the knowledge, skill, know-how, and practices that have been developed, sustained, and passed on from generation to generation within a community. To a large extent, TK is a reflection of a given community’s cultural identity and can be found in a variety of contexts, such as agricultural, scientific, technical, etc.⁹⁵ Instead, the protection legally granted to GIs only extends to protect the name or the symbol that identifies the components of TK and is based on characteristics, knowledge, and skill intertwined in the *terroir* of the GI-denominated region.⁹⁶

Still, by extending the definition of GIs to include the quality, characteristics, or reputation of the products in the alternate as the distinct qualifier for GI protection, TRIPS has nonetheless paved the ground for using GI protection to protect TK.⁹⁷ The reputation or characteristics embodied in any GI-

⁹² See generally Marion Pannizon, *Traditional Knowledge and Geographical Indications: Foundation, Interests and Negotiating Positions, Trade Regulation* (National Centre of Competence in Research (NCCR), Working Paper No.2005/1, 2006); Teshager W. Dagne, *The Identity of Geographical Indications and Their Relationship to Traditional Knowledge in Intellectual Property Law*, 5 WIPO J. 137, 143 (2014).

⁹³ Elizabeth Barham, *supra* note 3, at 131.

⁹⁴ See generally Susy Frankel, *The Mismatch of Geographical Indications and Innovative Traditional Knowledge*, 29 PROMETHEUS 253 (2011).

⁹⁵ *Traditional Knowledge*, WORLD TRADE ORG., www.wipo.int/tk/en/tk/ (last visited May 19, 2016).

⁹⁶ Frankel, *supra* note 94, at 6. ⁹⁷ Dagne, *supra* note 92, at 147.

denominated product is in fact the result of the association of the TK associated with the GI-denominated region and the natural factors of the region. In this context, it is to be evaluated whether *Jamdani*, a form of fabric that reflects the skill and knowledge of a given community associated with a particular territory, can be protected under GI regime within TRIPS.

As noted earlier, *Jamdani* is perhaps the most sought-after fabric from Bangladesh. Its uniqueness has similarly caught the attention of fashion lovers from all over the world.⁹⁸ The exact etymological origin of the word *Jamdani* is not known, and there are divergent opinions as to its original meaning. According to one authority, the word *Jamdani* is the combination of two words, “*jam*,” which in the Persian language refers to a superior-quality alcoholic beverage, and “*dani*,” which refers to an artistic serving dish. The proponent of this view holds that the fine quality of *Jamdani* could only be compared to something that was also adored for its supreme quality.⁹⁹ Others opine that the word originated from a Persian word *jam-dar* that means flowered or embossed.¹⁰⁰ *Muslin*,¹⁰¹ the finest fabric of the history, is believed to be the ancestor of *Jamdani*. *Jamdani* was considered best among all the forms of *Muslin*. The patterns and motifs of *Jamdani* are floral and geometrical and are believed to have strong Persian influences.¹⁰² Commonly, *Jamdani* patterns are geometric representations of trees, flowers, animals, etc.

The historical value of *Jamdani* is established from the fact that it has been chronicled in various historical documents as a fabric favored by emperors and kings.¹⁰³ The mention of *Jamdani* as an industry is found in *Kautilya's Arthashastra* (book of economics), where it is mentioned that this finest fabric was made in, what was then, Bengal and *Pundra* (now Bangladesh).¹⁰⁴ Although exact statistics are not known, *Jamdani* fabrics are now woven in Bangladesh in almost 150 villages from the adjacent areas of Dhaka like Rupgonj, Sonargaon, Sidhirgonj, etc.¹⁰⁵ Historically, *Jamdani* had been associated with this particular area due to the availability of superior-quality

⁹⁸ Desi Amin, *Fashion Designer Gaurang Sets Trend for “Made In Jamdani” Women’s Wear*, DESIMAG, www.desimag.co.uk/fashion-designer-gaurang-sets-trend-made-jamdani-womens-wear/ (last visited May 19, 2016).

⁹⁹ Chandra Shekhar Saha, *Bangladesher Boyon Gourab*, CANVAS 18 (August 2007).

¹⁰⁰ Sayyada R. Ghuznavi, *Jamdani: The Legend and the Legacy*, in *TEXTILE TRADITION OF BANGLADESH* 44 (Haque ed., 2006).

¹⁰¹ *Muslin* is a translucent fabric which was known for its fine quality. It is chronicled in the history as the finest fabric from Bengal. See Ghuznavi, *supra* note 100, at 37.

¹⁰² *Id.* at 44. ¹⁰³ See Ghuznavi, *supra* note 100.

¹⁰⁴ Shumon Sengupta, *Poetry in Thread: The Jamdani of Dhaka*, THE DAILY STAR (April 9, 2011) www.thedailystar.net/news-detail-180989.

¹⁰⁵ Saha, *supra* note 99, at 19.

cotton, which is the raw material of *Jamdani*. Today, the *Jamdani* industry is still confined to these particular villages. Although there have been several instances of *Jamdani*-like imitations in other areas of the country, such imitations have failed to achieve *Jamdani*'s level of prominence.¹⁰⁶

In addition, to use certain specific designs, *Jamdani* fabrics are woven following a particular traditional process. The weaving instructions are given by the master weaver to the apprentices verbally through poetic recitation known as *buli* or *sloka*. In this way, the knowledge of weaving patterns and processes are passed from masters to apprentices, that is, from generation to generation verbally.¹⁰⁷ Generally, members of the same family are involved in various activities of the weaving process. Currently, almost all weavers are either uneducated or have received little education. Nevertheless, all weavers have a very keen, perhaps intuitive, mathematical sense and mathematical skills as they have to understand the instruction of the weaving patterns, however complicated they are, from the *bulis* memorized by the masters.¹⁰⁸

Historical analysis shows that *muslin*, the predecessor of *Jamdani* as traditional fabric, was patronized by the contemporary rulers, including the royal Mughals, for its sophistication. However, the industry of hand-woven fabrics (including both *muslin* and *Jamdani*) fell into decline following the separation of India and the Liberation War of Bangladesh in 1971. This decline persisted until the 1980s. At that time, the industry of hand-woven fabrics experienced a revival, thanks to a number of craft development organizations, non-governmental organizations (NGOs), and individuals who came forward to rescue the industry through economic patronization.¹⁰⁹ This intervention expanded the use of the fabrics with respect to other clothes. For example, conventionally, the use of *Jamdani* was limited only to *sarees*. Instead, today the *Jamdani* fabric is widely used as a dress material and for making various products, including home décor. *Jamdani* products are also exported to various countries of the world, thereby contributing greatly to the Bangladesh economy.

Because of this "success," however, designers have recently begun changing the traditional designs of the *Jamdani* in the name of modernization. Moreover, it is also feared that the originality and simplicity of *Jamdani* may be destroyed in the guise of value addition through the curse of globalization.¹¹⁰

Based on the above, *Jamdani* was certainly a name that qualified to be protected as a GI in Bangladesh. Even though GIs are used predominantly for the protection of agricultural goods, the use of GIs is not limited to agricultural

¹⁰⁶ Ghuznavi, *supra* note 100, at 44. ¹⁰⁷ *Id.* at 48. ¹⁰⁸ Saha, *supra* note 99, at 20.

¹⁰⁹ Ghuznavi, *supra* note 100, at 49. ¹¹⁰ *Id.* at 56.

products. Instead, GIs can be protected also when they identify products whose special qualities are the outcome of human factors like manufacturing skills and traditions, and not necessarily geological and other natural factors.¹¹¹ In other words, even though the unique characteristics of *Jamdani* are unlikely to be rooted in the climatic factors and other factors directly dependent from the soil and the land as other products, particularly agricultural products, usually are, *Jamdani* products also carry inimitable characteristics. These characteristics can be essentially attributable to the know-how and the human-factor-based traditions that are rooted in the geographical area where the *Jamdani* fabrics are woven.

Recently, research has been conducted to reconstruct the history of *Jamdani*. After examining historical documents, the researcher has revealed that the overall environment of the area around the river *Shitalakhya* has significantly contributed to the quality of cotton that is used as a raw material of *Jamdani* fabric. In his paper, the researcher has opined that this is perhaps the reason why *Jamdani* has developed in this particular area.¹¹² Thus, there is no denying of the fact that *Jamdani* has developed its reputation from its place of origin. Accordingly, even though *Jamdani* does not fit into that group of GIs for which natural factors – i.e. the land, the air, and the climate – have an impact on the distinctive qualities of the products, it clearly fits in with the TRIPS’ definition based on “other characteristics” and “reputation.” In particular, *Jamdani* fabrics derive their characteristics and reputation only from a particular place or territory in Bangladesh.

Another question might be whether GI protection should be extended only to names that are also the names of a place or territory. Famous examples in this respect include Darjeeling tea, Thai silk, Parmesan cheese, etc. The current law on GI protection, however, does not require that the GI names correspond to a geographical name, so long as the GI-denominated products originate from a clearly defined region. Examples in this respect include Vinho Verde, Cava, and Argan oil.¹¹³ By making reputation an independent criterion for GI protection, TRIPS implies that it is not the

¹¹¹ World Intellectual Property Organization (WIPO), *Geographical Indications: An Introduction*, 10, WIPO Doc. 952(E).

¹¹² Iftakhar Iqbal, A Research Report on Protection of “Jamdani” as a Geographical Indication in Bangladesh, 2–6 (March 28, 2014), available at <https://scarydriver.files.wordpress.com/2015/03/gi-study-report-final-revised-28-march-2014.pdf>. This paper was a collaborative initiative of the Centre for Policy Dialogue (CPD) and the National Crafts council of Bangladesh (NCCB). It presented the dialogue on Protecting Geographical Indication Products in the Context of Bangladesh and Way forward.

¹¹³ WIPO, *supra* note 111, at 9.

name of the geographical area but the significance of the geographical area as it attaches to the name of the products that has to be considered.¹¹⁴ Here again, the GI Act of 2013 supports this interpretation,¹¹⁵ which paved the way to protecting *Jamdani* as a GI in Bangladesh.

Ultimately, in November 2016, *Jamdani* was registered as the first GI of Bangladesh under the GI Act of 2013.¹¹⁶ Bangladesh Small and Cottage Industries Corporation (BSCIC) applied for the registration of *Jamdani* in class 25(cloth) for *saree*, which is the traditional wear of Bangladeshi women. BSCIC submitted several documents to get the registration. These documents reveal historical and geographical facts and evidence to establish the nexus between the fabric and the place where it is produced.¹¹⁷ The authority concerned, Department of Patents, Designs and Trade Marks (DPDT), after conducting a meticulous examination of the submitted documents, finally registered *Jamdani* on November 18, 2016, and the certificate of the registration was handed to the chairman of BSCIC.¹¹⁸

6 CONCLUSION

It goes without saying that the adoption of the GI Act of 2013 in Bangladesh has paved the way for the protection of traditional products nationally and possibly abroad, if Bangladeshi GIs could be registered in other countries. However, the enactment of the GI Act of 2013 is merely the first step in a longer process of recognition, commercialization, and management of Bangladeshi GIs and GI-denominated products. Moreover, alone, the GI Act may not be adequate to successfully protect the cultural heritage of Bangladesh. In any event, in order to preserve the cultural heritage of Bangladesh, the first task to be undertaken is to identify products that can be protected as GIs. These products, and the GIs that identify them, should then be brought under the registration mechanism now put into place by the GI Act of 2013 as has been the case with the registration of *Jamdani* in November 2016.

To make this possible, however, a vigorous campaign may be needed to alert stakeholders and make them sensitive to the importance of GI registration. Still, we may have to wait several years to adequately determine the

¹¹⁴ Gopalakrishnan, Nair & Babu, *supra* note 5, at 14.

¹¹⁵ GI Act of 2013, *supra* note 6, ch. II §§4–5.

¹¹⁶ The Daily Star, *Jamdani Finally Gets Recognition*, at 1 (November 19 2016).

¹¹⁷ Department of Patents, Designs and Trade Marks, *The Geographical Indication (GI) Journal*, Journal No 1, (March 2016).

¹¹⁸ The Daily Star, *supra* note 116, at 1.

success of the GI Act of 2013 in relation to an effective protection of GIs in Bangladesh. Certainly, the enactment of the GI Act is aligning the legal system in Bangladesh with countries that have a tradition of protecting GIs, and this in turn creates the legal conditions for creating an effective system for the protection of cultural heritage and tradition of Bangladesh. An effective protection for Bagladeshi products can only come, however, from long-term wise management of national products and their names, and not only from GI registration.