

## **BASMATI : PATENT IS NOT THE CENTRAL ISSUE**

**Suman Sahai**

The blatant infringement of India's rights and property by the American patent on Basmati has raised a furore in the media and justifiably so. There is much talk of challenging the patent, data are being collected on Indian varieties, rice research stations have been approached to list the characteristics of Basmati rice and committees have been set up to prepare India's challenge on the technical points of the patent. This is not the way to attack the Basmati infringement because the central issue is not the patent, it is Geographical Indication.

Geographical Indication is a form of Intellectual Property Right (IPR) included along with other IPR forms like patents and copyrights, in the Trade Related Intellectual Property Rights (TRIPs) chapter of GATT/ WTO. This clause found in Articles 22, 23, 24 of Section 3 deals with the protection of goods that are geographically indicated. The Geographical Indicated protection has been specially conceived for well known speciality products which are associated with a particular region.

So it is that the word 'Champagne' is claimed exclusively by the Champagne region of France which is the geographical region from which the wine derives its world famous name. No other wine, even if it is made from the same grape variety, by the same method, and is identical in taste, aroma and other qualities, can be called 'Champagne'. The reason is that the glamour and mystique that makes Champagne an exorbitantly priced, up-market product is associated with the name and not necessarily with the quality of the wine. French Champagne producers are aggressive about protecting this name and derive every single ounce of trade advantage by claiming the Champagne market exclusively for themselves.

Another well known instance of a Geographically protected product is that of 'Scotch' whisky. No other whisky in the world even if it were to be indistinguishable in taste and flavour from Scotch whisky can use the name. This name belongs exclusively to the whisky producers of the Scottish highlands who derive the trade advantage of selling their whisky for five times the price of ordinary whisky. Geographically Indicated rights are protected fiercely by countries like France and UK because this protection translates into monopolies in the market and high earnings.

Similar to the exclusivity of Champagne and Scotch is that of Basmati rice. This very special long grain, aromatic rice is specifically associated with India and Pakistan. This is their geographically protected name which no one else can use. The focus of India's basmati challenge will have to centre around America's violation of India and Pakistan's geographically Indicated rights by using the name Basmati. That is the central issue of the Basmati patent, not whether the patent awarded by the American Patent Office is valid or not, which of course it is not. Rice Tech's plea that Basmati is a generic name, not a special name like Champagne, is a silly, contrived argument. Basmati is about as generic as Champagne and Scotch and should be as zealously protected.

The Americans would not dare to call their whisky Scotch or even American Scotch. They would as little dare to label Californian wines as American Champagne or Champagne. If they did this, they would be hauled by France and UK to the WTO Dispute Settlement Court and made to retract or pay penalties and face sanctions. Why then, it becomes necessary to ask,

do the Americans dare to purloin the Basmati name and even go a step further and monopolise it by a patent.

The answer lies in the sheer incompetence exhibited at the official level here. On the whole question of IPRs on biological resources, the patentability of life forms, the importance of biotechnology to the Indian economy and other crucial issues, India has still not been able to get its act together. There is no understanding of the issues among those supposed to make policy decisions and no policy has been formulated, much less implemented. A gaggle of assorted bureaucrats with little interest and even less knowledge, goes junketing from Geneva to Jakarta, bungling up negotiations and compromising the national interest in our most crucial sectors.

A crassly ignorant bureaucracy is also behind the defeatist viewpoint currently doing the rounds in the Ministries of the Government of India. The inexplicable view is being held out that we can not do anything on Geographical Indication because we do not yet have a domestic law. Nothing could be further from the truth. A very strong defence is possible given the nature of current trading practices which recognise India's rights over Basmati. Admittedly it would be preferable to have a law in place but its absence need not make us hesitate about asserting our claim.

In contrast to the Government's diffidence, India's Geographically Indicated Rights are accepted and implemented by other nations including Saudi Arabia and the UK. The Grain and Feed Trade Association in the United Kingdom, one of the largest importers of Basmati rice in the world, has stringent standards for using the term 'Basmati'. Its traders can use this name only for the long grain, aromatic rice grown in India and Pakistan. Similarly, Saudi Arabia, the largest Basmati importer in the world and one of the largest consumers of Basmati, has labelling regulations that permits Basmati from only India and Pakistan to be labelled as such. American and Thai aromatic, long grain rices are denied the use of this name. In view of this clear recognition of our rights over the Basmati name, the coyness of the Indian government to use the Geographical Indication clause is difficult to understand.

India should take the US to the Dispute Settlement court of the WTO for violating its geographically indicated rights over Basmati. In addition to this, India should formulate a long term strategy to protect its bioresources. It should mobilise the biodiversity owning countries of the world to demand that the two international treaties dealing with the use of biological resources be linked to one another. The Biodiversity Convention cannot have a particular framework for the use of bioresources and the WTO quite another, almost opposing one.

The US has refused to ratify the Biodiversity Convention which acknowledges the rights of rural and tribal communities and their ownership over bioresources but it is sparing no effort to push for compliance on the biotechnology industry driven agenda in WTO. India should take the lead in building consensus among biodiversity rich countries on a uniform policy for bioresource use. These nations should then jointly put pressure on the US to fall in line.