

## **THE WAY TO PROTECT BASMATI**

**Dr. Suman Sahai**

An American company Rice Tech has received a patent on Basmati rice. This blatant infringement of India's rights and property has raised a furore in the media and justifiably so. How should India respond? In planning its counter strategy, it would not be advisable for India to merely rely on challenging the patent as is being advocated. This is the easiest and least profitable line of action, as also the most expensive.

It would not be difficult to challenge the 'novelty' of the characteristics of the Basmati that is patented. Any plant breeder could quite easily demonstrate that the special qualities supposed to be present in the patented Basmati are found in the normal diversity of Basmati populations. If one had to analyse the Basmati strains of India and Pakistan, all the characteristics described for size and quality of the rice grain or for the height and behaviour of the plant, would be found. The case can be effectively made that at best the patented variety has brought a combination of favourable characters together but that is the everyday stuff of plant breeding and does not qualify for a patent.

But, just how many patents do we intend to challenge? It is clear that Indian biological resources and products are under attack from patents because these materials and products enjoy growing international markets. A special product like Basmati rice not only has a huge market in the UK, Europe, USA and West Asia, it also commands premium prices there. There are other sought after products like Darjeeling tea, Alphonso mango and Shahi litchi. Apart from these agricultural products, there are herbal drugs and nutraceuticals which are attracting increasing attention..and patents. We should be fully prepared that the number of such patents will increase in the coming years. Can we really afford to challenge every single patent?

It is a sobering thought that despite the large amount of money spent and all the public acclaim of having successfully challenged the American patent on turmeric (haldi ), the patent has still not been revoked in America. The patent holders have gone into appeal and the case could drag on in appeals and counter- appeals. Can we afford the cost of prolonged litigation in American courts, and for how many challenges? Ten, Fifty, Five hundred? Challenging the patent does not appear to be a promising strategy.

The strongest, almost inviolate defence that we have in the Basmati case is that based on the Geographical Indication clause of TRIPs. 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, 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. 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 in pressing its claim, 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, have 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 defend its case is difficult to understand.

The time has come to take some hard decisions with respect to the WTO and the defence of Indian interests in this forum which was touted as a multi-lateral one. This supposed multilaterism implied that member nations would abide by the same regulations. In the single most contentious issue in GATT and WTO, that of Intellectual Property Rights (IPRs) there has been an effort to harmonise an IPR regime for the world. Patent regimes for drugs and agro-chemicals, a sui generis system for plant varieties and Geographical Indication are all parts of the same TRIPs section. It is under TRIPs that the Americans have taken India to court for violating the conditions for drug patents while they think nothing of themselves violating with impunity, the conditions for Geographically Indicated protection.

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. The only response to this high-handedness is to demand compliance across the board. Either all countries comply with the conditions of the two treaties or no country does. There can not be two different standards for America and India.