

TRIPS AGREEMENT UNDER WTO AND ITS EFFECT ON INDIGENOUS KNOWLEDGE : BANGLADESH PERSPECTIVE

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1. Introduction

Agreement on Trade-Related Aspects of Intellectual Property Rights (herein after called as TRIPs) was adopted under the World Trade Organization (WTO) in 1994 with a view to holding all member countries to a common set of international minimum standards of intellectual property protection. It has been called the most ambitious international intellectual property convention ever attempted. The preamble of this agreement desires to reduce distortions and impediments to international trade, to promote effective and adequate protection of intellectual property rights and to ensure the measures and procedures for enforcement of intellectual property rights. For adopting the agreement, the developed nations argued for a stronger Intellectual Property Rights by creating an incentive for innovation would stimulate development of new technologies in industrial nations. On the other hand, the developing countries criticized the agreement as the rules of the agreement are against the culture and heritage of the developing countries. But another international instrument i.e., Convention on the Biological Diversity affirms the importance of the contribution of the people's of developing countries to the world bio-diversity and recognizes that the rights of local communities as well as states, are necessary to protect biological resources and to encourage conservation. Ignoring the interests of the developing countries, TRIPs made some provisions that adversely affect the collective rights of the people and indigenous knowledge of several communities in Bangladesh. In this article, an attempt has been made to identify the socio-economic and culturally bound indigenous knowledge of the several classes of the people and how much it has been effected by this agreement.

2. TRIPs Agreement and Bangladesh

Bangladesh belongs to the third world developing countries. Bangladesh has been affected by this agreement like other developing member countries of WTO as it has its own culture, multi-ethnic people and socio-culturally bound traditional knowledge of various groups of the people. The village people of Bangladesh have specific knowledge regarding bio-diversity, agriculture, healthcare etc. It is the right of the people of Bangladesh that they are entitled to enjoy their own inventions using their own knowledge in the respective field. Sometimes these inventions can play a vital role for poverty alleviation and rural development. According to the Bangladesh Constitution, the citizens of Bangladesh enjoy these rights as collective rights.¹ No body can impose any barrier for non-compliance of this traditional culture. But TRIPs agreement has assailed in this respect. The agreement declares that intellectual property rights are private rights.² On one hand, the agreement

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recognises sustainable development objectives, including eradicating poverty, environment and the realization of economic, social and cultural rights.³

Ignoring the rights of the great number of people it gave the developing countries jugglery with figures. Though individuals and national and multinational companies of the developed countries are greatly benefited from the agreement but an ample scope has been made for the developing countries to depend on the sweet will and mercy of the developed countries.

3. Issues of the Indigenous Knowledge in Bangladesh

Indigenous knowledge means the folk knowledge. It is a holistic system of knowledge comprising of values, concepts, beliefs and perceptions, which is naturally located amongst people living in a local, often rural environment. Indigenous knowledge is tropically oriented, augmented and transmitted in relation to the local people's diverse and complex livelihood and survival strategies.⁴ The village people of Bangladesh have specific culture and life-style in various fields, viz. knowledge regarding water, agriculture, plant, bio-diversity etc. These localised and socio-culturally bound traditional knowledge play an important role for the development of our society. Sometimes this knowledge represents examples of cost effective and sustainable survival strategies for poverty alleviation and rural development. So if any initiative is taken without ignoring such culture, sustainable development is not possible. These knowledge should be documented and developed both of nationally and internationally for conserving bio-diversity. But indigenous knowledge of the Bangladeshi communities has been adversely affected by the TRIPs agreement. Some of this knowledge and how they have been affected by the TRIPs agreement are discussed below:

3.1. Knowledge Regarding Agriculture and Food Security

Farmers are used to producing crops, collecting and preserving seeds by using their own knowledge from time immemorial. In most of the cases, farmers cannot afford pesticides and chemical fertilizers. They rely on the diversity within species and they are able to produce more diverse crops, which requires low external input.⁵ For example, our farmers are used to putting bamboo twig for grasshopper in relative crops field instead of using insecticide as insectivorous grasshopper is used to devour insects. As a result, crops are protected from insects.

This environment supporting culture is important evidence in our bio-diversity. For ensuring food security, biological diversity is the crying need. But patented seeds destroy our heritage. Now farmers are deprived to use and sell their seeds using their own knowledge and tradition because patented seeds have taken possession in the same place of our traditional seeds.

Ignoring the collective rights of the people, the TRIPs agreement neglects the biological resources and agricultural practices of Bangladesh. The TRIPs agreement protects the interests of the developed nations, whereas countries like Bangladesh will face a severe threat against food security.

3.2. Conservation of Plant Diversity and Indigenous Knowledge

Scientifically it is proved that plant is a part of our life. It is hard to give the description of the qualities of a plant. Plant is visilant of conserving bio-diversity. Our ethnic communities are aware about

biological aspects of plants e.g. growth, flowering time, seed formation, propagation method and they know about various uses of the plant diversity. The majority of ethnic communities in Bangladesh are living in the areas where major portion of the country's plant diversity exists, i.e., Northern and South-Eastern parts of the country. The ethno-botanic indigenous knowledge is very effective for planning and implementing conservation of plant diversity.⁶

It is known from survey on bio-diversity status of medicinal plants which was conducted among the ethnic communities (*Santals* and *Mahalies*) inhabiting in four villages under Rajshahi District. The study reveals that more than 117 plant species are known to the tribal communities for the ethno botanical utilities of the taxa and among the taxa 49 are herbs, 24 are shrubs, 15 are climbers and 29 are trees.⁷

The ethno-botany in Chittagong Hill Tracts also plays a vital role to conserve bio-diversity, which is an interdisciplinary science for documentation of indigenous knowledge and interactions between people and plants. CHT region comprises three districts name- Khagrachari, Rangamati and Bandarban and there are at least 10 ethnic communities viz. *Chakma*, *Marma*, *Tripura*, *Chak*, *Lushai*, *Bom*, *Bonzogi*, *Pankho*, *Khyang*, *Murang* who bear different culture and life style. These ethnic communities are centered around the hills and their resources. They are dependent on the wide variety of plant and animals of the hill forests for their dwelling, food, clothing, healthcare, festivals and other activities. The interactions between the mountain people and natural system have helped in maintaining the richness of species, communities and genetic materials in both productive systems and wild lands of mountain environment.⁸ The ethnic communities of the hill districts have special knowledge and perceptions on biodiversity resources management. Their perceptions regarding fruits procurement, selecting fuel wood, house posts and furniture, healthcare, food preservation, *jhumming*, domestication of crops made them exception from the people of plain land. In this region women have much knowledge about food plants, aromatic plants and plants of hair wash and skin care.

3.3. Indigenous Knowledge on Health

We have a great number of traditional healers like *Kabiraj* and *Ayurveda* who are used to using plant medicine from the time immemorial as a means of treatment of the various diseases. Plant medicine is available and cheap, where the modern drugs and modern treatment is expensive. For that reason traditional medicine in health care has been stressed by the World Health Organization (WHO) as ensuring medical care to the common people in the developing countries.

In Bangladesh a large number of medicinal plants are commonly used for the treatment of the major tropical diseases. For example-*Datura* leaf (*Datura Metel*) is used for asthma, Bark of arjuna tree (*Terminalia arjuna*) is for blood pressure and dysentery, Papaya fruit (*Carica Papaya*) for constipation, indigestion, liver diseases etc. So, the herbal medicine, which is manufactured by using medicinal plant, is not individual's property. One cannot claim its individual patent in his own.

At present arsenic contamination in tubewell water is a severe problem in our country. A high concentration of arsenic has been found in the ground water of the Southwest region of Bangladesh.

Consequently, it has been identified as one of the most alarming health hazards for Bangladesh.⁹ A reliable source says that very recently 2 (two) persons died of arsenicosis and about 400 (four hundred) tubewells out of 450 are arsenic affected and about 50 (fifty) villagers have been suffering from arsenicosis at Chaitan village under Gangni Upazilla of Meherpur district.¹⁰ But this problem of high arsenic content in tube-well's water of Bangladesh was not even seen 31 years back when UNICEF undertook sponsoring the sinking of large number tubewells in the rural areas for the provision of safe water. From that time people of Bangladesh had become habituated to drink tube-well water, abandoning the age-old dug well and pond water for drinking and cooking purposes. Because, those sources of water were the primary cause of diarrhea and cholera. From the time immemorial people were used to drinking pond, river or dug-well water by filtering with charcoal or stone-chip. Even they stored rain water in traditional way. Importing tube-well, instead of developing such traditional knowledge made our condition danger. At present filtering system of the surface water of river or pond with charcoal sand and rainwater harvesting system etc. are publicized widely for getting rid of arsenicosis. But the original patentee these systems is our people. Because these are the extended shape of their knowledge.

4. Indigenous Knowledge: TRIPs versus CBD

The convention on Biological Diversity (herein after called as CBD) recognises the contribution of local communities to the enhancement, diffusion and conservation on bio-diversity. On one hand CBD acknowledges the collective rights of the local communities in developing countries, who are the sources of bio-diversity of traditional knowledge and whose role in conservation is now universally acknowledged as fundamental. On the other hand, TRIPs is intended to provide private property rights over production and processes, be they bio-diversity based or not, in order to ensure that corporate interests are safeguarded equally world wide. The uniform legal regime, which TRIPs aim to achieve, would provide monopoly control to those who claim to have invented new plants, animals, micro organisms or uses thereof.¹¹ CBD requires signatories to protect and promote the rights of communities, farmers, indigenous people vis-a-vis their biological resources and knowledge system.¹² But TRIPs requires the application of either patents or an effective '*sui generis*' (i.e., unique) system to protect plant varieties at the national level. But *sui generis* option for plant varieties under TRIPs means that:¹³

- The majority of developing countries will need to provide some form of intellectual monopoly right on food and medicinal bio-diversity for the first time.
- Seed prices will rise in poor countries and the seeds will be tailored by TNCs to suit their related commodity market interests in agrochemical processing and trade.
- Farmers' access to diversity, their choice of planting material and options for management systems will be significantly impaired.
- Farmers' rights to save and exchange seed will be legally restricted, if not prohibited, because of 'protection' granted only to the interest of monopoly holders.

- Varieties further selected by farmers from those with IPRs will be considered genetic derivations falling under the extensive legal ownership of the original IPR holder.
- Corporations will be able to secure legal ownership of plant varieties which contain genetic information obtained from farmers' own fields in the South, which they then sell back to them with an added royalty charge.
- The bio-diversity and associated community knowledge systems which form the basis of the adaptability of agriculture to population and other pressures will be lost.
- Food security and agricultural innovation will severely decline.

5. Conclusion

It is not an exaggeration that the TRIPs agreement is the brainchild of industrialised countries. The first initiative was taken by the intellectual property committee of WTO, which brings together 13 major US corporations including Bristol Myers Squibb, Du Pont, Monsanto and General Motors. The interests of the developed countries are preserved absolutely. But the TRIPs agreement ignored the collective rights of the developing countries by recognising the intellectual property rights as private rights. So a scope has been created to bring down the collective rights of the indigenous and local communities of Bangladesh like other developing countries. Besides this TRIPs agreement threatens to make the Convention on Biological Diversity impossible to implement. Though both the instruments are international commitments and both have legal and authoritative character, one (CBD) upholds the collective rights of indigenous and local communities and the other (TRIPs) denies those rights. As a result, like other developing countries, the traditional knowledge of farmers and other communities built over the years is endangered in Bangladesh. On the contrary, the developed nations are in a good position. For example, according to the World Intellectual Property Organization (WIPO), citizens and corporations of industrialised countries hold 95% of the patents in Africa, almost 85% of those in Latin America and 70% of those in Asia.¹⁴ In this circumstances, new body of law recognizing the collective rights of indigenous and local communities as *a priori* rights over private intellectual property rights should be adopted without making any delay. Simultaneously Bangladesh and other developing countries should sit together for finding out the ways and means. This requires capacity building program involving all relevant stakeholders in defining and protecting its own resources.

References

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