

## PROTECTION OF GEOGRAPHICAL INDICATION UNDER INTELLECTUAL PROPERTY RIGHTS \*

### **Introduction:**

This earth is full of various adventures. Every place has something special and in this context, India has great heritage where the uniqueness of products of certain geographical region has been recognized from ancient times – Banaras Sari, Banaras Pan, Darjeeling Tea, Basmati Rice, Nagpur Orange, Kolhapur Chapels, Mysore Silk etc. These all products have been identified as typical to a geographical region.<sup>1</sup> ‘Protection of GI’s refers to protection of products originating from a certain geographical area. Thus, protection is provided against the use of GIs for products not originating from the geographical area to which the indication refers. Such protection has far reaching implications for both producers and consumers alike. So, the idea is to provide protection for GIs, a kind of intellectual property right, which entitles the enterprises that are located in the designated area to exclude others from using the indication. In other words, it seeks trade and commercial advantage on legitimate grounds.<sup>2</sup>

### **Definition of Geographical Indications:**

Geographical indication indicates that particular goods originate from a country, region or locality and has some special characteristics, qualities or reputation which is attributable to its place of origin. These special characteristics, qualities or reputation may be due to various factors, e.g. natural factors such as raw materials, soil, regional climate, temperature, moisture etc; or the method of manufacture or preparation of the product such as traditional production methods; or other human factors such as concentration of similar businesses in the same

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<sup>1</sup> Pradeep Kumar Pandey, “Protection of Geographical Indication (GIs) in India: An Analysis”, unpublished work

<sup>2</sup> Pradeep Kumar Pandey, “Protection of Geographical Indication (GIs) in India: An Analysis”, unpublished work

region, specialization in the production or preparation of certain products and the maintaining of certain quality standards. A geographical indication (GI) is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003. GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: "Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin." The salient features of the Act are defines Geographical Indication, provides a mechanism for registration of GIs, establishes a GI Registry, elaborates the concept of authorised user and registered proprietor, higher level of protection for notified goods and remedies for infringements.

Section 2(e) of the Act defines a GI as : ***“geographical indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”***

Therefore to qualify for protection an indication must:

1. Identify the good and its area of geographical origin.
2. Possess a given quality, reputation or other characteristics which
3. Is essentially attributable to its area of geographic origin.

Manufactured goods over a period of time while agricultural goods easily discernable.

#### **Registration Process:**

An application for registration must be made before the Registrar of Geographical Indications by any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods.<sup>3</sup>

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<sup>3</sup> 3 Available at

The application must be made in an appropriate form containing the nature, quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, manufacturing process, natural and human factors, map of territory of production, appearance of geographical indication (figurative or words), list of producers, along with prescribed fees.

- ❖ The examiner will make a preliminary scrutiny for deficiencies, in case of deficiencies, the applicant have to remedy it within a period of one month from the date of communication. The Registrar may accept, partially accept or refuse the application. In case of refusal, the Registrar will give written grounds for non acceptance. The applicant must within two months file reply. In case of re-refusal, the applicant can make an appeal within one month of such decision.
- ❖ Registrar shall, within three months of acceptance may advertise the application in the GI Journal.
- ❖ If there is no opposition, the Registrar will grant a certificate of registration to the applicant and authorised users .

### **Historical Background of Law on Geographical Indication in India:**

The concept of geographical indication has its origin in 19th century Europe and has considerably evolved since then. The current international framework is laid down in Article 22 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement which mandates member countries to provide for the protection of all GIs, where the obligation is for members to provide the ‘legal means for interested parties’ to secure protection of their GIs. The TRIPS defines GIs as ‘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 essential attributable to its geographical origin’ (Article 22). Under Article 22, the scope of protection is composed of three aspects:<sup>4</sup>

1. Protection against the use of indications that mislead the public or are deceptive.
2. Protection against the use of indications in a manner that are acts of unfair competition;

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[https://en.wikipedia.org/wiki/Geographical\\_Indications\\_of\\_Goods\\_\(Registration\\_and\\_Protection\)\\_Act,\\_1999](https://en.wikipedia.org/wiki/Geographical_Indications_of_Goods_(Registration_and_Protection)_Act,_1999), at 8.52 p.m.

<sup>4</sup> , Protection of Geographical Indications: Issues and Challenges, Available at [http://www.teriin.org/div/briefing\\_paper\\_GI.pdf](http://www.teriin.org/div/briefing_paper_GI.pdf), a 9.04 p.m.

3. Refusal or invalidation of trademarks that contain or consist of indications, where it may mislead the public.

Article 22.2.a prohibits the use of indications (words, phrases, images or symbols) that will mislead/ deceive the public about the good's geographical origin. Article 22.2.b prohibits any use of GI that constitutes an act of unfair competition as defined in Article 10bis of the Paris Convention. The language of Article 10bis indicates that in order to prohibit such acts as acts of unfair competition, it has to be established that their use is misleading or will create confusion to the public, and that damages result or there is likelihood of damages resulting from such use of GI. As per Article 22.3 of TRIPS, registration of GI as trademarks shall be refused or invalidated at the request of an interested party, if their use is likely to mislead the public as to the true place of origin. Most countries including developing countries disallow the registration of geographical names as trademarks, unless these have attained secondary meaning. Prior to 1999, there was no specific law in India on geographical indications which could adequately protect the interests of producers. Despite India being a party to the TRIPs Agreement, she did not enact a law on geographical indications until 1999. The judiciary, however, has been active in preventing persons to take unlawful advantage of geographical indications.

In *Mohan Meakin v. Scotch Whisky*<sup>5</sup>, the Delhi High Court affirmed the order of the Registrar of Trademarks by which he refused to register the applicant's mark proposed to be used on whisky produced in India consisted of the words "Highland Chief" and the device of the head and shoulders of a gentleman dressed in Scottish highland costume wearing, inter alia, feather bonnet and plaid and edged with tartan, a well-known symbol of Scottish origin.

In another case, *Scotch Whisky Association v. Pravara Sahakar Karkhana*<sup>6</sup> the Scotch Whisky Association succeeded in restraining the defendants from selling their whisky under the description "Blended with Scotch" along with the device of Scottish drummer wearing a kilt or tartan and the word "Drum Beater".

#### **The Legal framework in India:**

As a party to the TRIPS Agreement, India is required to protect GI and hence in order to fulfill that obligation, the Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted. It may also be noted that India felt that some of its products have high potential to

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<sup>5</sup> V. K. Ahuja, *Law Relating To Intellectual Property Rights*, 2nd ed. (New Delhi: LexisNexis, 2013), at 437

<sup>6</sup> V. K. Ahuja, *Law Relating To Intellectual Property Rights*, 2nd ed. (New Delhi: LexisNexis, 2013), at 437

benefit from GI registration and it was necessary to put in place a comprehensive legislation for registration and for providing adequate protection for GI.

For unless a geographical indication is protected in the country of its origin, there is no requirement under the TRIPS Agreement for other countries to extend reciprocal protection. The main benefits which accrue from registration under the Act are as follows:

1. Confers legal protection to GI in India;
2. Prevents unauthorized use of a registered geographical indication by others;
3. Enables seeking legal protection in other WTO member countries.

From the perspective of a developing country, one of the best features of the Indian Act is the comprehensive definition given of GI, whereby agricultural, natural and manufactured goods all come under the ambit of GI. This is especially important in the Indian context considering the wide variety of goods that is deserving of protection ranging from agricultural products like Basmati, Darjeeling tea to manufactured goods such as Banrasi sari, Kolhapure chappals, Chanderi silk etc. Section 11 of the Act provides that any association of persons, producers, organization or authority established by or under the law can apply for registration of a GI. Another important aspect of the Act is the possibility of protecting a GI indefinitely by renewing the registration when it expires after a period of ten years. In the domestic context, the Indian Act has tried to extend the additional protection reserved for wines and spirits mandated by TRIPS to include goods of national interest on a case to case basis. Section 22.2 of the Act endows the Central Government with the authority to give additional protection to certain goods or classes of goods. This is especially important in the developing country context considering that we may not have wines and spirits to protect like the West but other exotic niche products like teas, rice etc. Section 25 of the Act, by prohibiting the registration of a GI as a trademark, tries to prevent appropriation of a public property in the nature of a geographical indication by an individual as a trademark, leading to confusion in the market. Also, according to section 24 of the Act, a GI cannot be assigned or transmitted. The Act recognizes that a GI is a public property belonging to the producers of the goods concerned; as such it cannot be the subject matter of assignment, transmission, licensing, pledge, mortgage or any contract for transferring the ownership or possession.<sup>7</sup>

### **Impacts of GI registration in India: Some cases**

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<sup>7</sup> 7 Protection of Geographical Indications: Issues and Challenges, available at [http://www.teriin.org/div/briefing\\_paper\\_GI.pdf](http://www.teriin.org/div/briefing_paper_GI.pdf), a 9.04 p.m.

A number of observers point out that of all the different types of intellectual property rights, GI may be more amenable to the particular context of developing countries. GIs may especially facilitate protection of the collective rights of the rural and indigenous communities in their indigenous knowledge, ensuring that the entire community which has preserved the knowledge and has passed it on with incremental refinement over generations, stand to benefit from the knowledge and that this is not locked up as the private property of one individual (Sahai and Barpujari, 2007). Other advantages of GIs are that the knowledge remains in the public domain, the scope of protection is limited to controlling the class and/ or location of people who may use the protected indication and the rights can potentially be held in perpetuity as long as the product-place link is maintained (Commission on Intellectual Property Rights, 2004). Also, holders of a GI do not have the right to assign the indication, thus, preventing its transfer to non-locale producers.

Evidence on the socio-economic impacts of GIs in the Indian context are, however, limited although anecdotal evidence suggests that GIs have significant implications for producers in developed and developing countries (Jena and Grote, 2007) . Interestingly, the collective nature of GIs also brings to the fore significant collective action related problems across various stages of organization and governance (Das, 2009). For example, a group of producers may take the initiative in the GI registration process, while others not willing to join initially may join later thereby attempting to free-ride on the efforts of the fore runners. In India, there are many GIs that are registered in the names of some central or state government departments or bodies, yet there is no homogeneity among those initiatives and involvements across states. A number of studies have also found that GIs could lead to exclusion of many from enjoying the benefits (Gopalakrishnan et.al (2007), Rangnekar (2009)). Firms with better bargaining positions may also end up making disproportionate share of the economic value generated from securing protection (Rangnekar, 2004). It is against this backdrop that our study has tried to assess the situation on the ground with respect to a number of registered GIs, through in depth, field level case studies as well as primary survey based on a standard questionnaire prepared for the purpose. Some of these case studies include Muga silk of Assam, Banaras brocades and saris, Malabar pepper and Vazhakulam Pineapple, all of which are registered GIs.

### **Muga Silk of Assam**

Muga silk is a registered GI from the state of Assam. Historical evidence suggests that Assam's silk industry had reached the pinnacle of perfection by the 7th century A.D.

Banabhatta, the author of Harshacharita informs us that king Bhaskara Varma of Kamarupa (ancient Assam) presented to Harshavardhana silken towels as “silken and pure as the autumn moon’s night...”(cited in Sahai and Barpujari, op.cit.). In the present day, muga silk constitutes the state’s most popular export product after Assam tea. The Patent Information Centre of the Assam Science Technology and Environment Council (ASTECC) secured registration for muga in 2006, which is incidentally the first registered GI from the north-eastern region. While ASTECC is the registered proprietor of the muga GI, till date, there are no registered users. One to one interviews with weavers and silk traders in the town of Sualkuchi revealed very low awareness about the GI protection of muga. While the price of muga has been rising over the last few years, that has little to do with GI registration. The reason for the high prices of the muga yarn, according to the various stakeholders interviewed, are diminishing area under muga cultivation owing to rubber cultivation, diseases at the cocoon stage, loss incurred due to the outdoor nature of muga rearing, and so on. Nevertheless, higher prices have not been able to encourage the farmers to hold on to muga cultivation. As a result, muga has become almost three times more expensive, compared with other similar varieties of silk. Apparel with 100 per cent muga yarn is rarely produced these days, except to cater to the state emporiums, or for special orders. Muga is with often blended with imported tussar silk from China or other indigenous silk yarn such as pat. Meanwhile, as observed in the field, power-loom is getting increasingly popular for muga weaving, dealing a further blow to handloom weavers. In an interview, an applicant for registered use of muga observed that fabric woven on the power-loom has certain advantages and could be the only way out for entrepreneurs like him as many weavers are leaving the profession owing to un remunerative wages. Regarding the setting up of a quality control and inspection mechanism, as required by the law, ASTECC has proposed employing the services of the Seri Bio Lab of the Institute of Advanced Study in Science and Technology, Guwahati, for quality control. An inspection body is yet to be constituted. Hence, at this stage, even after six years of registration, GI in muga cannot give any guarantee of quality or authenticity.

### **Banaras brocades and saris**

‘Banaras brocades and saris’ secured registration under the GI Act in September 2009, with the application filed by nine organisations viz. Banaras Bunkar Samiti, Human Welfare Association (HWA), joint director industries (eastern zone), director of handlooms and textiles Uttar Pradesh Handloom Fabrics Marketing Cooperative Federation, Eastern UP Exporters

Association (EUPEA), Banarasi Vastra Udyog Sangh, Banaras Hath Kargha Vikas Samiti and Adarsh Silk Bunkar Sahkari Samiti. The weaver community predominantly constitutes poor Muslims and Dalits and the structure of production is based on a hierarchy of kothdars (wholesale dealers), master weavers and other weavers. With the objective of understanding the actual impact of registration on the ground level, TERI researchers conducted a multi-stakeholder consultation at Varanasi interacting with registered users, Banarasi Sari traders, bunkars (weavers), government officials, local buyers, NGO representatives, cottage manufacturing units etc. The consultations indicated that the Banarasi sari industry is impacted by a host of variables in terms of raw material and labour issues, the socio-economic aspects of the region, and, to some extent, the pitfalls of excessive liberalisation and legislation (Dwivedi and Bhattacharjya, 2012). The changing economic and market situation has resulted in reduced income for weavers who cannot even meet their basic needs, causing malnutrition and widespread poverty throughout the traditional weaver community. Such destitution and despondency among the weavers has forced them to commit suicide or has precipitated employment shifts, as evidenced by MGNREGA (Mahatma Gandhi National Rural Employee Guarantee Act) benefits. It could be gathered from the fieldwork that the promise of geographical indication protection has not curbed the menace of fakes.

Machine-based cheap product imitations continue to be sold. Cheap raw material imports have led to the sale of what are known as Kelasaris, in the name of Banarasi saris. These use banana tree resin to create threads which are then polished to give the look of silver or gold thread. Chinese imitation saris, pegged at much lower prices, are flooding the market. Moreover, there is a tenfold rise in the number of operating power-looms in the district of Varanasi itself, although certain other studies put higher estimates. Most power-loom owners have been producing cheap imitation products in large numbers to meet the growing demand, with computerised designs. Enforcement under the legal regime is frustrated further through absence of will on the part of GI holders to take action against the imitators. Despite the stakeholders being aware of the deleterious impact of sales of fake saris, complex market dynamics enforces silence among all concerned.

### **Malabar pepper**

Malabar pepper is famous for its quality. It is classified under two grades – garbled and ungarbled. History is replete with instances of foreigners coming to the Malabar Coast to trade in Indian spices in general and pepper in particular. It is stated that the exorbitant price of pepper



during the middle ages, a trade which was monopolized by the Italians, forced the Portuguese to seek a sea route to reach India. Pepper is used as a spice and it has also got medicinal properties. Malabar pepper is cultivated in the geographic regions comprised in the Malabar region of the erstwhile Madras Presidency. Now these areas comprise in the states of Kerala, Karnataka and Tamil Nadu. Malabar pepper accounts for around 25 per cent of the entire world's supply of pepper. This pepper is unique for its sharp, hot and biting taste. Highly aromatic, with a distinctive fruity bouquet, it has the perfect combination of flavour and aroma. In order to protect the brand value of Malabar pepper, the Spices Board applied for a GI registration and after completing the formalities the registration was granted. As pepper is exported in huge quantities, there was a feeling that the GI tag would give better legal protection against counterfeit products, more visibility to the brand etc. None of the respondents interviewed by TERI researchers were aware of any infringement action initiated against any of the counterfeit producers. There was also a general feeling that it is the traders who reap benefit out of the GI tag and not the farmers. The general refrain was that farmers do not get any extra benefit from the GI tag, which is also corroborated by findings from the TERI survey discussed later. The general mood in the sector at the time of field visit was a worry over the declining price in pepper. There were demands that there should be a complete ban on future trades in pepper.

#### **Duration and Renewal of GIs:**

Section 18 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 lays down that the registration of a GI shall be for a period of ten years, but may be renewed from time to time. The Registrar shall, on application made in the prescribed manner, by the registered proprietor and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the GI for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be.

#### **Concluding Observation:**

Intellectual property rights have never been more economically and politically important or controversial than they are today. Patents, copyrights, trademarks, industrial designs, and geographical indications are frequently mentioned in discussions and debates on such diverse topics as public health, food security, education, trade, industrial policy, traditional knowledge, biodiversity, biotechnology, the Internet, the entertainment and media industries. In a knowledge-based economy, there is no doubt that an understanding of IPRs is indispensable to

informed policy making in all areas of human development. Geographical Indications is an emerging field of Intellectual property. Every region has its claim to fame and it has to be protected. Geographical Indications, a form of Intellectual Property, is statutorily protected under the Indian Law which is in tune with India's obligations under TRIPs. The people of India may be benefited through utilizing this law. It is need of hour to raise the awareness among people regarding protection of Indian GIs. With the increasing recognition of GIs' multifunctional character, the challenge will be to design and implement a comprehensive GI scheme that could constitute the basis for sustainable development.



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