
CHALLENGES IN PROTECTING GEOGRAPHICAL INDICATIONS IN INDIA: A COMPREHENSIVE ANALYSIS

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ABSTRACT

Geographical Indications (GIs) in India serve as a powerful tool for protecting the unique qualities of region-specific products, preserving cultural heritage, and enhancing rural development. However, the protection and enforcement of Geographical Indications in India face numerous challenges, including legal complexities, administrative hurdles, market exploitation, and the threat of genericide. This article provides a comprehensive analysis of these challenges within the Indian context, examining their implications for producers, consumers, and policymakers. It also explores potential strategies to strengthen the Geographical Indication regime in India, emphasizing the need for robust legal frameworks, increased awareness, and enhanced enforcement mechanisms. The article concludes by discussing the future trajectory of Geographical Indication protection in India amidst globalization and market dynamics.

Introduction

Geographical Indications (GIs) are a form of intellectual property that signifies products with qualities, reputation, or characteristics inherent to a specific geographical origin. These indications are vital for protecting the unique attributes of regional goods, ranging from food and beverages to crafts and textiles. For instance, “Champagne” refers specifically to sparkling wine from the Champagne region of France, while “Parmigiano-Reggiano” denotes cheese produced in designated areas of Italy. By legally protecting these regional identifiers, Geographical Indications help maintain the authenticity of products and prevent misuse or **imitation that could mislead consumers.**

Definition of Geographical Indication.

1. European Union

In the European Union, a Geographical Indication is defined as follows:

Definition: A Geographical Indication is a name that identifies a product as originating from a specific place, region, or country where a given quality, reputation, or other characteristic of the product is essentially attributable to its geographical origin. The product must be produced, processed, and prepared in that specific geographical area¹.

The regulation aims to protect the names of specific products to promote their unique characteristics and to prevent misuse or imitation of these names

2. United States

In the United States, Geographical Indications are primarily protected through trademark law. The Lanham Act does not provide a distinct definition for GIs but includes provisions that can be applied to protect Geographical Indication names under trademark law:

Definition: While the Lanham Act does not specifically define Geographical Indications, it does address geographic trademarks and the protection of marks that are

¹ Regulation (EU) No 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs

descriptive of the origin of goods, which can encompass GIs if they are recognized as such².

The Act aims to prevent consumer confusion by protecting trademarks, including those that might serve as Geographical Indications, from being misused or imitated.

3. India

The Geographical Indications of Goods (Registration and Protection) Act, 1999

In India, the definition of Geographical Indications is as follows:

Definition: “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 be³.

Importance of Geographical Indication

The importance of Geographical Indications extends beyond mere product labelling; they play a significant role in preserving cultural heritage and fostering economic development. GIs safeguard traditional knowledge and artisanal practices, ensuring that local craftsmanship and methods are valued and sustained over time. Economically, Geographical Indications provide a competitive advantage to local producers by enhancing the marketability of their products, often leading to higher value and better market access. This not only supports local economies but also contributes to the broader goal of sustainable development by promoting regional production and consumption.

1. Legal Challenges

GI Registration Act in India: The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999) came into force in India with effect from 15 September

² “15 U.S.C. § 1051 et seq, Lanham Act (Trademark Act of 1946)”

³ Section 1(3) (e) under The Geographical Indications of Goods (Registration And Protection) Act, 1999

2003. This Act promises to provide

- Adequate protection to the producers of GI goods.
- Protection to consumers from deception, and
- Promotion of goods bearing GI in export market.

But in reality there are several inadequacies in this act which is needed to be addressed as discussed below:

1. No effective enforcement mechanisms are there at domestic as well as at export markets.
2. There is no any agency available to monitor post-GI mechanism in India.
3. It does not lay much emphasis on inspection and monitoring mechanism for GI protection, due to which competitors try to free ride over its reputation.

However, this leads to loss of trust on the brand, they mislead consumers, in all that process the one who loose most is actual right holder. Geographical Indication Registration process in India: From the above drawn flow chart of GI Registration process in India one can easily analyse the lengthiness of it due to the time lag involved in the process of registration from application, scrutiny, acceptance, advertisement in Journal, opposition if any, to final registration. Lots of GI registration cases are pending in India which is very discouraging for any producer who is willing to register for any GI products⁴.

2. Economic challenges (Market Exploitation and Counterfeiting)

In order to achieve the sustainability of GI, the developing country like India need to have the financial and technical assistance to promote their product in international market. The primary problem in India is that the merchants take home the dragon's portion of the economic or

⁴ Kumari Youkta, Shreya Nupur," Issues and Challenges of Geographical Indication in India", International Journal of Multidisciplinary Research (IJMR),Volume 6,Issue 10,(Oct 2010)

financial gains brought about by the GI as compare to producer who has the actual interest⁵.

One of the most significant challenges in protecting GIs in India is market exploitation and counterfeiting. The growing demand for GI-tagged products, both domestically and internationally, has led to an increase in counterfeit products that mimic the characteristics of genuine GI-protected goods. For example, counterfeit versions of Darjeeling tea and Banarasi sarees are widespread in the market, undermining the value of the original products and causing economic losses to legitimate producers.

Mr. DS Rawat, secretary general of ASSOCHAM said that, “Chikankari industry is highly fragmented and has been facing significant challenges owing to insufficient market information on export trends, opportunities and prices, scarcity of raw materials, lack of adequate finance and growing competition from mill and factory-made products.”⁶

Moreover, the lack of stringent market surveillance and enforcement mechanisms exacerbates the problem of counterfeiting. While the government has made efforts to curb the sale of counterfeit products, the scale of the issue remains vast, making it difficult to effectively police the market. This not only affects the economic prospects of genuine producers but also erodes consumer trust in GI products.

3. Threat of Genericide

Another major legal barrier is the provision laid down under Section 9 of the Act in compliance with TRIPS provision that solely leaves it up to the country to determine whether or not a specific geographical name has transformed into a generic term.

Geographical Indication Act prohibits the registration of Geographical Indication which is⁷ –

- identified as generic names or indications of the products or

⁵ Aishwarya Chaturvedi “Is Geographical Indications Sufficient to Aid to the Indian Economy” Managing IP Blog p.1 (May 2019) available at <https://www.managingip.com/article/2a5brqcfb83rfpjt5b0g0/is-geographicalindications-sufficient-to-aid-to-the-indian-economy>

⁶ Amit Verma “Chikan from China threat to Lucknow craft” The Asian Age, Jan 21, 2016 available at <http://www.uniindia.com/machine-made-chinese-chikan-threatening-livelihood-of-5-lakh-embroidery-workersin-lucknow-assochem/business-economy/news/342037.html>

⁷ Geographical Indication Act, 1999, S 9, No.38, Act of Parliament, 1999(India).

- which are not protected or have ceased to be protected in their country of origin or
- which are no longer in use in that country

As soon as the GI becomes generic, it reverts to the public realm; it is restricted in getting protection in the country in which it originates or has been abandoned, or when it has gone out of usage there⁸

The risk of genericide, where a GI term becomes a generic descriptor for a product type rather than indicating its geographical origin, is a significant concern in India. This is particularly relevant for products that have become widely recognized and imitated, both within and outside India. For instance, the term "Basmati" has been used generically in various markets, threatening its status as a GI-protected product.

Preventing genericide requires continuous efforts to educate consumers about the specific qualities and origins of GI-protected products. However, in India, where consumer awareness about GIs is relatively low, this remains a formidable challenge. Moreover, the enforcement of GI rights to prevent genericide often requires international cooperation, as many cases involve the misuse of GI terms in foreign markets.

4. Administrative and Logistical Challenges

The administration of GIs in India involves several layers of oversight, including ensuring that all producers adhere to the defined standards of production. However, this process is fraught with administrative challenges, particularly in regions where traditional methods are passed down orally and may not be well-documented. Additionally, maintaining the quality and authenticity of GI products during distribution is a logistical challenge, especially for perishable goods like agricultural products.

The lack of infrastructure and resources in many rural areas makes it difficult to ensure that GI standards are consistently met. This can lead to variations in product quality, which can, in turn, affect the reputation of the GI as a whole. Moreover, the process of monitoring and

⁸ Geographical Indication Act, 1999, S 9 Explanation I & II, No.38, Act of Parliament, 1999(India)

certifying compliance with GI standards is resource-intensive, often requiring significant financial and human resources that may not be available to all producers.

5. Climate Change and Environmental Impact

Climate change poses a growing threat to the sustainability of GIs in India, particularly for agricultural products that are highly dependent on specific environmental conditions. For instance, changing rainfall patterns and rising temperatures in the Darjeeling region have affected the quality and yield of Darjeeling tea, a product that is inextricably linked to its geographical origin.

Producers may need to modify their cultivation practices, invest in research to develop climate-resilient varieties, or even reconsider the geographical boundaries of the GI. However, these adaptations must be carefully managed to ensure that they do not compromise the traditional qualities that the GI seeks to protect.

6. Lack of Consumer Awareness

In India, consumer awareness about GIs and their significance remains limited. Many consumers are unaware of the specific characteristics that differentiate GI-protected products from their non-GI counterparts. This lack of awareness diminishes the market potential of GI products, as consumers may not be willing to pay a premium for products with GI certification.

Moreover, the lack of awareness extends to producers, particularly small-scale and rural producers, who may not fully understand the benefits of registering their products as GIs. This knowledge gap can prevent producers from taking advantage of the economic benefits that GIs can offer, such as access to niche markets and the ability to command higher prices for their products⁹.

Strategies for Enhancing GI Protection in India

To address these challenges, several strategies can be employed to strengthen GI protection in India:

⁹ Aaryavart Chourasia, "Issues with geographical indication under intellectual property laws" Journal of Legal Research and Juridical Sciences, VOL. 2 ISSUE 3, ISSN (O): 2583-0066

- **Strengthening Legal and Institutional Frameworks:** Simplifying the registration process and providing support to small-scale producers can help increase the number of GI registrations in India. Additionally, enhancing the capacity of enforcement agencies and judicial bodies to handle GI disputes more efficiently is crucial for improving the protection of GIs.
- **Enhancing Market Surveillance and Enforcement:** Implementing stricter market surveillance and enforcement mechanisms can help combat the issue of counterfeiting. This could include regular inspections, the use of technology to track and authenticate GI products, and harsher penalties for those found selling counterfeit goods.
- **Raising Consumer and Producer Awareness:** Conducting awareness campaigns to educate both consumers and producers about the importance of GIs and the benefits of purchasing or registering GI products can help increase the demand for genuine GI-protected products and encourage more producers to seek GI registration.
- **Adapting to Climate Change:** Developing strategies to mitigate the impact of climate change on GI products is essential for long-term sustainability. This could involve research into climate-resilient agricultural practices, as well as potential adjustments to the geographical boundaries of GIs to account for changing environmental conditions.
- **International Cooperation:** Strengthening international cooperation on GI protection can help resolve disputes and enhance enforcement efforts. Collaborative efforts between India and other countries can lead to more effective protection mechanisms and a more unified approach to GI issues.

Conclusion

The protection of Geographical Indications in India is a complex issue that requires coordinated efforts across legal, economic, and environmental spheres. While India's GI regime has made significant strides in protecting the unique qualities of its region-specific products, several challenges remain. By strengthening legal frameworks, enhancing market surveillance, raising awareness, and adapting to environmental changes, it is possible to overcome these challenges and ensure that India's rich cultural and agricultural heritage is preserved for future generations.