
EFFECTIVENESS OF THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999: A SOCIO-LEGAL ANALYSIS

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ABSTRACT

Geographical Indications (GIs) are a significant category of intellectual property which guarantees products whose quality, reputation, or features are inseparably associated with a place of origin. The Geographical Indications of Goods (Registration and Protection) Act, 1999, came to be enacted in India to protect traditional products, generate rural development, deter unauthorized use, and preserve cultural heritage of the country. This paper critically analyses the effectiveness of the Act on a socio-legal platform by looking at its legal framework “implementation, and impact on the local community socio-economically. It discusses how much GI registration has benefited the artisans, farmers and traditional producer by providing exclusive market recognition, economic opportunities and security against being duplicated. The critical issues that have been also identified in the paper are lack of awareness on part of the stakeholders, the ineffective enforcement mechanisms, market access, misuse registered GIs, and protection internationally. Considering a doctrinal and socio-legal study approach rooted in the statutes, judicial rulings, government reports, and literature, the research concludes that even though the Act has gone a long way in enhancing the protection of geographical indications in India, its effectiveness needs to be intensified through enhanced enforcement, institutional support, awareness on the part of producers and policy reforms to achieve sustainable socio-economic development and preservation of traditional knowledge.

1. Introduction

Geographical Indications (GIs) are also a significant type of Intellectual Property Rights (IPRs) that designate goods which come to the market out of a particular geographical area where its quality, fame or other distinguishing factors can be recognized to belong ultimately to the place of provenance. India has a rich cultural heritage and various traditional goods such as agricultural goods, handicrafts, textiles and food products that are a result of the local community and their expertise and skills that have evolved over generations. It is not only necessary to protect these products with an effective legal framework to preserve cultural heritage but fostering sustainable economic development and supporting rural livelihoods.¹

In 1999, the Geographical Indications of Goods (Registration and Protection) Act was enacted by Parliament, and took effect in 2003 in order to protect such products. The Act seeks to reduce unfair competition among the producers, secure the registered geographical indications against unauthorized use and improve the commercial value of indigenous products both in the domestic and global markets. After its enactment, India has registered various well known GIs which include Darjeeling Tea, Banarasi Saree, Kanchipuram Silk, Basmati Rice and Madhubani Paintings. Constructive towards these accomplishments, issues are still therefore concerning ineffective enforcement, lack of awareness among producers, imitated products, mediocre market access and the market, as well as an unequal distribution of economic gains.²

The effectiveness of the Geographical Indications of Goods (Registration and Protection) Act, 1999 is critically discussed in this paper based on the lens of socio-legal. It assesses the level at which the Act has met its aims and objectives of safeguarding geographical indications, safeguarding traditional knowledge and enhancing the socio-economic status of local communities together with finding out the existing issues that have lingered in acting on the Act.

2. Legal Framework Governing Geographical Indications in India

The Indian law on protecting Geographical Indications (GIs) is mainly regulated by the Geographical Indications of Goods (Registration and Protection) Act, 1999 that came into force on 15 September 2003. The Act has been created in order to achieve the commitments of India

¹ P. Narayanan, *Intellectual Property Law* (3rd edn., Eastern Law House 2017) 685–690.

² The Geographical Indications of Goods (Registration and Protection) Act, 1999.

with the review of Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO). It gives a legal structure in details on the registration, protection and enforcement of geographical indications on goods of a particular geographical region of origin.³

The Act, under Section 2(1) (e),⁴ classifies goods as a geographical indication; that is, to be a good of a specific territory, region, or locality where a certain quality, reputation, or any other attribute of the goods is closely related to its geographical origin. This Act addresses agricultural items, natural items, and manufactured items, as long as any portion of the production, processing or preparation occurs within the geographical area defined by the Act.⁵

The Act provides a registration of GIs and recognises the rights of registered proprietors and authorised users by creating the Geographical Indications Registry at Chennai. It bans unauthorised use of registered geographical indication and offers civil and criminal recourse to violation such as injunctions, damages and penalties. The act also secures the consumers against fraud and unfair competition, as well as commercialize the genuineness products.

Besides the GI Act the protection of geographical indications is enhanced by international obligations in the TRIPS Agreement, specifically Articles 22 through to 24 which urge member states to avoid misleading use and to avoid unfair commercial practices. Collectively, the national and international legal systems aim to ensure the maintenance of traditional Indian knowledge, safeguarding the interests of producers and stimulating availability of indigenous products both locally and internationally.⁶

3. Socio-Legal Impact of the Geographical Indications Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999 has played an important role in the protection of Indian traditional products, as well as, the socio-economic development of the locals. The socio-legal dimension derives the fact that the Act does not just compete with the protection of intellectual property but also emphasizes the areas of preserving culture and sustainable economic development in rural life. It acknowledges the collective

³ The Geographical Indications of Goods (Registration and Protection) Act, 1999; Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, arts. 22–24; World Trade Organization, *Understanding the WTO: Intellectual Property (TRIPS)*.

⁴ The Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 2(1) (e).

⁵ P. Narayanan, *Intellectual Property Law* (3rd edn., Eastern Law House 2017).

⁶ Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012).

rights of the producers and artisans whose knowledge and skills have been passed down the generations, therefore protecting the rich Indian culture.⁷

Among the biggest accomplishments of the Act is the increase in the market value and authenticity of products GI-tagged. Registration allows legal status and identification of the true products and imitations, enhancing consumer confidence and better market chances to the local manufacturers. A number of GI products have acquired national and international status as e.g. Darjeeling Tea, Banarassi Saree, Kanchipuram Silk, Pochampally Ikat and Madhubani Paintings have been used in the promotion of exports and branding the regions. The Act has also provided job opportunities and empowered the rural economy by assisting the artisans, weavers, farmers and small scale producers. GI registration, in most areas, has helped in preserving the traditional craftsmanship and local forms of production that would otherwise have lost its ground because of industrialisation and mass production. It has also encouraged tourism as it has improved the identity and image of a region with unique products.⁸

The socio-economic advantages of GI registration have not been fairly shared however. The financial benefits are usually reaped by the traders and the middle men and few manufacturers realistically know their legal rights and financial benefits. The problem that small manufacturers often encounter is finding their way to the market, preserving the quality of their goods and stopping any imitation and abuse of their products. Through these challenges, it is clear that legal protection cannot be successful unless backed up by effective implementation, institutional support, capacity building, and fair benefit-sharing mechanisms.⁹

4. Challenges in the Implementation of the Geographical Indications Act, 1999

Although a holistic legal system has been set up, there are still various legal, institutional and socio-economic challenges that surround the successful execution of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Among the main issues is the ignorance of artisans, farmers, and local producers concerning registration process, rights granted under registration of the GI, and legal remedies in case of infringement. As a result, numerous products which are eligible are not registered, and registered owners are likely to not

⁷ P. Narayanan, *Intellectual Property Law* (3rd edn., Eastern Law House 2017) 685–702.

⁸ K.C. Kala, 'Geographical Indications and Rural Development in India' (2013) 18(4) *Journal of Intellectual Property Rights* 361.

⁹ World Intellectual Property Organization (WIPO), *Geographical Indications: An Introduction* (2017).

maximise the GI protection advantages.¹⁰

The other issue that is very hard to confront is lax enforcement of GI rights. Copies and imitations products are still offered both locally and internationally, negatively impacting the image of the original GI products and costing real manufacturers money. The enforcement agencies, association of producers, and regulatory authorities must work hand in hand to prevent and monitor such infringements.¹¹

The dispensation of the economic benefits is also unequal, which hinders the effectiveness of the Act. Some people can also understand how in most instances the share of the profits goes to the middlemen and traders as opposed to the actual artisans and farmers who manufacture the products. Poor marketing support, less market availability around the world and less financial support further limit commercial potential of GI products, especially among small scale producers.

Also, the evolution of e-commerce has added a series of new issues and concerns because counterfeit GI products are now sold more in online shopping malls. There are no effective digital monitoring systems and cross-border enforcement rules, so it is hard to stop the abuse of registered geographical indications. To solve these issues, there is a need to achieve greater institutional coordination, awareness programmes, enhancement of mechanisms of enforcement and policies featuring fair economic benefits of the local people.¹²

5. Conclusion

Through registration and protection of the interest of the traditional products in India, Geographical Indications of Goods (Registration and Protection) Act, 1999 has played a major role in ensuring the legal protection of geographical identity of these products to prevent any illegal application. The Act has helped in conserving cultural heritage, assisting rural livelihoods, improving the market value of indigenous products and sustainable economic development. It is also a factor that has helped some Indian products to achieve national and international fame hence helping local manufacturers and local economies.

¹⁰ P. Narayanan, *Intellectual Property Law* (3rd edn., Eastern Law House 2017) 703–710.

¹¹ N. S. Gopalakrishnan and T.G. Agitha, *Principles of Intellectual Property* (2nd edn., Eastern Book Company 2014) 433–439.

¹² K.C. Kala, 'Geographical Indications and Rural Development in India' (2013) 18(4) *Journal of Intellectual Property Rights* 361–367

The research however, does show that the efficiency of the Act is not only based on the legal acknowledgment but also on its practical application. Any form of unwavering adversaries like poor awareness among producers, ineffective enforcement, counterfeit products, unequal distribution of economic proceeds, and inability to access domestic and global markets, continue to militate against its goals. The advent of digital commerce has further escalated the threat of threats of abuse of registered geographical indications and hiffer forceful monitoring and enforcement mechanisms are needed.

A socio-legal approach shows that the success of the GI regime relies on active involvement of producers, government agencies, consumers, and market institutions. To maximise the benefits of GI protection, building institutional capacity, stakeholder sensitisation, market interaction, producer associations, and good enforcement against infringement are important. The Geographical Indications of Goods (Registration and Protection) Act, 1999 has the potential to become an effective tool in the protection of traditional knowledge of India” cultural heritage and inclusive and sustainable socio-economic development with proper legal reforms and facilitation by policies.