PREVENTION OF MISUSE, ADULTERATION AND INAUTHENTICITY OF GI TAGGED PRODUCTS AND ITS ENFORCEMENT MECHANISM UNDER GI ACT, 1999

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ABSTRACT

The Geographical Indication of Goods (Registration and Protection) Act, 1999[1] was formed by the Parliament of India after giving ratification to the TRIPS agreement under the WTO. This legislation provides the framework for duly recognizing such products which are localized in their origin and owe their uniqueness to some geographical, historical or cultural phenomenon. However, since this recognition is granted on a community and not on an individual, its enforcement mechanism is generally weaker when compared to other types of intellectual property rights.

The GI tagged products are recognized due to their distinct characteristic features. However, it does not form part of a trade secret, process patent or design patent, and so making of such products is not protected as such. Any person can make them and market them. This poses an essential question as to the scope of GI based brands and their quality control aspects.

This paper entails examination of the concept of GIs and goes on to explore the importance of GIs in the Indian context, with a focus on how producers, consumers and rural communities stand to benefit from GI protection. The paper then discusses the various problems that plague the Indian GI framework. While analysing the post-registration issues that arise with Indian GIs, the authors discuss solutions that could help overcome the obstacles in the path of successful GI implementation in India.

Keywords: Geographical Indication, India, TRIPS, authorized user, infringement

[1] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India.

AN INTRODUCTION TO GEOGRAPHICAL INDICATIONS

A Geographical Indication (GI) refers to a good in the territory of a country or a region or locality, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. These indications are given to those goods which are unique because they can be produced only in a certain geographical area. GIs, therefore, are a link between a product and its place of production: they are signs that a product has originated from a certain place; and possess certain qualities as a result of the same. Through the use of GIs, information about the quality of the product attributable to natural or human factors which are unique to a locality or region is communicated to the consumers.

India has a strong cultural identity, with a rich history of indigenous goods having special characteristics. By providing GIs, the law attempts to safeguard a number of products which are locally produced from being marketed by manufacturers who are not from that geographical area. In furtherance of this objective, The Geographical Indications of Goods (Registration and Protection) Act, 1999[2] was passed. The statement of objects of the Act[3] provides that the legislation was passed to protect the interests of producers, bring economic prosperity, promote goods in the export market and lastly, protect the consumers from deception. Another reason for the Act was due to obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement)[4]. If a geographical indication isn't safeguarded in its originating country, there is no requirement for other nations to offer reciprocal protection according to the TRIPS Agreement. It has been 25 years since the legislation came into force and most of these objectives are far from being achieved.

Evolution of Geographical Indications in India

Till the enactment of the Act, there was no separate law in India offering significant protection to GIs. They were protected using common law principles. However, there were three alternative ways in which the then-existing legal system of the country could have been utilized for preventing misuse of GI. The first way was in the field of consumer protection through Section 2(1)(r) of the Consumer Protection Act, 1986 and Sections 36A to 36E of the erstwhile

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[2] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India.

[3] Statement of Objects and Reasons, The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India.

[4] Agreement on Trade-Related Aspects of Intellectual Property, Jan. 1, 1995, 1869 U.N.T.S. 299.

Monopolies and Restrictive Trade Practices Act, 1969. The second way was through *'passing of'* action in courts. In this context, the plaintiff needed to demonstrate that there is a goodwill associated with the products they supply, which bear the geographical indication. Additionally, they had to prove that the defendant is misleading the public by suggesting that the goods they offer originate from the plaintiff. Therefore, to prevent the unauthorized use of a GI, a successful action for passing of had to be shown. The last alternative to protect GI before the Act[5] was in the form of Certification Trade Mark (CTM) protection. According to Section 2(e) of the Trade Marks Act 1999, Community Trade Marks (CTMs) could be modified to fulfill the roles of contemporary Geographical Indications (GIs), and the CTM system was deemed suitable for safeguarding names of geographical significance. Before the enactment of the Act[6], one of the most frequently protected geographical names under the CTM system was "Darjeeling tea."

Upon the implementation of the TRIPS Agreement in 1995, India found itself obligated to provide formal protection to Geographical Indications. These obligations emerged from negotiations preceding the signing of the TRIPS Agreement, which emphasized the importance of this type of intellectual property. The European Union (EU) played a significant role in these negotiations due to its considerable emphasis on GIs, influencing the inclusion of such obligations. Consequently, India gradually phased out previous methods of protection with the enactment of the Act in 1999.

GI Registration Procedure in India

The process to get GI registered in India involves filing an application before the Geographical Indications Registry which has been established by the Central Government, with all India jurisdiction, at Chennai. The party filing it must necessarily represent the interest of the producers and should mention the special characteristics of the product in the application, along with other particulars. The Examiner will then examine and scrutinize the application. Any deficiencies can be remedied by the applicant within a month. Additionally, if the Registrar raises any objections to the application, a show-cause notice will be issued, and the matter will be adjudicated accordingly. Upon acceptance of the application, it will be published in the GI Journal. Any individual with objections can file a notice of opposition within three months of

[5] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India.
[6] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India.

the publication. The applicant is given two months to respond; failure to do so will result in the application being deemed abandoned. Subsequently, both parties will present their evidence, and the matter will be adjudicated. Once a Geographical Indication is officially accepted, it will be registered.

THE ROLE AND IMPORTANCE OF GIs IN THE INDIAN CONTEXT

Each region in India has a developed form of art and traditional products significantly moulded to suit their unique climate and topography, particularly due to the strong link shared between the people and their land. This indicates that products from each region are closely tied to their geographical origin, meaning that each region produces goods that can be identified and recognized as Geographical Indications.

The primary economic rationale for protecting Geographical Indications (GIs) stems from the notion that the place of origin serves as an indicator of the quality of goods. By labeling products with their origin, regions can effectively utilize their resources to enhance the quality attributes of the product. Research indicates a growing global trend where consumers place greater value on products associated with specific places or methods of production. GIs become significant in this regard, by providing recognition and legitimacy to producers making and marketing goods linked to their geographical origin; thus "institutionalizing the reputation" of goods being protected[7]. GIs also give indigenous producers the opportunity to operate in a niche market of specialized goods based on differentiation of products to earn higher profits, and use the geographical origin of the goods as a means to sell them better. This helps to revitalize lagging markets of traditional goods and save such industries from dying out in a country like India. Further, GIs are an effective marketing tool, as they are brands in themselves. Therefore, any product with the label of a GI assures a high quality to its consumer which in turn is sufficient to attract customers who are willing to pay for the same.

The West has long been fascinated by Indian goods, with trade for silk, spices, ivory and other goods from India flourishing since ancient times. Traders flocked to Indian shores for the rich products offered. India can tap into this ready market for traditional goods. Adequate protection under GIs could help boost exports, consequentially hiking foreign exchange earnings, whilst

[7] Gautami Govindrajan and Madhav Kapoor, *Why the Protection of Geographical Indications in India Needs an Overhaul*, 8.1 NLIU LR (2019) 22

simultaneously protecting the exclusiveness, heritage and traditional skills of those making such products.

Geographical Indications, as collective rights, are particularly well-suited to safeguard the interests of communities that have cultivated distinctive products. These rights protect these goods from being hijacked by corporations; and reward the true owners and creators of such products. They also promote the evolution of tradition and culture. Small local producers can use them to enhance their reputations, and compete more effectively against large corporations.

GIs can also act as effective tools of rural development. Many, if not most, of the goods which are eligible for GI protection originate from villages. Unique and typical products are often developed in these villages and rural communities based on their culture and circumstances, as a result of the interaction of local knowledge and environmental conditions. As stated above, GIs can be used to give small local producers a way to compete against corporations. They can also publicize the region that GIs use for the names.

GIs further help to protect indigenous knowledge, by keeping it in the public domain, and granting rights to the producers in perpetuity, which helps to not only protect the traditional knowledge but also make sure it is not lost over time. GIs foster local production and generate employment in these areas. Moreover, GIs have the potential to foster ancillary industries such as tourism, contributing to the socio-economic advancement of the region. By generating interest in the product and the associated region, tourism can be stimulated, further enhancing the area's economic development.

Geographical Indications can also offer significant benefits to consumers.Sellers often dupe consumers into buying inauthentic goods by misrepresenting that the goods come from a particular region. These piggyback riders have a dual detrimental effect- firstly, that of cheating innocent consumers; and secondly, by devaluing the authentic product by passing of fake goods of poorer quality as the real ones. GI protection to the goods will ensure that only producers who belong to the geographic region from where the unique good originates can use the particular name to sell the goods, thus protecting consumers from being cheated by unscrupulous sellers. This would also guarantee the preservation of the value of the authentic product. Consequently, it's evident that an efficient GI mechanism serves various objectives including producer protection, fostering fair competition, promoting foreign trade, facilitating rural development, and ensuring consumer protection, among others. These goals hold particular significance in a developing nation like India.

Violations and Enforcement of GIs in India and Abroad

Violations of Geographical Indications are widespread, occurring both within and beyond the borders of India. The famous Banarasi silk is being copied by weavers in Surat, who use power-looms to make cheaper imitations of the traditional silk. Traders also import Chinese silk, and sell it as Banarasi silk in Indian markets. This has proved ruinous for the weavers of the original Banarasi silk, forcing them to search for new jobs. This has also occurred in the case of Pashmina shawls as well, with power-loom made substitutes driving the producers of the authentic Pashmina out of business. In both the above examples, the registered GI holders, which are private entities, have done nothing to enforce their rights. In fact, even in instances where the Government is the registered GI holder, no active measure towards enforcement has been taken. This can be seen in the case of Muga silk, where there has been a steady stream of products which are not pure Muga but which are passed off as the same. These instances represent just a few examples of blatant Geographical Indication (GI) violations within India, where sellers attract consumers using the name of a geographical area but ultimately sell them inauthentic and low-quality products. Thus, there arises a crucial need for all registered GI holders, government and private alike, to actively enforce their GIs; as not doing so would frustrate the very purpose of registering a GI.

Protecting GIs in foreign jurisdictions is an even tougher task due to the vast expense it entails. Violations can be seen abroad as well. Producers in Bangladesh have been producing Banarasi silk in gross violation of the Indian GI tag, which has compounded the struggles of the weavers of the authentic silk. Even though the Government has taken several initiatives towards protecting "Darjeeling" Tea India and abroad; the statistics show that violations are still taking place: around 40 million kg of tea per annum are being sold globally as "Darjeeling tea", whereas the actual production of authentic Darjeeling tea is around 9 million kg only. Another prominent case of violation occurred when America granted a broad basmati patent right to Ricetec, an American company. Subsequently, a protest ensued as America was encroaching upon the rights associated with Basmati, which rightfully belonged to India. This grant of patent right was condemned as bio-piracy and as being grossly violative of India's rights. Eventually, the dispute was resolved with a narrower right being given to Ricetec. All these instances prove that violations of GIs are a common phenomenon. However, all hope is not lost and effective steps can help curb these violations; as was done in the Basmati case.

A major problem with the Indian GI scenario as it exists today is the government attitude towards GIs. The government merely seeks to register GIs, thus promoting a system of "Vanity GIs", since there exists no proper post-registration system in place. While there have been efforts to promote registration of GIs, little is being done afterward to enforce the GI and then promote the goods. The problem with this is that if the follow-up mechanism to GI registration is weak, it renders the protection offered to producers and consumers ineffective.

There are over 500 registered GIs in India, belonging to a number of categories such as agriculture, handicraft, foodstuff and manufactured. Among these, only a few Geographical Indications are widely recognized and familiar to people, whereas many other lesser-known GIs struggle to derive benefits from their designation. Prominent GIs typically enjoy a readily available market and high demand. Conversely, lesser-known GIs face challenges due to inadequate demand for their products, often stemming from factors like insufficient promotion, marketing efforts, and awareness. This can be seen by contrasting celebrated GIs in India such as Darjeeling Tea and Basmati Rice, which India has managed to successfully protect internationally with lesser known ones such as Tulaipanji Rice (West Bengal) or Guledgudd Khana (Karnataka), which are not known domestically, let alone abroad. Some of the popular GIs, such as Malabar Pepper and Mysore Silk, were well-known even historically, having gained recognition since colonial times. This high demand further increases the economic value of such products as it is more profitable for a person to market and sell them. On the flip side, GIs such as Warangal Durries are in desperate need of the same amount of popularity. There emerges, therefore, a need for an effective post-registration mechanism to popularize the GIs which are still hidden in the shadows of obscurity.

Quality is an important consideration for GI goods, as consumers expect these goods to conform to a high level of quality. In fact, it is the quality of the goods that contributes to its reputation. In the Indian context, a significant issue arises from the lack of a proper mechanism for quality control for most Geographical Indication protected goods. There is no monitoring or supervisory body to ensure that the GI registered goods actually adhere to the quality consumers expect to receive. Further, the enabling Rules of the Act also give little emphasis on an inspection structure for GI. Rule 32(6)(g) asks for an applicant to list particulars of the inspection structure, "if any", to regulate the use of the GI. This makes it clear that it is not even mandatory for the inspection structure to exist. It is impossible to maintain the supply chain integrity of the product and consequently its quality, without a proper inspection system.

Marketing, branding and promotion are vital tools to sell any product in the market. One of the major reasons behind the registration of a good as a GI is to promote sales of that good due to the preference of consumers for GI-branded products. A good branding system will help producers to make good on the commercial potential of their products; and help them differentiate their products. An important step in this regard would be developing a common logo for GI protected goods in India, as has been done by the EU. This would reassure consumers as to the authenticity of a product. In sharp contrast with the aggressive marketing strategies employed by various countries to promote their GIs, however, there is little being done in India to market our GIs, thus leading to an enormous waste in potential.

FILLING IN THE GAPS

It is important to remember that the Act in India is still at a very nascent stage. There are bound to be issues and hurdles in the implementation. Indeed, measures can be implemented to address these challenges.

Awareness needs to be increased in the grass root level, and the need for this cannot be overstated. The government has been organizing awareness campaigns in regions where goods eligible for Geographical Indication protection are manufactured. The reach of these camps needs to be broadened, and should permeate rural areas where there is no knowledge of GIs. As it is important for local producers to understand the significance of GIs, vernacular language should be used to facilitate more effective communication. Further, producers should be made aware not only of the protections that GI registration offers; but also how to go about maintaining the GI protection and protecting themselves from infringements.

Finding an immediate solution to the nationalisation of GIs is difficult. While it is true that the increasing number of GI registrations in the name of the government could pose problems, the truth remains that in the current scenario, it is difficult to do away with it altogether. However, steps can be taken to mitigate the potential negative effects of this necessary evil. First, greater clarity needs to be brought in the provisions of the Act in terms of who can be an appropriate

GI holder, especially with regard to the position of government bodies. This could arise as a result of judicial decisions, or an amendment in the legislation.

Second, absolute transparency should be maintained in the operation of such government GI holders to ensure that no corruption or malpractice takes place. Transparency in decision-making and operation would also mitigate the issue of preferential treatment by the government and ensure that the ultimate benefits of GI registration accrues to the actual producers. Finding a solution to the challenges associated with the foreign registration of Geographical Indications (GIs) is not straightforward. While it is true that the present framework is cumbersome and painstaking, there exist no feasible alternatives for Indian GI holders. India not being a contracting party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration[8], the reciprocal protection that arises between the Contracting Parties of the same cannot be availed by Indian GI holders. Hence, each holder must undertake individual efforts to register their respective Geographical Indications (GIs) in foreign countries.

As for the problem of excessive reliance on documentary evidence; a solution would be to consider testimonial proof that a particular GI has existed over generations while granting a GI. Testimonies of three successive generations can be recorded and verified to prove that the custom has indeed existed over time. Moreover, common knowledge of the tradition can serve as a means to verify the authenticity of claims raised. This is something that needs to be decided from case to case; with adequate examination of the legitimacy of claims.

While emphasis should certainly be given to increasing registrations for GIs, sufficient attention must also be paid to post-registration mechanisms. Sufficient quality checks must exist for GI goods, especially ones which are being exported. These inspection measures and quality checking mechanisms should be envisaged at the pre-registration stage itself, so that each GI, once registered, has adequate mechanisms to ensure quality is not compromised. This can be done by associations of producers, as has been done in the case of Parma Ham. Darjeeling Tea is an important example in this regard; as the Tea Board has a well-established quality checking and Certification mechanism in place. Similarly, producers can, with the

[8] Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, Oct. 31, 1958, 923 U.N.T.S. 205, www. wipo.int/treaties/en/text.jsp?fle_id=285856/.

assistance of the government if necessary, develop such measures.

Organization among the producers is imperative to ensure that there is a smooth mechanism in place to inspect and promote the goods. As GIs are collective rights, it is extremely important for producers to cooperate with each other. A strong organisation of producers of a certain GI protected good could go a long way in protecting and promoting the GI, and helping the local vendors flourish. Adequate marketing strategy must be developed. Certain Geographical Indications have created logos for themselves to facilitate product differentiation. Muga silk, Darjeeling Tea, Odisha Pattachitra, and Kota Doria, are some of the GI protected goods which have developed their own logos. Other producers of GI goods should also develop unique and distinctive logos for the product and get them registered. These logos should be prominently displayed on the goods as well. This would help them differentiate authentic goods more easily and help combat the spurious goods that are being sold. With e-commerce gaining more importance in modern business, it is important for producers to make authentic GI products available online as well, as has been done in the case of Chanderi Silks. This will broaden the reach and consumer base that the goods enjoy.

Another strategy which can be adopted is to use the stories, myths and legends of an area to market products. There is no lack of folklore and mythology that can be used to better market these goods. Promotional events can also be arranged to engage consumer interest and provide them with insight into the laborious processes involved in producing these products. One such instance was the Raghu-rajpur International Arts and Crafts Exchange in 2012, which invited artists from the world over to the small village which is the home for the GI protected Odisha Pattachitra paintings. These events can boost earnings through tourism, and promote GI goods as well.

Indeed, the government can implement measures to integrate Geographical Indications (GIs) with tourism. India boasts a diverse cultural heritage and draws millions of tourists annually who are captivated by local handlooms, arts, and crafts. By incorporating GIs into the advertising campaigns of tourist destinations, attention can be drawn to these products. This approach would not only enhance sales but also elevate awareness and interest in them among tourists. By integrating GIs and tourism; both industries would become symbiotic: each would benefit the other. Tourists can partake of the GI protected products; and these regions would flourish due to the influx of tourists. This would further help to popularise lesser-known GIs.

Steps must also be taken to check infringements and violations of GI rights. Producer associations can do this by closely monitoring markets of inauthentic products. They can also hire- third party watchdog agencies to perform this function. Swift legal action should be taken against any instances of passing of goods. We must take cues from the fierce guarding of the Champagne brand, and of Scottish Whisky, in this regard. In India itself two cases were filed, namely, Scotch Whisky Association v. Golden Bottling Limited[9] and Khoday Distilleries Ltd. v. Scotch Whisky Assn. & Ors.[10].

Another concern that needs to be addressed is that all of these initiatives require funding. The government can offer financial support to registered Geographical Indication (GI) holders through initiatives such as subsidized loans, financial aid schemes, and other forms of assistance. While it is expensive to market, inspect and promote a GI, doing so will help producers reap profits and establish a brand name for themselves. Government assistance in doing this would be invaluable for producers.

CONCLUSION

Although the Indian Geographical Indications framework has numerous challenges, the situation is not entirely bleak. GIs in India are still at a developing stage, and the goods to be protected are quite numerous. The issues faced are remediable: what is needed is for producers and the government to step up and take action to fix them. There is a lot the government can do in this regard: awareness programmes, providing financial assistance to producers through loans and subsidies, promoting and marketing GIs, ensuring proper enforcement of GIs both in India and abroad; to name a few. Producers, too, must organise themselves into effective groups which can work towards protecting, enforcing and promoting their GIs. The costs that will be incurred in doing so will be quite considerable. However, stakeholders stand to lose a lot more if they fail to protect their rights- every day, producers lose a staggering amount of sales and profit thanks to violations of GIs. The costs are justified and even necessary to help the producers harness the economic potential in their products, and profit from them. India needs to wake up and realise the importance of a proper enforcement mechanism for GIs. It is high time that effective steps are taken to fill in the gaps in the system.

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[9] (2006) 129 DLT 423.
[10] (2008) 10 SCC 723.