
GEOGRAPHICAL INDICATIONS AS INSTRUMENTS OF INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK, SOCIO-ECONOMIC IMPACT AND POLICY CHALLENGES

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ABSTRACT

GI is increasingly becoming a unique class of intellectual property right which connects product with its geographical origin as well as unique properties inherent due to origin. In this regard this paper discusses theory and legal evolution of GIs as well as their socio economic importance with specific emphasis on aspect of rural development, conservation of cultural tradition and market distinction.

This paper will consider international legal perspective through TRIPS agreement and Lisbon system, along with an analysis of sui generis system in India through Geographical Indications of Goods (Registration and Protection) Act, 1999. Moreover this paper would analyze procedure of registration, legal protection of GIs and their impact via case studies such as Darjeeling Tea case and Basmati rice dispute.

This work critically analyzes socioeconomic implications of GIs by looking at their ability to improve producer welfare, lessen information asymmetries and create niches in markets. Nevertheless, this paper acknowledges that there are considerable obstacles associated with GI systems, including institutional constraints, inequitable sharing of benefits, threats of misappropriation and continued conflicts in international trade.

Accordingly this research suggests that GIs have considerable potential in terms of promoting sustainable development and cultural heritage conservation. At same time paper stresses importance of effective policies that could improve efficiency of GI regimes and enhance stakeholder benefits.

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1. Introduction and Conceptual Foundations

Geographical indications can be described as a unique intellectual property right where link exists between origin of product and characteristics associated with such origin. Contrary to other intellectual property rights which are personal in nature, geographical indication intellectual property is collective and is an expression of community's cultural heritage.³

In essence a geographical indication is simply a guarantee of quality. This means that consumer is assured that a product has certain properties as a result of being produced in its particular geographical location. Such properties may be due to natural characteristics such as soil and climate, among others and also human aspects such as craftsmanship.⁴

Definition of geographical indication in international law according to TRIPS agreement emphasizes that quality of product is essentially derived from its origin.⁵

Therefore GIs operate as:

- Indicators of provenance
- Symbols of quality
- Tools for collective intellectual property protection

Their significance has increased immensely in contemporary world economy due to an increased consumer demand for authentic products.

2. Historical Evolution and Legal Recognition

The principle of linking products with their geographical sources dates back to ancient times when cultures and civilizations understood that certain types of goods possessed distinctive

³ World Intellectual Property Organization, *Geographical Indications: An Introduction* 6 (WIPO 2017).

⁴ *Id.* at 8.

⁵ Dwijen Rangnekar, *Geographical Indications: A Review of Proposals at TRIPS Council* 15 (UNCTAD-ICTSD 2003).

characteristics depending on their production locations, including wines, spices and fabrics. Nevertheless this practice transformed into an enforceable legal right only via successive international treaties.⁶

These conventions included provisions related to “indications of source” and “appellations of origin” in Paris Convention (1883). Madrid Agreement (1891) mentioned false and misleading indications of geographical origin. A more comprehensive legal framework was developed in Lisbon Agreement (1958) focusing solely on protection of appellations of origin.

The landmark moment was inclusion of GIs into TRIPS Agreement (1994).⁷ It signified transition from individual country laws to international legislation concerning geographic indications elevating them to an essential aspect of global trade agreements. Furthermore TRIPS outlined a dual protection system for GIs:

- General protection for all types of GIs (Article 22)
- Enhanced protection for wines and spirits (Article 23)

3. Legal Nature and Rationale for Protection

GI protection is based on law and economics alike. While trademark serves as an individual indicator of production GI serves to indicate a collectivity. Thus GI is a special class of intellectual property.⁸

Legal reasons for protection of GIs lie on two fundamental bases:

a. Protection from Misleading Use

Geographical Indications protect consumers from use of geographical name in such a way that would deceive them regarding actual place of production. The idea behind this type of protection is one of consumer protection.⁹

b. Protection from Free-Riding Behavior

⁶ World Intellectual Property Organization, *Geographical Indications: An Introduction* 6–7 (WIPO 2017).

⁷ *Id.*

⁸ Rangnekar, *supra* note 3, at 13–15.

⁹ *Id.* at 21.

GI also protects producers from free-rider effect of exploiting reputation built around product. It is not required that this be misleading to consumers it only needs to be seen as competitive behavior.¹⁰

These facts make clear that GI is dual-purpose:

- Protecting consumers from deception
- Protecting producers from free-riders

Moreover there are differences between GIs and other terms like:

- Indicators of source that only denote origin but do not have quality associations
- Names of origin that require a closer relationship between product and location

These distinctions further emphasize dual nature of GIs as legal entities, combining aspects of intellectual property, competition and consumer laws.

4. Economic, Social and Environmental Significance

In addition to legal aspects GIs have an economic development function and are relevant in rural and agricultural sectors as well.

One of roles of GIs is to serve as quality indicators. Markets with information asymmetry where buyers cannot evaluate quality of products effectively can benefit from GIs. They minimize risk, increase buyer confidence and improve efficiency of markets.¹¹

Another role of GIs is to provide opportunities for differentiation. With help of GIs producer can break into more expensive niche markets instead of being confined to commodities trade thereby increasing revenues.¹²

The developmental aspects associated with GIs include:

¹⁰ *Id.* at 22.

¹¹ Cerkia Bramley, *A Review of Socio-Economic Impact of Geographical Indications* 2–3 (2011).

¹² *Id.* at 4.

- rural development through job creation and revenue generation
- cultural preservation through heritage protection
- community empowerment due to shared ownership

It should be noted that one of functions of GIs is agrobiodiversity conservation since GIs stimulate using region specific and traditional agricultural techniques.¹³

Empirical data show that impact of GIs may vary depending on various parameters. Sometimes too much emphasis can be placed on achieving financial goals. Other objectives are often neglected.¹⁴

5. International Framework and Contemporary Challenges

The existing global system regulating GIs mainly revolves around provisions laid down in TRIPS agreement which mandates certain standards for protection at bare minimum. It requires member countries to offer adequate legal measures to stop misappropriation and ensure there is no unfair competition.¹⁵

Besides TRIPS Lisbon Agreement along with its Geneva Act (2015) allows for international protection of GIs and appellation of origin via a single procedure.¹⁶

However certain limitations have surfaced in this regard:

- Uneven level of protection in different nations
- Expensive and complex nature of registration and enforcement process
- Failure of many producers in developed nations to know about GIs and its benefits
- Some disputes during international negotiations with regards to extending higher

¹³ Bal Krishna Joshi & Devendra Gauchan, Geographical Indication, in *Good Practices for Agrobiodiversity Management* 35 (2020).

¹⁴ Dominique Barjolle et al., *Impacts of Geographical Indications* 2–3 (2009).

¹⁵ Rangnekar, *supra* note 3, at 25.

¹⁶ World Intellectual Property Organization, *Geneva Act of Lisbon Agreement* 2–3 (2015).

protections beyond wine

Additionally while potential of using GIs for development purposes seems promising recent findings indicate that effects can vary significantly.¹⁷

6. Legal Framework of Geographical Indications in India

A sui generis regime has been evolved in India to safeguard geographical indications under Geographical Indications of Goods (Registration and Protection) Act, 1999 (hereinafter referred to as “GI Act”). The law has been made to fulfill India’s international commitment under TRIPS Agreement and to safeguard indigenous goods against exploitation.¹⁸

According to GI Act a geographical indication shall mean any indication which identifies a good as originating in territory of a country or a region or locality in that territory where a given quality, reputation or other characteristic of good is essentially attributable to its geographical origin.¹⁹ This definition reflects stipulation in Article 22 of TRIPS Agreement.

The law applies to a vast array of goods namely:

- Products of agriculture
- Natural products
- Manufactured products

However it is pertinent to note that even in case of manufacture at least one stage of production should be performed within defined territory.

Further provisions of GI Act have been elaborated in Geographical Indications of Goods (Registration and Protection) Rules, 2002 relating to various procedural matters like application, examination and registration.

In India GI system is managed by Geographical Indications Registry situated in Chennai which

¹⁷ Bramley, *supra* note 9, at 1.

¹⁸ Dwijen Rangnekar, *Geographical Indications: A Review of Proposals at TRIPS Council 15* (UNCTAD-ICTSD 2003).

¹⁹ *Id.* at 25–30.

is under management of Controller General of Patents, Designs and Trade Marks.

7. Procedure for Registration of Geographical Indications

The process of registration of Geographical Indications (GIs) under Geographical Indications of Goods (Registration and Protection) Act, 1999 involves several steps. It aims at ensuring genuineness, transparency and legality of process besides protecting rights of producers belonging to a particular geographical location. It should be noted that proving link between product and its origin is one of critical steps of GI protection as highlighted in international literature and TRIPS agreement.²⁰

To register a GI a person can submit an application to Geographical Indications Registry. The applicant may be an association of individuals or producers who represent producers interests. They need to furnish information about the geographical indication name and description of goods geographic indication and production area, origin of product and characteristics and peculiarities that differentiate it from other products. It is important to provide information about manufacturing process, evidence from history and measures taken for inspecting product's qualities. All of provided information should prove that product has certain features or a reputation that is attributable to its geographical origin.²¹

Following its filing application is examined by Registrar for preliminary scrutiny as well as substantive examination. The examination process seeks to ensure that application is legally sound in addition to verifying the validity of claims in regard to distinctiveness and connection to geographical location. Deficiencies identified at this stage have to be remedied within a specified time frame. This process is meant to ensure that only valid and justified claims pass through.²²

Upon successful examination of application same will be published in Geographical Indications Journal. This process is important insofar as it ensures transparency of entire process giving room for participation in registration process. Persons aggrieved by claim have a specific time within which to submit an opposition notice. If opposition is received within

²⁰ Dwijen Rangnekar, *Geographical Indications: A Review of Proposals at the TRIPS Council 15* (UNCTAD-ICTSD 2003).

²¹ World Intellectual Property Organization, *Geographical Indications: An Introduction* 8–9 (WIPO 2017).

²² Dominique Barjolle et al., *Impacts of Geographical Indications 2* (IAAE Conference Paper 2009).

stipulated period two parties can be expected to offer their side of story.²³

In case an opposition is not raised or even when there is an opposition raised against registration of GI but it is dismissed in favor of applicant then GI is registered and recorded officially in register and thereafter certificate of registration is issued. It allows legal rights of GI to be recognized thus allowing only users authorized by law to make exclusive use of GI in respect to goods concerned.

The registration will remain valid for a period of ten years after which it can be renewed indefinitely at required fee rates. Individual producers may also apply to be recognized as authorized users.²⁴

8. Rights Conferred and Enforcement Mechanisms

Rights that follow from GI registration are as follows:

- Sole right to use GI in connection with goods
- Right to stop others from using GI without authorization
- Suit can be brought for infringement

Apart from GI registration GI Act recognizes concept of authorized user registration which entails that individuals that have right to use GI in question are registered. It follows that authorized users are actual producers in relevant geographical territory.

a. Infringement

A GI will be considered as infringed where:

- The GI is used without permission
- The GI is used in such a way that it deceives consumer

²³ Cerkia Bramley, *A Review of the Socio-Economic Impact of Geographical Indications* 2–3 (2011).

²⁴ Bal Krishna Joshi & Devendra Gauchan, Geographical Indication, in *Good Practices for Agrobiodiversity Management* 35 (2020).

- There exists an element of unfair competition

b. Remedies

Legal remedies provided under Act include:

- Enjoining defendant
- Payment of damages or profits
- Confiscation and destruction of goods
- Imprisonment and penalty

The aforementioned measures show how GIs protect not only producers but also consumers.

9. Comparative Perspective: India and International Regime

India's GI regime mirrors international practice under TRIPS while having some unique aspects of its own.

a. TRIPS alignment

In line with TRIPS GI protection in India includes:

- Similar definition of GIs
- Legal protection from misuse
- Unfair competition provisions

The two step approach within TRIPS general GI protection as well as stronger protection of wines and spirits continues to be debated at an international level.

b. Sui Generis vs Trademark System

Different countries take different approaches towards GI protection:

- Sui generis systems (India, EU) include specialized GI regimes

- TRADEMARK systems (USA) employ certification marks

Use of sui generis system in India facilitates:

- Better recognition of traditional knowledge
- Strengthened connection with territory
- Collection rights

c. International Protection Under Lisbon

The Lisbon Agreement along with Geneva Act provides for an international registration system that allows protection in multiple countries by filing one single application.²⁵

However it is important to note that India is not a party to Lisbon convention which means that there cannot be international protection of Indian GIs.

10. Case Studies: Indian and International Experiences

a. Darjeeling Tea

Darjeeling Tea is one of first and most successful instances of a GI from India recognized worldwide for distinct taste associated with climatic and geographic conditions of Darjeeling.

This GI is extensively enforced by Tea Board of India on a global scale prohibiting use of brand “Darjeeling” without due permission. Such an instance indicates that GIs can be a powerful tool to brand products.²⁶

b. Basmati Rice Controversy

Basmati rice has faced many legal issues with regard to misappropriation of label by various firms abroad. In this case:

- Several foreign firms tried to market their rice products as Basmati.

²⁵ World Intellectual Property Organization, *Geneva Act of Lisbon Agreement* 2–3 (2015).

²⁶ World Intellectual Property Organization, *Geographical Indications: An Introduction* 8 (2017).

Such instances indicate:

- The likelihood of exploitation of traditional knowledge by foreign firms.
- The need for international protection and enforcement of GIs.²⁷

c. Empirical Evidence on Socio-economic Effects

Some empirical evidence indicates that introduction of GIs leads to:

- Higher incomes for producers
- Better market opportunities for producers
- Sustenance of resources

On other hand socio economic effects of introducing GIs are possible only if there is:

- An appropriate institutional infrastructure
- Active cooperation between producers
- Successful marketing initiatives.²⁸

11. Socio Economic Impact of Geographical Indications

Often geographical indications are touted as highly effective instruments of economic growth especially in rural and agricultural economies. The economic influence of GIs is much more nuanced than what is generally perceived.

Firstly a crucial role played by geographical indicators in economic growth is that of quality signalling reducing informational asymmetries between producer and consumer. When dealing with commodities like agricultural produce whose quality cannot be determined in advance GIs come in handy as a tool through which authenticity can be communicated to consumers.²⁹ This increases consumer trust and permits producers to earn profits through sale of higher

²⁷ Cerkia Bramley, *A Review of Socio-Economic Impact of Geographical Indications* 3 (2011).

²⁸ Dominique Barjolle et al., *Impacts of Geographical Indications* 2–3 (2009).

²⁹ Cerkia Bramley, *A Review of Socio-Economic Impact of Geographical Indications* 2–3 (2011).

quality products at a premium price.

Also geographical indications have proven themselves useful in increasing market differentiation as they transform generic products into differentiated products. Producers are therefore able to take advantage of higher value addition markets instead of being at mercy of volatile commodity markets.³⁰

Developmentally GIs have been found to do following:

- Generate rural employment
- Generate local entrepreneurship
- Support community based production processes

However empirical research indicates that these positive effects of GIs are not guaranteed.

Factors that determine their effectiveness include:

- Provision of good governance
- Access to markets
- Availability of strong institutions³¹

12. Challenges in Implementation of GIs

Despite their theoretical strengths there are various practical issues that prevent GIs from being effective.

a. Issues of Institutions and Administration

There is need for sound institutions such as regulators, certifiers and monitors in order for GIs to function effectively. Most developing countries have weak and un equipped institutions that fail to enforce these regulations properly.

³⁰ *Id.* at 4.

³¹ *Id.* at 1.

b. Challenges of Collective Action

Due to nature of GIs where they are owned jointly by all stakeholders there are issues arising due to different interests and lack of coordination and benefit sharing.

c. Market Access and Commercialization Problems

While GIs add value to product they are faced with market access problems through:

- Insufficient brand promotion
- Poor infrastructure
- Competition from counterfeit products

d. Problem of Misappropriation and Brand Dilution

Misappropriation is a serious problem in GIs since misuse of names causes both economic losses and loss of credibility of products. The rising commercialization of GI products poses another danger since it affects their cultural value.³²

e. Unequal Benefit Distribution

Studies reveal that economic benefits of GI products are shared unequally between large scale producers/intermediaries and farmers who are disadvantaged by GI system.³³

13. International Trade and Policy Debates

GI's have been a controversial topic in international trade, especially in WTO context.

One of major issues related to geographical indication concerns Article 23 of TRIPS agreement concerning enhanced protection. While developing nations such as India seek to extend article to cover more than wines and spirits as a way of protecting their traditional products developed nations are against move citing possible restrictive impact on trade.³⁴

³² Dwijen Rangnekar, *Geographical Indications: A Review of Proposals at TRIPS Council 22* (2003).

³³ Dominique Barjolle et al., *Impacts of Geographical Indications 2-3* (2009).

³⁴ Rangnekar, *supra* note 3, at 30.

Another significant issue concerns link between geographical indications and trademarks since controversies often emerge when geographical names are registered as trademarks in another country and hindered from using names. Besides international GI system reveals a conflict between approaches used by the:

- European Union approach which emphasizes use of sui generis systems to offer strong protection
- United States approach which relies on trademark laws

The Lisbon Agreement and its Geneva Act (2015) although they have sought to resolve some of above problems by establishing an international registration system remain ineffective due to non-participation of many countries.³⁵

14. GIs, Sustainable Development and Cultural Preservation

GIs have come to be seen as tools for sustainable development in sectors such as rural development environmental sustainability, and cultural conservation.

One of main benefits of GIs is their contribution towards agrobiodiversity. GIs contribute to agrobiodiversity by supporting cultivation of crops native to region and traditional agricultural practices.³⁶

Furthermore another benefit provided by GIs is their contribution towards conservation of culture and knowledge. GI products have origins in traditions practiced within a community and their protection means that they are safe from exploitation.

There exists a conflict between:

- The commercialization of GIs
- The conservation of traditional values

³⁵ World Intellectual Property Organization, *Geneva Act of Lisbon Agreement 2–3* (2015).

³⁶ Bal Krishna Joshi & Devendra Gauchan, Geographical Indication, in *Good Practices for Agrobiodiversity Management* 35 (2020).

Over commercialization might result in erosion of culture and values that define GIs.

15. Policy Recommendations and Future Directions

The following policy measures will enhance effectiveness of GIs:

a. Strong Institutional Structures

Governments should develop strong institutions to facilitate successful implementation and enforcement of GIs.

b. Enhanced Awareness among Producers

It is vital to develop training programs and awareness campaigns to help producers make use of GI scheme effectively.

c. Market Access

Measures should be put in place to promote marketing of GIs. It should also include developing export strategies and participating in international trade exhibitions.

d. Equitable Distribution of Benefits

There should be emphasis on sustainable development in that benefits from use of GIs must reach every stakeholder in supply chain.

e. International Cooperation

Increased cooperation among nations will enable harmonization of protection of GIs thus minimizing problems of appropriation and trademarks.

f. Linking GIs to Sustainable Development Policies

GIs need to be incorporated into development policies in areas such as rural development, environmental conservation and culture.

16. Conclusion

Geographical Indications can be described as a relatively new and dynamic type of intellectual

property that encompasses elements of law, economics, culture and geography thus transcending mere legal protection of product names. GIs constitute an entirely new concept in collective intellectual property based on connection between a product and its place of origin. In modern world of globalization and mass industrial production GIs present an alternative sustainable development paradigm built upon local resources and tradition. In addition GIs contribute towards promotion of cultural identity and facilitate market differentiation.

The legal framework of geographical indications in India can be described as fairly comprehensive and TRIPS consistent. This framework proves government's commitment to securing its cultural heritage through effective legal regulation. Under this system producers receive legal protection of their products that helps in generating revenue from regionally produced goods. Nevertheless there are certain conditions that should be met in order for this system to be effective. First degree of awareness about GIs among local producers should be considerably high. Second appropriate mechanisms should be developed to enforce GI law. Third international cooperation should be strengthened in order to ensure adequate recognition of GIs abroad.

Through case studies like Darjeeling Tea and Basmati Rice disputes it becomes clear that Geographical Indications can present both opportunities and problems depending on how they are protected. On one hand Darjeeling tea presents an excellent example of brand success that can be achieved by implementing Geographical Indications across borders. Basmati dispute, on other hand, shows limitations of traditional products without strong worldwide legal protection.

The socio economic implications of GIs are neither universal nor homogeneous and depend to a large extent on governance system, market conditions and fair distribution of profits from protection of Geographical Indications. In order to ensure equitable benefits of this system for all participants it is necessary to use GIs strategically as a tool of development.

To summarize it should be said that concept of Geographical Indications requires more than just legal definitions they should be perceived as powerful instruments that can transform poor rural areas into prosperous communities with strong cultural traditions and competitive economy.