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INTELLECTUALIS

Geographical Indications: Realising the Goal of
Community Benefits & Ownership



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EDITORS' NOTE

Dear Readers,

We proudly present the third edition of Volume 5 of Intellectualis, with the theme '*Geographical Indications: Realising the Goal of Community Benefits & Ownership.*' In this edition, we have looked at various nuances of GIs as an emerging form of IP, its current and future scope in Indian jurisprudence and the present international conventions that are governing it. These pieces also show the readers how there is lack of enforcement even after recognition of GI tags and display GI's relevance across fields such as the artisan, handicraft, textile, gastronomy and vinification industries. Our committee members have contributed to pieces regarding the quality control factor of GIs and has compared it to the quality control of trademarks. Those from the indigenous community who are involved in manufacturing and cultivating such products linked to a particular territory of origin are to be rewarded for their efforts equitably, mutually and beneficially and prevented from exploitation by Western communities.

We hope that you take the time to read what our e-newsletter has to offer. We would like to extend our gratitude to the student body of School of Law, CHRIST (Deemed to be University) for their overwhelming response to the newsletter. This edition would not be possible without all our committee members, especially those in the Research and/or Editorial sub-team. We would also like to thank our Faculty Coordinator Dr. Avishek Chakraborty for constantly supporting us and guiding us through the drafting of this newsletter.

We hope you enjoy reading this edition!

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Quality Control Problems During the Commercial Exploitation of GI – Comparing with Trademark Law

- Samrudh P & Anjali Saran

Introduction

Certain goods or products are associated with or originated in a particular region, and these goods are credited with specific protection for the cultivators or owners to claim the authenticity of these goods or products. Geographical Indication (GI) is the means of protection that is granted to the genuineness of certain products or goods. Sec. 2(1)(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 defines Geographical Indications. From the definition, it is clear that the essence of it is to differentiate it from the other competing goods and to provide exclusivity and authenticity. There are particular tags that establish individuality in the products or goods in the market, thus adding to the same value. It is based upon the physical and cultural assets of these goods or products and also adds to the same. For example, *Aranmulakannadi*, *basmati rice*, *Tirupati laddoo*, *Hyderabadi Haleem*, etc.¹ All of these goods or products have received the GI Tag, as their production, manufacture, usage, authenticity and culture stems from a particular geographical region. As far as the quality of the GI Tag is concerned, the product of the good has to be of a certain degree. It has to satisfy the quality criterion and remain under the quality controls imposed on the same. If not, the Tag will lose its potential, as the exclusivity or the authenticity of that particular good can't be traced

anymore. This amounts to the cessation of a GI; quality restrictions are imposed on a GI to prevent this. The same can be compared to a Trademark (TM's) quality control. As essentially, the ultimate function of a TM and GI boils down to emphasizing the originality of an entity. And during Licensing of a TM, the Licensor imposes definite quality controls on the Licensee to abide by. If this is reached, then the Licensor can revoke the License, or if not, then the potential and the efficiency of the functionality of the trademark can drop. Similar is the situation of GI, as their functionality is for the product or good to be of a certain degree and quality.²

GI Development & Uses

Geographical Indication, or GI, is a type of Intellectual Property that has been in existence for a long time. It was present back in the year 1883, when the Paris Convention was convened in the same year, wherein the "*indication of the source*" was first pointed out. Since then, GI as a concept has undergone rapid development. The Madrid Agreement of 1891 was another convention that prevented misuse of indication of the source. Since then, GI has garnered great importance in the international arena. Geographical Indication is a type of IPR that tells a person where a thing is from or its origin. The concept of GI, from being a submissive factor with respect to IPR, has now become a

prominent factor in the identification of the intellectual property. Now, GI has been identified as an independent IPR. GIs are a form of IP that identify the product from its region. For example, the debate in the EU regarding Basmati Rice going on between India and Pakistan was granted to India due to India being identified as an origin for source of rice. Hence, there are several factors which are taken into consideration before granting GI to a product of a particular region. There are mainly three broad factors:

1. The GI must relate to a good.
2. The good must belong/originate to a definite area.
3. The goods must indicate qualities that are unique to that particular area.

Another example of a GI is Darjeeling Tea, which has been accorded a GI tag in India. It is the first product to get the GI tag in India. The tea has been identified as possessing a unique taste and being made only in Darjeeling. The TRIPS Agreement also states that – “*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.*”³ Hence, the concept of GI has seen massive development in the years since the concept was first introduced back in 1833. GI encourages the preservation of knowledge specific to that region. It also gives the region a type of advantage by granting rights over the product that has been accorded GI. For example, if India has GI over Basmati Rice, then India can gain a monopoly

in its production, and other countries may have to pay royalties in order to grow and sell it. The country owning the GI tag can lead to great economic benefits for the country. The development of GI acts as a tool for the regional promotion that will help in protecting our heritage. It can create value for local rural communities in developing countries through products that are deeply rooted in tradition, culture and geography. This is also the reason why GI, as a source of IPR has been developing rapidly in recent times.

Area of Concern

GI has been an area of concern. From the numerous debates that have taken place both intra and inter-countries with respect to the origin of a particular product, GI has always been in the news. An example can be the Indian sweet *Rasagola*. *Rasagola*, an Indian sweet usually identified with the state of West Bengal, has been in great dispute in the news. The state of Orissa has been granted its own GI tag for Rasagola, two years after the state of West Bengal was granted it. However, two states getting a GI tag for the same product can have grave consequences. An example can be the debate with respect to *Champagne* between Germany and France. Ultimately, the GI tag was granted to France for it. In fact, in India, it was only in 1995, after the TRIPS Agreement and the Basmati rice debate that GI became an important factor of IPR. However, there are still numerous factors which need to be sorted for a viable GI framework. Prior to 1999, the year the Geographical Indications of Goods (Registration and Protection) Act came into existence, India did not

have any mechanism for GI protection. Even the TRIPS Agreement recognized GI as an IP only in those countries that had formally given GI tags to its products. This is the reason that when the Basmati problem came up earlier in 1995, India expedited the process of implementing the Act. However, there are still many challenges that are being faced by the GI structure. There are other factors also, like India not having a proper GI structure and lack of quality control measures, along with a uniform system of measurement that has been discussed in the later part of the article. Other concerns also include the lack of recognition of GI as a full-fledged IP. The post-registration activities after getting a GI tag, like marketing of the product, is not carried out properly. There is a lack of awareness amongst people also with respect to GI; hence it becomes very difficult for GI to reach its actual potential in India.

Challenges to GI

There are quite a few challenges to the implementation of the protection of GI. Geographical, legal, economic and social challenges are a few challenges in achieving efficient GI Law. However, the more stringent the Law gets, its right implementation is dependent on the bodies or authorities formed in order to achieve full efficiency. Sec. 11 (2) of the GI (Registration and Protection) Act, 1999 specifies certain documents for the application of a GI⁴. Sec. 32 (1) of the same Act lays down additional documents to be submitted during the filing of the application⁵. All these documents and their submission, although done to ensure the validity and potential of the product or good, if the

process gets cumbersome, then the implementation and functionality of them drop. Another prominent feature of the Indian GIs is that they are truly diverse, whereas when looking at most of the GIs in the European Market, it's mostly wines and spirits. In 2021, the enactment of the Tribunals Reforms Act, 2021 bought an end to the Intellectual Property Appellate Board (IPAB), which was initially a body established to hear appeals regarding Trademarks. However, over the years, it transcended to become a board that handles all IP appeals⁶. Now, most of the powers of the IPAB have been vested with the High Courts. Commercial Courts deal with most of IP disputes nowadays. With already such an unwieldy functioning of the Courts, the challenge of bringing in a whole new area of Law under the same establishments does prove it to be burdensome, as a novel quasi-judicial authority would be viable for the requirement. This freedom to structure a required framework concerning GI, for any country, provided under the TRIPS agreement is more of a double edge sword. Art. 1.1 of the TRIPS Agreement gives the member Nations the flexibility to involve the GI Protection in their own legal approaches⁷. Hence, the protection of GI in Foreign Markets becomes a bit onerous because the legal approaches towards their protection vary from each country. Darjeeling Tea is the only GI that has Foreign Recognition, as the attempts to make it receive foreign recognition were going on way before 1986. Albeit, the GI was granted in 2003. This solidifies the fact that stringent Quality Control measures can indubitably ensure the product's performance in the markets. Its Quality

Control provisions and measures make sure that the product or good does cater to the specific needs of the user. This product, when it is a GI, has certain standards to be met, which subsequently keeps up the product's demand in the market, along with the consumer's good faith and trust in the same. Considering this, Quality Control is the quintessential factor influencing the performance of GI in India, which is also a major challenge to our national goal of establishing a better foreign presence.

Operation of the Quality Control Factor Within GI (In Comparison with TM Law)

India has around 370 GI tags, albeit this; there are very few that have a reputable presence in the International and domestic markets, the reason for this being lack of Quality Control provisions in place. Rule 32 (1)(g) of the Geographical Indication of Goods (Protection and Registration) Rules, 2002, lays down the provision for the establishment of an Inspection Body (IB) that checks the subject matter in a GI-1 application⁸. As this body is responsible for quality checks, standards, inspections and control, it makes it essential for the body to be granted specific powers and functions. However, on the contrary, Rule 32 (1)(6)(g) makes this elective on the applicant's option⁹. This passive doing of the legislators has led to a lack and flaws in the quality control measures and mandates in the applications. As a result, there are quite a few GI tags that aren't inspected for quality standards by the IB. Karnataka has 46 registered GIs, making it the State with the highest number of GI tags. However, it also has the

highest number of uninspected GIs. As 10 GI tags are registered without any quality inspection. 93% of the GIs in Uttar Pradesh (UP) are inspected for quality standards, making it the State with the highest number of inspected GIs, although it only has 28 GIs.¹⁰ This data signifies that the quality control measures and checks are not as feasible as they could be. The diversity in India, and the differences in the land, climate, soil, culture, practices, usages, etc., influence the potential of the Nation in the field of GI. And to address this potential, there is a requirement for further rigid and stringent Quality Control measures to be taken. Rule 32 (1)(6)(g) has to be amended in order to make inspection by the IB as a mandate for any good or product to receive the GI tag under the GI-1 application. These changes can bring about a difference in recognition of the GI in the international markets as well as stabilize the demand at the National level too. Since the kernel of Quality Control provisions is justly equivalent in GI and TM, it is crucial to understand the approaches taken by both of these IP. In the usage of a TM, a Licensor can impose explicit quality controls on the Licensee. This is done in order to maintain the market value of the TM. When the quality of a trademark drops, so does the other goods and products that are associated with any company or establishment. Hence, a TM is at the heart of any business or start-up. These safeguards may include but are not limited to, instructions on how and where to apply the mark, unambiguous and clear product specifications, adequate product inspection and approval procedures, the right to routinely inspect

manufacturing facilities to check for compliance with the license agreement and applicable laws, and the right to examine customer service feedback and complaints. In a few countries, such as the US, a TM may be deemed forsaken if it doesn't satisfy the quality standards imposed on it by the Licensor. Such a TM loses its function and cannot be enforced by the Court of Law. This type of Licensing is called "Naked Licensing." *Barcamerica International USA Trust v. Tyfield Importers Inc et al.* is a US case law that establishes the principle for quality control of TM.¹¹ The term 'Quality Control' isn't really defined anywhere; however, it can be based on the standards of the Licensor, and the Licensee is bound to abide by it. The quality control is just to ensure that the standards of the TM don't decrease because of the actions of the Licensee. It just safeguards the fact that the same quality of TM maintained by the Licensor has to be followed by the Licensee as well. The essence of the same was also reflected in the case of *Double Coin Holdings Ltd. and Anr V. Trans Tyres (India) Pvt. Ltd. and Anr.*, where the Delhi High Court held that a TM acquires goodwill only when the product being sold is of a certain quality and that quality should be maintained, this is the primary reason for the policing of a TM, as in India.¹² The diminishing value of a TM would come into play when the Licensee doesn't abide by the specifications and the measures imposed by the Licensor which was established in the case of *Rob Mathys India Pvt. Ltd v. Synthos Ag Chur.*¹³ The Court also opined that Quality Control is implied by the very nature of the License and doesn't have to be particularly

mentioned; as long as the measures are to safeguard the quality in a reasonable way, it's feasible. The comparison between the approaches between GI and TM Law clearly points towards how the ambit of Quality Protection is plainly broader in TM Law than in GI. As the provision makes it optional for an inspection by the IB, but in TM Law, Sec. 49 (1)(b)(i) of the Trade Marks Act, 1999 makes it mandatory to write to the registrar an affidavit, specifying the relation between the registered proprietor and the proposed registered user, the quality control measures to be taken by the proprietor and other restrictions imposed on the proposed user. Sec. 50 (1)(c)(i) of the same Act, gives power to the Proprietor to cancel the License given on certain grounds, and sub-clause (i) is the ground on which it can be cancelled for the Licensee has overstepped the restrictions levied on him, ergo resulting in a diminishing the TM's value. The importance of Quality Control measures cannot be overemphasized. It is one of the few fundamental qualities of an IP, which has to be maintained throughout its existence. Although the Quality Controls have fairly the same spirit between GI and TM, their purpose and rationale are also similar, ergo giving rise to some skirmishes between the two.

Conflict with TM

Trademark is a type of IPR wherein a logo or name helps the consumers identify the manufacturer of a product. When the connection between the manufacturer and the consumer finishes, so does the benefit of the trademark. For example, Xerox was a company that first started with the photocopy

business, but later, as the word came to be seen more as a coping mechanism for the company, the word got diluted and lost its value. A similarity between a trademark and geographical indication is the identification part. Similar to a trademark, GI also helps the consumer identify the source or origin of the product. Hence, often, people confuse GI as a subset of TM, rather than having its own identity. While TM is a more standardized form of IPR protection offered everywhere in the world, yet, GI is still developing. Both these IPs are greatly alike, helping the consumers recognize the place where it was produced. However, both these IPs can be differentiated on various grounds. While TM can be allotted anywhere in the world, GI is an IP that is allotted only on the basis of the natural environment and human factors. A culmination of these helps in identifying a product from a particular region. Another major difference between the two is that a GI is region specific or nation-specific, i.e., all the people of that region can have the rights over that product. For eg., *Banarasi Silk sarees* made in the Varanasi region can be owned by all the people of that region that have similar quality products; however, a person of another region cannot claim rights and protection under it. On the other hand, for a TM, it is only the inventor of the product or the producer that can have rights over it. Nobody else will have a right over it. For example, the Tanishq name and logo can only be used by TATA's and no other entity without due permission from the parent and owner company. Hence, it is of utmost importance that GI tags be regulated in a better

manner, as it grants community rights to the people and can lead to great economic benefits for the region. Like all other IPs, GI, too, grants its users certain exclusive rights over prices, supply, and other such aspects. Another way TM and GI can be differentiated is by the fact that TM can be a symbol or word used to identify the product, whereas GI is the product itself. So, while TM is the title, GI is the product, not necessarily a name or title. While for TM, as pointed out above, identification and being able to establish a link is necessary, GI is the uniqueness of the product itself due to its geography. Section 25 & 26 of Chapter V of the GI Act 1999, talks about the interrelation between TM & GI. Section 25 speaks about the prohibition of registration of geographical indication as a trademark, wherein the section has stressed on GI not being used as a TM.¹⁴ Section 26 talks of the protection granted to those TM that have already registered so, prior to the coming of the 1999 Act, with a name or symbol similar to a GI, can remain to do so, provided it is being done in good faith.¹⁵ Moreover, despite the clear demarcation made by 1999 Act for GI and TM, there still remain several cases of disputes between the two, which need to be adjudicated upon or settled amicably.

Conclusion

While GI seems to be a comparatively newer concept, it still seems to offer good profits for products where it has been used with efficacy. But GI protection via legislation alone isn't adequate to shield the product or its makers from being claimed or misused in other parts of the world. GI

monstrously affects the financial part of non-industrial nations like India, and sadly, the GI Act of 1999 isn't adequately extensive to screen the interest of craftsmen and skilled workers and its misappropriation. GI interaction needs the help of competent authorities like government institutions (GI Board for example) and long-term strategies alongside the current steps being taken. This calls for purposeful endeavours towards the same goal being made by the public authority and makers. For this, awareness among people about GI and its importance needs to be generated and demonstrated by the institutions. Furthermore, the entire GI framework suffers from unstandardized ways of granting and evaluating a GI. As mentioned in the article that the authenticity of a GI can be questioned due to a lack of proper quality control measures in place. Therefore, there is a need for proper measures to be introduced and implemented by the government by seeing the standards set up in other countries. The conflict between GI and TM is again an issue that needs to be looked into thoroughly, with the proper demarcation between the two IPs. The current Act needs to be unambiguous in this aspect. Apart from these, the commercial viability of having a well-structured GI needs to be looked into. The different legal challenges being faced by the current framework, like IPAB abolition, also need to be addressed soon in order to properly develop GI in India. It is only then that GI will be able to get the same esteem as conventional IP.

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Post-Registration Enforcement Issues of GI Tags in India

- Vamshi Krishna Kusuma

Introduction

Geographical Indications in India have faced threat in the past and are still surviving in an exploitative international market. This article aims to expand on the lack of protection and enforcement post the recognition of a Geographical Indication (further termed as ‘GIs’) specific to India. In addition, brief references to the current state of exploitation of numerous Geographical Indications in India have been employed to support the statements made. To give a brief the laws enacted to recognise and protect GIs in India, the Geographical Indications of Goods (Registration and Protection) Act, 1999¹ is the sole provision under Indian legislation. The Act provides for a Registrar of GIs holding authoritative power to recognise and empower communities, art forms, handicrafts, etc. An important objective of this Act is to justify the uniqueness specific to that GI. Moreover, the Act elaborates on the procedure of

registration, criteria for qualification of a GI, as well as methods of redressal of violation or exploitation.

Main Issues

The primary, recognisable issue with Indian GIs is that the extent of misuse of goods protected under the Indian GI Act has exceeded the rate of redressal and resolution to such exploitation. In order to defend and protect a unique good, it is important to monitor the markets and recognise the presence of any producer violating the rules. It is even more important to take action and protect the essence of that GI. The lack of enforcement and prevention of unfair competition against these goods seem to be the issues at hand. The reasons are numerous.

1. Lack of monitoring body: The lack of a representative body to monitor exploitation and enforce the protection of various artisanal works seems to be a weakness. The case of ‘Banarasi sarees and brocades’

substantiates this point. The Banarasi sarees of Uttar Pradesh are popularly recognised with intricate motifs weaved with golden and silver threads. Due to increasing demand for the same, cheaper mass-produced sarees entered the market under the name of Banarasi sarees and brocades, causing losses to the local manufacturers². In response to this, the skilled work was recognised a geographical indication under the name of ‘Benarasi sarees and brocades’, yet it did not stop the distribution of fake works. Even after 11 years, there has not been much redressal to the local manufacturers.

2. Limitations of the Indian GI Act: Specific limitations or shortcomings of the Indian GI Act, such as specifications for registering a specific commodity as a GI, have played a role in creating problems to certain producers. A good example would be the case of ‘Judima Rice Wine’, a traditional preparation practised by and significant to the Dimasa Tribe belonging to Dima Hasao, a hill district in Assam.³ The product is now a declared geographical indication, but this particular GI highlighted a possible issue within the Indian provision for GIs. The renowned Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is a primary document to draw an international interpretation of Geographical Indications. This agreement only provides for a minimum standard of

protection of GIs. There is no mandate for establishing a framework for protecting GIs. The GI Act of India, yet, requires proof of origin to a specific region, culture or community, furthermore in the form of historically documented proof of the same through gazettes, articles, publications and so on. The issue arises mainly in respect of tribal communities and regions that own no documentary proof of their product’s uniqueness. It is more probable that these have been orally passed down through generations as a practice. This lack of documentary evidence can easily prevent a unique and culturally valuable commodity from obtaining protection against exploitation as a GI.

3. Delay in taking required actions: The presence of fallacies and weaknesses in the current provisions for GIs is evident. Delays in proceeding with the needed actions of enforcement and protections can also prove costly towards many unrecognised and unrecorded GIs all over India. A good lesson can be learnt from the cases of both Darjeeling Tea and Indian turmeric. In the case of Darjeeling Tea, the tea is a signature product from north-eastern India. Its exceptional taste, owing to the location of cultivation, attracted international attention. This also gave rise to producers around the globe selling under the name of Darjeeling Tea. The Tea Board of India, the sole

authority representing all Indian tea producers⁴, has taken up roles of complainants in courts of other countries – all to prevent trademarks such as ‘Darjeeling’ associated with the sale of tea from being registered in other countries. Cases in Japan include complaints against producers such as Yutaka Sang yo Kabushiki Kaisa for registering a trade under the name ‘Darjeeling Tea’ in the Japanese Patent Office (JPO); Mitsui Norin KK for advertising the ‘Divine Darjeeling’ logo⁵. The case of protecting the value of Darjeeling Tea and preventing international sellers from benefitting under this name has been a much more elaborate fight. Drawing from this very example, quick redressal and action at a judicial fold are very necessary. Every commodity or skill does not have a ‘Tea Board’ to protect and defend it, and in some cases, even at a district or state level. This makes it necessary for the government to step in and provide ample defence to exploited GIs.

Conclusion

India is a country with about 420 Geographical Indications enriched with commodities and creations that have acquired international recognition and demand. It is arguable that the list has not yet exhausted, because of all the non-registered items that are integral to the character of India. The issue of proving origin through documentary evidence of an item’s lineage in that particular region remains a

controlling or preventing factor. This is mainly due to the presence of commodities made by tribal groups or backward, secluded communities that cannot produce documented evidence but rather oration. Strengthening the existing provisions in India by understanding this limitation, as well as recognising the different circumstances, could be the next step forward. All these steps would sum up to the main original objective of creating Geographical Indications - preserving and protecting producers of unique commodities from destructive exploitation.

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Are Gi Tags Helping India's Exports? – An Analysis

- Amisha Sharma

Addressing the Legal Question

According to estimates from the International Trade Centre, around 125% more coffee bags are labelled and exported as "Antigua" each year that are made in Guatemala!¹ The issue raised here is that while it is, in theory, unlawful for unauthorised users to use GI tags, there is no practical way to stop it. At most, the Indian government can write to the African authorities if an individual, say from Africa, wishes to sell Indian basmati rice, even if he is not authorised to use the GI label. But what if Africa declines to act? The amount of time and effort required by the All-India Rice Exporters Association (AIREA) to establish the GI tag for the product in every nation is beyond comprehension. Therefore, ensuring that the GI label applied to any product in any country keeps its importance and sense of origin is imperative.² As a result, the WTO website database should be updated as soon as a GI is registered for any good in a nation, and a circular or notice should be distributed to its member nations. Each country's government should ensure that people know that a particular GI registration has been granted.

Introduction

An item's reputation, characteristics, and quality, typically influenced by its country of origin, make it most recognisable. The Geographical Indication (GI) label serves as an identification of the product's place of birth, whether it be natural, agricultural, or manufactured. The oldest type of Intellectual Property (IP) protection is GI status. Champagne, Feta cheese,

tequila, Ceylon tea, Antigua (Guatemalan) coffee, and Kalamata olives are a few goods with GI tags available internationally.³ No unauthorised individual is allowed to use the tag, which is supplied to authorised users in a particular country and can only be used by them. However, no perfect approach has yet been found that guarantees 100% protection for a specific GI tag.

GI Tag and its Functionality along with Issues

The tag was created to protect consumers from false information and counterfeit products and keep manufacturers from having to sell goods at reduced costs. For instance, because Darjeeling tea carries a GI tag in India, anyone caught selling it illegally could face legal action. However, you are helpless if a Bangladeshi vendor sells counterfeit goods in Sudan because that country does not recognise the GI tag on Darjeeling Tea. For GI tags to be meaningful, countries must register them individually because the WTO has not yet established a "multilateral GI registration system."⁴ The Nikes, Apples, GEs, and Guccis of the world are not intended for use with GI tags. They are designed to serve the needs of third and first-world producers who need more financial resources to construct an expensive-to-create brand. The international structure needs to emerge soon to preserve its interests.

Benefits

The Darjeeling tea industry benefited from the GI tag because it helped verify the legitimacy of the goods being sent. The Darjeeling tea and logo were India's first

products to receive a GI tag. Some items, like Darjeeling tea, have significantly benefited from GI labelling to the point where their prices have increased elsewhere when output has decreased in India. The most recent instance was in the years before 2013 when the agitation for a separate state (Gorkhaland) was ongoing in the Darjeeling district and surrounding areas.⁵ Darjeeling tea exports to many countries, such as the UK, Australia, China, and Pakistan, have dropped sharply. In the first half of August 2013, at least three major English newspapers—The Telegraph, The Guardian, and The Daily Mail—published articles expressing the worries of Darjeeling tea enthusiasts. A similar concern was described in the media of nations including China, Australia, Pakistan, and the Arab states. When political or labour turmoil occurs in Darjeeling, the cost of Darjeeling tea in high-street cafés around London, Paris, and other export markets skyrockets.

What Needs to be Changed

It's debatable if GI tags have any direct effect on exports. For instance, the Karimnagar silver filigree received the GI tag in 2007. The marking has aided in maintaining the silver filigree's uniqueness. But aside from that, nothing else happens. The natives are entirely ignorant of what a GI tag is. However, the product's increased visibility in foreign markets because of the GI brand has been highly beneficial. What is evident is a need for knowledge of GI tags, which might be crucial in popularising good-quality, indigenous products on global markets, allowing the higher prices realised to support more significant investments, and improving the livelihood of rural residents, farmers, craftspeople, etc. The art needs to be made more widely known, first in India and then

internationally. The advantages will come about immediately if 70% of people register themselves. The government must take action to ensure that GIs function well for Indian exports.⁶ The central and state governments should look into issues such as the acute funding shortage faced by many registered GIs, the lack of civil and criminal remedies in case of GI violations, the lack of a vigilant market watch and regular inspections, improper coordination between actors involved in the value chain of GI product exports, etc. The government must treat GIs seriously if sectors like handicrafts and others that generate rural employment are to thrive in the absence of large pockets.

Concluding in Terms of Export Differentiation

It ultimately comes down to this: GI tags are helpful but only guarantee export success. Economics and perceptions have always had much to do with prices and quality. However, these tags also function as credentials that enable India's smaller producers, dispersed throughout our less well-known export temples, greater certainty of doing business abroad.⁷ Although producers of Toda Embroidery, Naga Mircha Pickles, Coorg Orange Marmalade, Alleppey Coir, Coorg Green Cardamom, Jaipur's Blue Pottery, etc. may not be aware of it, having GI tags on their products makes persuading foreign customers easier than usual. Additionally, it implies having the ability to set prices. The government must raise awareness among individuals who produce these commodities if India hopes to use GI tags to establish a foothold in the global market. A policy framework must be developed for it. Although GI status is unquestionably a tool for creating a brand, the

government will need to give financing, tax breaks, and training to make GI tags meaningful.

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Challenges and Opportunities for Protecting GIs in India

- Kandalam Abhisvara

Introduction

As an indication of quality and authenticity, Geographical Indications (GIs) serve to designate products as originating from a particular region. The goods' origin (geography), quality, and reputation are interlinked. If protected, GIs may be correctly attributed to counterfeit products or services that may not meet the standard for designation as a GI, which ultimately leads to misrepresentation and deception. Some commentators assert that, given the collective nature of the rights to a GI, provisions for the

exclusion or neutralisation of those who intentionally undermine the GI's integrity or perform below the standard must be made before the GI is established.¹ In other words, an individual's rights to the GI must be subject to performance and integrity. On the other hand, strict standardisation and quality control may frequently result in the imposition of adverse rigidities in the system, preventing it from accommodating innovations and experiments in line with technological advancement as well as changes in consumer tastes and preferences.² Therefore,

every system of GI registration faces a challenge in resolving the conflict between the legitimacy provided by the stringent quality and origin requirements on the one hand and the desire to mitigate the adverse effects of strict regulation by adopting more lenient rules relating to geographical origin and product standards on the other.³ When used strategically, a well-protected GI can be a robust marketing tool since it represents to consumers a certified level of the reputation, quality, and distinguishing features of the said products. In the era of information asymmetry, the producer can indicate to the consumers the merits of their products.. Because of its potential socioeconomic benefits, GI has drawn favourable attention from developing nations, who view it as a sleeping beauty that will one day awaken.⁴ Article 22 of the TRIPS Agreement specifies the present universal framework for GIs. Due to its commitments under TRIPS, India, to grant legal recognition and protection to GI products, passed the sui generis legislation: Geographical Indications of Goods (Registration and Protection) Act, 1999.

Challenges to GI Protection and Enforcement

The Act was passed with certain objectives: the Protection and prosperity of producers of GI goods; the Protection of the consumer against misleading GI products; and the Promotion of the global export market for GI products.⁵ However, the stakeholders face multiple difficulties when realising the potential benefits built into GIs:

- *Lengthy Registration Process:* The registration process of GIs in India is

cumbersome and lengthy, with several products pending registration at various stages.

- *Lack of an enforcement mechanism:* A highly effective post-GI framework is essential to oversee the enforcement of the GI (in domestic and export markets) and prevent any infringement. This requires constant market surveillance to determine whether counterfeit products are being passed off. Additionally, disagreements may arise with competitors on whether their goods and/or marketing strategies violate the said GI. However, domestically, there is no established authority to oversee the post-GI system, and even in export markets, no effective enforcement mechanism exists. As with monitoring export markets, especially in developed nations, it typically necessitates hiring the services of a watchdog organisation at exorbitant prices, as was the case with the Darjeeling Tea Board when it hired the services of *Compumark*, an international watchdog agency to monitor and report to the Tea Board all cases of unauthorized use and attempted registration.⁶ Further, there needs to be more emphasis on inspection and monitoring mechanisms, which allows the competitors of the GI products to wrongfully leverage the GI's reputation regarding the quality of the product.⁷ The brand loses credibility due to this consumer misinformation, and the valid

owner of the rights incurs the most loss in the process. The widespread misuse of much Indian GIs brings to light the urgent need for vigorous enforcement. Yet, the amount of abuse that has already surfaced makes the effort challenging. It comes at a high cost to the right holders, especially those in rural India, who cannot afford these costs. Consider the tea brand "Darjeeling Tea," a registered GI. Despite the Tea Board's numerous efforts to ensure appropriate legal protection, an estimated 40 million kg of the tea is sold worldwide; although only about 9 million kg of genuine Darjeeling tea is produced.⁸ The Tea Board of India spent approximately \$9.4 million on legal action and an international watch agency (*Compumark*) engagement to combat infringement.⁹ Despite these challenges, it is reassuring to see that some of the registered GIs in India right holders have begun to take steps to assert their legal rights domestically. Considering the case of *Pochampally Ikat* sarees, the right holders of the GI filed a case against the manufacturing and selling counterfeit products. The Manufacturers and Retailers pleaded guilty on the grounds of unawareness of the GI protection of *Pochampally Ikat*. The dispute was ultimately settled outside of court. The stakeholders, however, did not stop there. They undertook further enforcement measures, such as creating state and district-

level committees, to facilitate coordinated action to combat counterfeiting. Specific steps include gathering data on the infringers, creating a database of potential infringers, notifying the infringers of the violation, and bringing infringement lawsuits, among others.¹⁰

- *High Marketing and Promotion Costs:* The success of a GI depends, in part, on effective marketing and promotion of the product. These processes are not only resource-intensive but also challenging to carry out for many stakeholders from a developing country like India.¹¹ Regarding distribution channels, it could be necessary to use varied strategies in different nations to sell the same product. In order to access the market, makers of GI products might have to compete with the economic power of numerous intermediaries. For instance, processors are progressively infiltrating the supply chains of agro-food items to control the vast majority of production-related decisions, frequently placing the primary producer in an unfavourable position by increasing their dependence on the processor.¹² In the case of coffee and tea, where India is the owner of a sizable number of GIs, several processing businesses dominate the world trade. Due to the retail enterprises' expansion and related economies of scale and scope, their position is also problematic.¹³ Given these difficulties, a comprehensive marketing and distribution

scheme is necessary for a GI to function as a valuable tool for business. with a proper institutional framework, it is easier to guarantee that a proportionate share of the benefits resulting from a product's GI designation reaches the actual producers or artisans downstream in the supply chain.

- *Geographical issues:* There are several uncertainties concerning the exact location that should be considered as the place of origin for a specific product, which poses many issues. For instance, in claiming GI protection for Basmati Rice, Punjab, Haryana, Himachal Pradesh, UP, J&K, and Delhi have traditionally been considered as sites for cultivation.¹⁴ On the other hand, Pakistan also claims a GI over Basmati Rice.¹⁵ Further, climate change hinders product development due to the damages brought on by adverse climatic conditions, thereby impacting the yield of products and services.
- *Lack of awareness:* The fact that individual proprietorship accounts for a very small portion of all GI registrations and that the Government of India owns most of them (roughly more than half) is attributable to a lack of awareness.¹⁶

Opportunities Presented by the Protection of GIs

A rise in the inflow of income to the community engaged in its production could be facilitated by adequate protection of a GI product by preventing

loss of value through copying, free riding, or usurpation.¹⁷ Therefore, GI is frequently mentioned as an instrument with the ability to support rural development, albeit indirectly, by lowering the economic poverty of the rural poor.¹⁸ The effects of GIs on rural development in India merit attention, given that the majority of GIs in this country are associated with artisanal work and agriculture,¹⁹ two industries that support the livelihoods of a significant portion of the rural poor in this nation. It may also be an alternative for the growth of the agricultural sector. GI products may also have varying spillover effects on the tourism sector, boosting tourism and employment generation.²⁰ Given that most of these traditional products and the persons engaged therein are fighting for employment in the face of competition from inexpensive representations or other competing products that are increasingly making their way into the quickly shifting markets in the age of globalisation, GI assumes an increasing role for India. Aside from the potential for obtaining a premium price, the increased likelihood of reclaiming the market share (either partially or entirely) initially lost to imitations may result in the genuine right holders receiving more significant financial returns.²¹ Therefore, provided that they receive a fair piece of the benefits accrued, GIs can contribute to the socioeconomic well-being of the actual producers or artisans. It can boost the rural community's standard of living while also increasing the region's valuation. GI thus aids in building flexible, dynamic platforms for rural development.

The Way Forward

Given the economic potential held by GIs, there is a compelling argument for public or quasi-public institutions to formulate a strategic approach to promote GIs. For rural Indian producers with very little awareness of it, it can be a complex undertaking to turn a GI product into an international GI brand. The following are a few suggestions: The Government should employ efficient marketing strategies and promotional initiatives at a larger scale to capitalize on the economic prospects presented by GI products. The appropriate stakeholders should undertake worldwide marketing and promoting these products as an exclusive GI brand. All goods registered under GI must carry a premium price as decided by the government. There should be tax incentives for GI product makers.

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Analysing the Geographical Indication of Goods (Registration and Protection) Act, 1999: Legal + Economic Perspective & Suggestions for Improvement

-Manushri Bhat

Introduction

A geographical indication of a good can be defined as an element of industrial property that designates a nation or a specific location therein as the location of origin of that good.¹ Such a name typically carries a guarantee of quality and individuality, primarily due to its origin in a specified geographical place, region, or nation. Geographical indications are considered an aspect of intellectual property rights (IPRs) under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property² and Articles 22 to 24 of the TRIPS agreement.³ Further, the Indian legislation, The Geographical Indication of Goods (Registration and Protection) Act, 1999⁴ has been formulated in this regard. Today, geographical indications are highly valued as intellectual property with respect to a wide range of items. They are

viewed as a legal and practical tool for developing rural areas and preserving cultural assets, in addition to serving as a tool for defending consumer rights. With this, the relevance of GI to the economic activities of countries, especially India, is high.

Socio-Economic Impact of GI on Economies

- Higher retail price and returns - Consumers are willing to pay extra for products with a regional designation since it adds value. According to a consumer survey conducted in 2000, 40% of EU customers are willing to pay 10% extra for products that have a guarantee of their origin.⁵ Therefore, geographical indications unlock revenue by leveraging consumer demand for genuine,

high-quality goods. As a result, most goods with a regional designation have a higher suggested retail price than comparable goods. The premium, therefore, covers the manufacturing and production costs as well as quality control signal with respect to consumers. It also covers the cost of the product's fame. Primary producers profit from their involvement in manufacturing items with a regional indication by receiving a higher price in addition to a higher retail price.

- Increased output and value - Geographical indications have a significance that can be communicated in many different ways. For instance, it has been demonstrated that the registration of a geographical indication raises both production output and land value.⁶ Additionally, the security that comes with legal protection opens up options for investment in a particular good or area. The Phu Quoc Fish Sauce Producing Association implemented a geographical indication for Phu Quoc in 2001⁷, increasing the product's value and drawing in a foreign investor, Unilever, who invested \$1 million in cooperation with local producers.
- Promotion of rural development and sustainability - By increasing farmer wages and protecting the rural people in these areas, GI benefits the rural economy, especially the

less privileged or isolated places. By erecting a barrier to entry into a specific market niche, granting a geographical indication will allow the right owners to profit financially from their geographical indication and exclude unentitled consumers. The owners of geographical indications and their communities will receive an equitable division of value and benefits as a result of these characteristics. Further, financial incentives will result in consequential incentives to protect and preserve conventional practices and knowledge, thereby supporting intergenerational equity.⁸ The proprietors of a geographical indication and the society at large will also profit from additional indirect benefits, such as job development, population retention in rural regions, and the potential for tourism. However, to fully reap the benefits of GI so that it affects our country positively, it is imperative to have strong and supporting legislation in place.

Main Problems with the GI Legislation in India

- There needs to be a clear definition of what constitutes a GI product. This has led to several disputes, particularly over the use of traditional names and symbols. It has been argued that the legislation does not adequately protect traditional knowledge and fails to incentivize its preservation.

- There needs to be a clear procedure for registering a GI product. The process is complicated and time-consuming, which deters many potential applicants.
- There is no protection for unregistered GI products.
- There is no effective enforcement mechanism, meaning that once a GI is registered, there is little to no stopping others from using it. The legislation also does not adequately protect against the misappropriation of GIs as the Act does not provide any penalties for infringement of geographical indications. Due to this, it does not provide any compensation for this infringement.
- The legislation has been criticized for being too restrictive and not providing adequate flexibility for innovation and creativity.
- Finally, there have been concerns that the GI legislation could lead to a situation where a few large companies control the market for traditional products.

Economic Consequences of the Indian GI Legislation

The present GI legislation in India has presumably affected the economy. It has led to an increase in the price of products that have been granted GI status. This is because GI status confers a certain level of quality on a product, and producers can charge a premium for products with GI status. Further, the GI legislation has also led to an increase in the number of jobs in the country, as producers of GI products

need to employ people to produce and market their products. Finally, the GI legislation has also led to an increase in foreign investment in the country, as investors see the potential for growth in the GI sector. However, the GI Act, 2000 also negatively impacted Indian businesses. The Act creates a new type of intellectual property right, which can be used to make an exclusive claim over a particular geographical area or location. This can be used to block other businesses from using the same or similar geographical indications, even if they are using it in a completely different context. The Act also requires businesses to register their geographical indications, which can be costly and time-consuming. Finally, the Act also imposes some restrictions on the use of registered geographical indications, limiting how businesses can promote and sell their products.

Overcoming Problems in the Indian GI Law

- Improving communication and coordination between the various stakeholders involved in the GI process: One way would be to create a more effective and efficient system for tracking and monitoring GIs. This could be done by establishing a centralized database of all registered GIs in the country and requiring all stakeholders to regularly update and maintain accurate records, encouraging more active participation from the industry and other stakeholders in the GI process.
- Improving the quality and quantity of information available on GIs: Measures could be implemented to prevent the registration of false or misleading GIs.

- Increasing awareness of GIs among the general public and all stakeholders, including producers, traders, and consumers: This could be done through training programs, workshops, and public outreach campaigns. Finally, it is also important to strengthen enforcement mechanisms to ensure that GIs are used correctly and that infringing products are penalized.

Further, registering geographical indications under the Act to provide legal protection to geographical indications from being used by others would help immensely. Providing penalties for infringement of geographical indications will deter others from infringing on other geographical indications and provide a mechanism for enforcement. Registration of a GI will provide a central database of geographical indications which can be accessed by all.

Conclusion

Indigenous knowledge linked to a geographical territory is protected through the use of geographical indications. When combined with effective marketing techniques, the holders of such knowledge can turn their accumulated, long-standing collective knowledge into a source of income while simultaneously preserving and promoting their heritage. Geographical indications are believed to provide long-term benefits for development since they add value, improve the marketability of products, and give developing nations an advantage

in promoting exports and rural development, resulting in sustainability and intergenerational equity. However, none of this is possible without a proper structure and framework. Therefore, a nuanced understanding and legislative revision to accommodate what GI has to offer is imperative.

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Case Study: Do GIs Actually Protect Vulnerable Communities? - Inequity of Access/Ownership

- Sudekshana Venkatesan

Introduction

Geographical indications are seen as beneficial instruments both for the producers and consumers in enabling the harness of maximum benefit from the proper association of quality and other characteristics of a good to its geographical origin. This is believed to minimise the search cost of the consumer and also help the local producers capitalise and gain the recognition for their art, which is their livelihood. When goods are attributed to their geographical origin and are demarcated so, the people trying to duplicate the goods can be identified and sued, and also the lemons in the market can be minimised. The statutory recognition was granted keeping in mind the benefit of the local producers. However, this object is not entirely achieved in the enforcement of the Act.

The Inequity

Even though the GI tag can bring numerous benefits with the recognition it extends, there is a downside to it. Considering this is not a perfect world we live in, and there are disparities and divides among the people dwelling therein, the benefits arising from the GI tag are not equitably distributed among all the stakeholders. Unlike most other countries where GI tags are obtained in respect of wines, etc, the GI tags in India are sought mostly for artisanal works, handlooms and handicrafts. Through GI tags, the products get due recognition in association with its

geographical origin. Now that search costs have been reduced for the consumer, they are willing to pay even a higher price as they are sure that they have overcome the problem of adverse selection and moral hazard. So, products with GI tags tend to be priced higher. But what is to be noted is that the high price is collected at the top most level of the supply chain. By the time that reaches the bottom, it is next to nothing in most cases. Due to the heavy dependency of the local artisans on the products for their livelihood, they have been impoverished. This has led them to discourage their next generation from pursuing their art and look for a livelihood elsewhere resulting in a drastic decline in the handicrafts of India. The exploitation of the artisans can be seen from the instance of the handloom industry.¹

Major Issues

Some of the major issues can be listed as follows:

- More powerful actors in the supply chain appropriating a disproportionate share of the benefit:² Since the GI tag bestows protection and rights with numerous players on different levels of the supply chain, equitable distribution of benefits is not done. This is because entities on different levels of the supply chain possess different amounts of bargaining power. The ones on the top end up dominating and dictating their terms over those at the bottom as always. GIs are

protected as a collective right.³ So, what happens when one section of those holding such a right exploit the other sections? There is no remedy provided in such cases. So inevitably, the vulnerable sections continue to be exploited with insecurity, poor working conditions, etc.

- High costs of enforcement: The most successful GI tag which the holders have effectively maintained and enforced is the Darjeeling tea⁴. But that entailed huge costs right from the application stage. Producers of all local products cannot afford such costly mechanisms and end up not applying at all because even if they apply, the enforcement costs are through the roof. They will end up with lesser benefits than they already have. Also, the success of the product depends on effective marketing and promotion. Such activities are resource-intensive and artisans and producers from the lower strata cannot afford such activities.
- Genericide: Section 9 of the Indian Trademarks Act, 1999 - GI tags are not granted if the good for which it is sought has become generic⁵. This is determined by considering the place of origin and the area of consumption. It has to be noted that in India, most of the goods seeking GI tags are mostly traditional, agricultural and other products. They have pre-existing reputation in the market and may have even become generic. But that cannot be a reason to deny them the

recognition. Because of this provision, numerous products have not been granted the GI tag and thereby the benefits accruing therefrom to the local producers.

- Non-existence of a robust inspection structure: The absence of a proper and mandatory inspection mechanism for quality control to do away with the problem of duplicate goods and lemons undermines genuine producers and thereby affects their livelihood. Without quality control, there is considerable incentive for free-riders. This problem can be especially reflected from the plight of the weavers of the Banarasi saree.⁶ The increasing penetration of lemons in the market due to absence of effective quality control, has affected the numerous artisans whose livelihood depends on the craft. With the attractive benefits which the GI tag bestows, numerous free riders flock the market with lemons and bring down the quality assurance of the product. Now since the lemons pose a threat of adverse selection to the consumer, the consumers are no longer willing to pay a higher price. So even the peaches do not get sold and affects the artisans. *“The penetration of markets by inferior quality products is so deep that the ordinary Indian consumer can no longer be sure of the quality of the Banarasi saree he/she is buying.”*⁷ This is the extent to which lack of quality control is affecting not only the vulnerable artisans but also the

consumers. The same has happened in the case of the Venkatagiri sarees.⁸ Power looms have replicated the designs of the weavers who make use of handlooms. The huge cost difference, gives an advantage to the power looms and affect the weavers. This defeats the whole purpose of a GI tag. While measures are taken before granting a GI tag, the government agencies should be just as vigilant on an ex-post basis as well and ensure effective quality control.

Conclusion

There has to be a considerable revamp of the existing mechanism in order to do away or atleast mitigate the existing problems. Otherwise the vulnerable communities will continue being so. Bring a robust inspecting mechanism to ensure quality control and to make sure that the benefits of the GI tag are equitably and fairly distributed between all levels of the supply chain.

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Tracing the Developments Towards GI Recognition for Alphonso Mangoes in India

Introduction

A geographical indication, also known as a GI, is a label applied to goods with a particular geographical origin and qualities or a reputation attributed to that origin. Such a name offers a sense of assurance about quality and individuality that is mostly due to its

- Ananya Singh & Devrata Siddhartha Morarka

geographic area of origin. Darjeeling Tea, Mahabaleshwar Strawberries, Blue Pottery of Jaipur, Banarasi Sarees, and Tirupati Laddus are more examples of Indian products with a GI tag.¹ Products with GI tags are frequently produced locally and

traditionally by communities over many years. Their goods are unusual and one-of-a-kind, and they have a particular customer both locally and internationally. In India, GI registration is administered by the Geographical Indications of Goods Act 1999. They are typically used for wine, foodstuff, handicrafts, and industrial products. The king of Indian Mangoes is Alphonso Mango.

Significance of GI Framework For Alphonso Mango

The Geographical Indication (GI) label has been given to the Alphonso mango from Ratnagiri, Sindhudurg, and other nearby districts in Maharashtra, the Ministry of Commerce announced in October, back in 2018. “Alphonso Mango from Ratnagiri, Sindhudurg, and other adjoining areas in Maharashtra, finally gets a Geographical Indication (GI) Tag,” the Commerce Ministry said in a release.² The Alphonso mango has an exceptional reputation and is known for its high quality. The Alphonso, also referred to as the ‘hapus’ in Maharashtra, will unquestionably be protected by its labelling among customers in the international market because of its exclusivity and distinctness.³ There is a new innovation under which an Alphonso mango will be attached with a GI sticker. The fruit will be better able to uphold its own standards in the international market thanks to the geotagging of the product. However, it will also satisfy the crucial need for food chain traceability. The fruit's whole journey from harvest to distribution may be seen thanks to traceability. Since Alphonso's distinguishing feature is region-specific, a plant grown somewhere other than Konkan cannot be called an Alphonso.

Therefore, defence against copycats from other areas is essential. Alphonso's GI registration is unquestionably crucial for maintaining the fruit's exclusivity and originality among customers in the market. However, in light of the fact that Alphonso manufacturing is also found in areas other than the Konkan, a robust enforcement mechanism should also be in place in addition to registration. The primary goal of GI protection is to ensure the fruit's integrity and authenticity, which can assist it in commanding a fair premium price in addition to providing protection. Article 1(1) of TRIPS says unequivocally, "Members shall be free to select the appropriate means of implementing the terms of this Agreement in accordance with their respective legal system and practice." As a result, by filing a claim with the district court, the Indian GI Act of 1999 offers redress in the form of an injunction and damages for the infringement of the registered GI. The GI Act of 1999 contains certain provisions for safeguarding the victim (GI tag holder), and to seek appropriate damages in case of misuse of the GI tag. Some illustrations can be Section 21 – of the Act that speaks about the ability to seek redress for geographical indication infringement.⁴ Section 23 – speaks about the registration of GI is conclusive proof of validity.⁵ Section 25 –states that the registration of GI as a trademark is forbidden.⁶ Section 39 – talks about provision for penalties for falsifying GI. ⁷Sec. 66 explains about when to launch a lawsuit for infringement of a GI.⁸

Limitation in Enforcement

Firstly, the time-consuming legal remedy in court will not be very helpful in view of the time and money required to do the same, which may weaken the very objective of the GI act 1999 of promoting the business of conventional goods of a specific region.⁹ Secondly, the purpose of obtaining registration is to prevent adulteration. The merchandise, which are images of a specific district, needs to just arrive at shoppers from that specific locale. Be that as it may, on account of natural products like mango shows up in the market in a mass amount from different locales, wherein the equivalent gets repacked by the vendors, and they appropriate it to the various regions. Consequently, the chance of blending the non-Alphonso Mangoes with genuine Alphonso can't be precluded.¹⁰ The shortfall of a guard dog framework might make the chance of a combination of non-Alphonso mangoes with Alphonso.

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Decoding The Russian-France Dispute Over Champagne - A Landmark GI Dispute

- Melissa Joseph & Thomas Alex

Introduction

In today's world, it is essential to protect the origin of a product. A geographical indication (GI) is a label applied to goods with a particular geographic origin and characteristics or a reputation derived from that origin. An indication that a product is made in a

specific location is 'necessary for a sign to be considered a GI. The main goal of implementing GI tags is to give producers legal protection that motivates them to sell and make more products. An increase in the growth of firms is a result of increased production. Thus, geographical indication protection

is influential in growing exports. A geographical indication tag gives a product or service the international recognition it needs, thus providing benefits to the manufacturing country.

The Role of GI in the Russian-French Dispute

Two international agreements govern geographical indications: the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the WTO TRIPS Agreement. On December 27, 2019, Federal Russian Law No. 468-FZ, titled "On Viticulture and Winemaking in the Russian Federation," was amended. The amendment became effective on July 2, 2021. Vladimir Putin, the president of the Russian Federation, ordered that all foreign producers of sparkling wine must expressly state this on the back of the label on all imported bottles intended for use in commerce or sale in the nation.¹ France thought this restriction was discriminatory because Russian producers may only use the Russian name for Champagne ("shampanskoye") on their labels. The idea that Champagne can be produced outside of France's Champagne area is one thing that is certain to send French winemakers into a frenzy. The phrase Champagne, as explained below, is expressly protected as a protected appellation and is legally supported. "Champagne solely comes from Champagne", as stated on the website of the Champagne committee.²

Recent changes to the Russian winemaking law mandate that foreign champagne producers, including those from the French region of Champagne, rename their imported wines from "champagne" to "sparkling wine." The legislation

does not recognise French appellations because only locally produced Shampanskoye deserves the renowned and previously unique label.

How Does GI Work in France?

The "Appellation d'Origine Contrôlée" or Appellation of Original Control" is a system created by France that distinguishes GIs and protects them by making it illegal to produce or sell a product that uses that name (AOC). Champagne is a protected designation of origin entered into the EU Geographical Indications Register eAmbrosia on September 18, 1973, under the designation PDO-FR-A1359. Only producers of sparkling wines from the Champagne region in France are permitted to use the GI "champagne" for wines that adhere to the appellation's stringent guidelines. Except for Russia, which is not a signatory, this appellation for Champagne is mandated in France and 121 other nations where it is sold.³

How GIs Work in Russia

The definition of GIs is found in Article 1516.1 of Part IV of the Russian Civil Code, which is comparable to Article 22.1 of the TRIPS Agreement. This emphasises the importance of having at least one stage of the item's processing or production in that region. Section 76(3) and paragraph 2 of Article 1516.1, which deal with intellectual property status by aspects of individuality and intellectual activity, both recognise appellations of origin of goods (AOG). With modifications made by Federal Law Nr. 230-FZ on July 26, 2019, the legal definition of GIs was added to the Civil Code for the first time in 2019. Before this, only the legal definition of AOGs was found in the Civil Code.⁴ By establishing more

specific and effective legal regulations, the Civil Code's addition of a separate category of GI sought to elevate the status of regional and local Russian brands. The Russian Civil Code defines AOG as a designation that represents or contains the full or abbreviated name of a country, city or rural settlement, locality, or another geographical object, whether it be modern or historical, official or unofficial, or that was derived from such a name and came to be known as a result of its relation to a good whose unique properties are solely or primarily determined by the natural conditions and human factors of a specific geographical object.

Why Was the Russian Act Enacted?

The Russian Federation first proposed this law on October 16, 2019, but it took three years for the Federal Assembly of Russia (the State Duma) to consider it and pass it. The purpose of changing this rule was to protect domestic wine producers' interests better and increase their exposure to international producers. They sought to remove barriers to local viticulture and the winemaking business, support and promote Russian wines on domestic and international markets, and establish a Russian system to protect these products under GI and Appellation of Origin.⁵

What is the International Impact?

The newly enacted legislation expressly defines the term "Russian champagne." Russian Champagne is defined as "a sparkling wine produced in the territory of the Russian Federation from grapes cultivated there by the method of secondary fermentation of the cuvee acquired from it in containers that are packed for their retail sale," according to Paragraph 58.3 of

the new Law.⁶ Only domestic Russian manufacturers will be permitted to market their products as "Russian champagne" under the regulation. "These revisions are exclusively in the interests of the development of winemaking in Russia," the new law's authors claimed.

The new regulation added the "Russian cognac" category and "Russian Champagne." Cognac is a spirit that was first given its name for the French municipality of Cognac. Cognac is a protected GI that was added to the EU GIs register on June 12, 1989, with the registration number PGI-FR-02043.⁷ Legally, and in accordance with the legal definition and intent of a GI, the terms "cognac" and "champagne" may only be used to refer to products that originate from the Champagne region and the Cognac commune in France and which adhere to the region's established standards and production regulations.⁸ Whether or not the terms are registered as domestic GIs, using the terms "cognac" or "champagne" on alcoholic beverages may mislead consumers about the product's origins and the company that made it.⁹ In summary, this is a dubious legal tactic that favours local wine producers by establishing a legal framework that may have a negative impact on the rights of foreign producers and Russian consumers. At the same time, trade names like "Russian cognac" and "Russian champagne" will be prohibited in nations where Champagne and Cognac have registered GIs.

Conclusion

Any product's origin or manufacturing location is given the proper consideration under GI because such a location is particularly distinctive due to its

climate, geography, etc. Commercially, businesses profit by selling products that customers want, and every client wants an original creation of a certain standard quality. Yet, sellers deceitfully sell imitations to do so. It should be remembered that every country produces a unique range of goods that are an outstanding blend of its vibrant culture and climatic conditions and that these products should be preserved and given complete protection from any infringement. The Geographical Indications of Goods (Registration and Protection) Act 1999 governs and awards GIs in India. The dispute has been postponed in Russian legislation until the end of 2021, thanks to negotiations between France and Russia as of November 2021. Although this is a short-term fix, Associate Minister for Foreign Trade Frank Riester argued that it is unquestionably preferable to the previous rule. Some contended that because wealthy Russians do not mistake less expensive domestic wines for genuine Champagne made in France, the regulation does not negatively impact French producers as much. Charles Goemacre, the director-general of the Champagne Committee, called for a temporary ban on the export of French Champagne to Russia (for instance, Mot Hennessy stopped production there), but it was lifted in September 2021, and a compromise was reached¹⁰; however, the dispute is still far from resolved.

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Comparing India's Position on Geographical Indications with the Corresponding Laws in Japan

- Prarrthana Gopi

Introduction

A geographical indication (GI) is a tag or signal used on merchandise corresponding to a selected geographical region or foundation. A GI is an indication used on merchandise that has a selected geographical starting place and own traits or a recognition that might be because of that origin place. In order to feature as a GI, a signal needs to perceive a product as originating in a given place.

Japan on Geographical Indications

In June 2015, the law on Protection of the Names of Specific Agricultural, Forestry and Fishery Products, and Foodstuffs (Geographical Indication (GI) Act) came into existence. In Japan, numerous local products can be excessively expensive and obtain recognition due to specific manufacturing techniques

and herbal traits of the manufacturing vicinity or area including weather and soil conditions. The GI Act consequently presents a machine that the authorities protect names of such merchandise /products as Intellectual Property. The GI Act protects the rights of manufacturers through the established order of GI safety legislations, thereby contributing to the improvement of the agricultural, forestry, and fishery industries and ensuring the rights of consumers are preserved. The motive of the Act is to develop and maintain the increase of financial and economic growth in neighbourhood areas through the development and cost of conventional products. It was founded on the idea that GIs should be developed and protected as a commonplace asset inside the regions of Japan.¹

Main Features of the GI Law in Japan

GIs are names used to identify agricultural, forestry, fishery, food, and beverage products (excluding alcoholic beverages, pharmaceuticals, and cosmetics) originating from a locality, region, or country as a whole. These products must have a certain quality, reputation, or other characteristics that can be attributed to their geographical origin. Producer associations may make GI requests to MAFF. There is a procedure for opposition. Any registered production group member may utilize the GI after submitting the application. As long as the group of manufacturers in question continues to operate and the quality of the particular product is preserved, the registration will stay in effect indefinitely. According to the Ministerial Decree that implements the GI Law, registered GIs will have protection on par with Article 23 of the TRIPS Agreement, reflecting a trend in national legislation. There is some administrative enforcement in place, and MAFF has the authority to bring charges for the improper use of GI.²

Protection of Registered GIs and their Symbols

Chapter 2, Article 3 under the Act deals with the protection of Registered GIs. It states that any producer group member registered in accordance with Article 6 may use its GIs registered on certain agricultural, forestry, and fishery products and foodstuffs of its production. Except as provided in the above statement, no one can use registered GIs or similar denominations for agricultural, forestry, and fishery products and foodstuffs of the same nature as

these geographical indications, exempting of following cases:

- 1) when a person labels GIs on goods (including packaging) manufactured or processed using products related to said geographical indications as materials or ingredients.
- 2) if the owner of an earlier trademark right, which was applied for before the date of registration of a registered GI, uses the same mark as the registered GI on goods or services in relation with the said brand.
- 3) when a person has subsequently used the name identical or similar to a GI on the products or their packaging prior to the registration date of the aforementioned GI uses this name without an illegal purpose.

Article 4 of the Same Act deals with the Protection of Symbols of Registered GIs

The GI mark provided under Article 4(1) of the GI Law is the mark to indicate that the goods bearing the brand are registered in the GI Protection System, so that consumers can easily recognise that the GI mark is a trademark used under the Japanese GI protection system. Designs emphasize Japanese culture - Mount Fuji with a large area of sun and water, with red, the color of the sun used in the Japanese national flag, and gold, the color representing tradition and formalities commonly used in Japanese culture.³ Symbols indicating protected GIs should be in accordance with the ministerial ordinance on the label. Except in the case referred to in paragraph 1 of the article, no one may use identical or identical symbols similar to symbols.

Indian Legislations that deal with Geographical Indications

In compliance with TRIPS, India enacted the Geographical Indications of Products (Registration and Protection) Act 1999, which came into force on 15th September 2003, and the Geographical Indications of Products (Registration and Protection) Rules, 2002. The objective of the GIs Act is to provide better legal protections with respect to GIs, to prevent unauthorized persons from abusing and deceiving consumers, and to promote products bearing the Indian GI label on the global market.

To help understand the aim of the topic better, we can discuss the legal dispute that arose, where Japan sought and filed for a GI tag at the GI Registry in Chennai, for an alcoholic beverage, named “Nihonshu”

The Japanese Embassy in New Delhi has submitted a GI application for Nihonshu/Japanese Sake, an alcoholic beverage. This is the first time a product from Japan has applied for a label in the GI register in India. The Japanese Embassy also mentioned in the filing that Japan's economy was historically based on rice, which was used as a type of quasi-currency before the introduction of a monetary economy in the Meiji period (1869 -1912). As a result, Nihonshu's production was entirely under government control.⁴The Toii has full authority over

the production of Nihonshu in the breweries and supervises all workers. In addition, Toii plays an important role in training young apprentices by passing on their techniques and experiences. Through this system, the techniques of making Nihonshu are transmitted to this day. Eventually, the Japanese embassy claimed that a GI is a label affixed to products with a specific geographical origin and display characteristics related to that specific location, therefore seeking a GI tag on the alcoholic beverage.

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GI of Kota Doria & Blue Pottery of Rajasthan: An Insight Into Its Regional Identification, Authenticity, Significance and Protection Against Its Infringement

- Joanna Jacob

GIs in the Artisan Industry

GI is a sign of certification - a mark given to products that stem from a particular region. Their origin would be their unique selling point (USP). Such kind of identification or certification is given to mark their origins of inception. Geographical Indications are a kind of Intellectual Property that provides certification. These signs are given to goods to make their geographical locations known and to embrace their age-old genesis and other such advancements which may have developed over time. GIs would enable us to locate the emergence of the goods that have been given GI tags and make people aware of the region's history, significance, uniqueness and reputation that it may have garnered spanning decades. And to protect and preserve such heritage, GI Tags are provided in such a manner that the region that it belongs to would become celebrated much more, and also, the product would hereinafter popularize the region and further contribute to its development and growth. As defined by *WIPO (World Intellectual Property Organisation)* - GIs are identification methods used on products that stem from a particular region or a specific geographical location, and the qualities that it possesses would be from its origin, and its reputation must be given its due.¹ The *Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS)* defines GIs as indications - to identify a good originating from a territory that essentially attributes itself to its geographical origin, thereby establishing two concepts: Indication of Source (IS) and Appellation of Origin (AO), that traces its origin to the *Paris Convention of 1893* and the *Lisbon Convention of 1958*, where expressions and phrases were to be signified in the former. Geographical Location was to be provided with heritage in the latter. Article 22 of the TRIPS Agreement implies that “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 characteristics of the good is essentially attributable to its geographical origin.”² GIs normally are

registered on goods that originate from rural, marginal and other indigenous communities, which has been in practice for centuries. They also have a reputation of their own due to the unique qualities that it possesses.³ An example of it would be champagne, a GI Tag for wine that comes from a French vineyard in its northeastern region which was initiated by the Romans in the 5th century. This is one of the significant reasons why GIs fall under IPR because it marks its origins to the territory that it comes from, and that is a right which needs to be protected, and IP laws serve that purpose.

Indian Legislation

India governs the laws relating to GIs through the *GI Act (Geographical Indications Registration and Protection Act), 1999*. It protects GIs through registration which guarantees legal protection against any kind of misuse, imitations or infringement that tarnishes or spills ink on the true origins of the products. The GI tag is issued by the Geographical Indication Registry under the department of Industry Promotion and Internal Trade Ministry of Commerce and Industry. Some popular GI tags include The Darjeeling Tea, Mysore Silk of Karnataka, Kota Doria of Rajasthan, Kashmir Pashmina, Nagpur Oranges, Lucknow Chikan Crafts, Blue Pottery of Jaipur, Warli Paintings of Maharashtra, etc. Legal protection of GIs is an absolute necessity, and that is majorly where IP comes into being, as it ensures that other sellers or manufacturers in the markets don't infringe upon the GI of others without any

authority. This keeps authenticity intact and also enhances the economic prosperity of the producers having acquired their GI tags by promoting their goods in the markets in the subcontinent and also across the globe.

GI Protection in the Artisan Industries

Since GIs are generally indications of agricultural products, industrial goods and handicrafts, it is, as a matter of fact, essential among the artisans as well. Since Section 2(3) of The GI Act, 1999 defines Geographical Indications as agricultural, natural, or manufactured products originating from a significant region, its quality, reputation and characteristics are to be attributed to that region.⁴ The work of the artisans was one of the key aspects that led towards the overall economic growth of India, with the plethora of employment opportunities that it provided among the rural communities preserving its cultural heritage, members comprising of men and women from the marginalized communities were making textiles, pottery, paintings and other such handicrafts. GIs were absolutely vital to identify these original works and also differentiate them according to their geographical origin and also ensure that it's safeguarded against third parties who may want to steal or imitate those goods, declaring them as their own original work. This became one of the critical reasons for GI legislation to come about in India. The weighty threat to the artisans' crafts - other sellers trying to imitate and pose their products as the original; took away from the artisans' innovations and creative authority. Since fake goods and replicas of many popular goods were being sold,

artisans were losing out on their businesses. Impersonation of original goods sure did take a significant hit in the artisan industry.⁵ An instance that was clearly far-reaching since it was one that finally led to the implementation of the GI Legislation in India, was the Basmati Rice controversy⁶: the US and India had an affray where the former was granted a patent for the rice. However, it had been growing in the Indian and South Asian subcontinents for centuries.

In the artisanal industry, the relevance of GIs is to prevent the unauthorized use of products by other commercial establishments to prevent the mass production of fake goods posing to be an authentic one, taking away from their authenticity itself. By providing financial gains to the artisans for their original work and exporting their products whilst safeguarding their innovations, GI aids in its further growth and development and furthermore also assures consumers of authenticity and quality experiences. And if these GIs are ever infringed upon, the provisions given in *Section 22 of the GI Act r/w Section 2 of Article 22 of the TRIPS Agreement* would be imposed⁷; GIs are protected by registering them under the law of trademarks, but not necessarily as a trademark since GIs and trademarks are distinct. Registration of GI is mandatory as per *Section 17 of the GI Act, 1999*, and it is registered for a period of ten years, renewed from time to time. It is registered under the GI act as per the grounds outlined in *Sections 11, 13 and 16* of the act by applying for

registration.

Kota Doria & Blue Pottery

Kota Doria is a distinctly woven fabric made up of the amalgamation of pure cotton and silk, having unique weaves that are handwoven having a square-like pattern known as 'khats.' It originates from the Khaitoon region of Kota in Rajasthan. It was brought by the Mughals in India in the 17th century. Attires made of this particular fabric is widely adorned, and its heritage is muchly preserved. It got its GI tag for the uniqueness of its weaves and also since it has a deep history connecting to its traditions and customs that the people have been following for a long time. In fact, Kota Doria was actually the first to get a GI tag in Rajasthan. Similarly, another widely popular artisanal handicraft also belonging to the region of Rajasthan is its Blue Pottery - a tradecraft of Jaipur having Turko-Persian origin which came to India through Persia, and Afghanistan via the Mughals. Its name came into existence, given its eye-catching blue dye. Its unique quality is that it's made of pure quartz amalgamated with raw glaze, fuller earth, sodium sulphate, and more, but it clearly is not made out of clay, unlike most other pottery.

That is what makes it truly distinct from the others, given the process of its making. Eventually, even the colour got registered as 'Jaipur Blue.' This got its GI identification more recently, but it was essential to its being in order to preserve its age-old creation techniques that have been passed down for generations. This was done to protect its origins against cheap imitations. There were other regions in India where the interests of the artisans were

hampered as replicas were being sold in the markets both domestically and internationally. An apparent infringement was to be seen - Chinese replicas and, closer to home, 'Khurja', an Uttar Pradesh based clay pottery. It was widely being sold as blue pottery deceiving people.⁸

This was also genuinely detrimental to the artisans, which turned out to be quite massive, and so to protect their interests, Blue Pottery was given the GI tag, establishing its origin, value and visibility in the markets both domestically and internationally. Eventually, registration for the GI tags would patronize the artisans' businesses. In *The Scotch Whisky Association, William Grant and Sons Limited, William Grant and Sons International Limited and William Grant and Sons Distillers Limited v. Golden Bottling Limited*, the relief prayed for by the plaintiffs was granted, and the defendant and those acting under the defendant were restrained from using the word 'Scot' or any other word similar thereto in the whisky manufactured and sold by the defendant. Similar rulings were adopted by the Delhi High Court as in *Time Incorporated v. Lokesh Srivastava and Anr.*, *Microsoft Corporation v. Yogesh Popat & Anr.* and *Cartier International B.V. v. Cartier Enterprises*. Through the registration of products to acquire GI tags and it being provided, the authenticity of the goods is captured along with the natural essences of their origin and the innovations of the craftsman who create them. Their work is given recognition, and it makes exporters delighted. They would no longer lose their businesses to fake

imitations of their products. Further, it would prevent counterfeit products from being sold in the markets, further promoting the artisans' businesses and increasing development.

Conclusion

Like this, the talent, credibility and hard work of artisans don't go unrecognized because a lot of them do and have been for ages. The true essence and uniqueness of goods are also captured with protection against abuse, imitations/forgeries, misappropriation and more. Since then, artisans' revenues have also majorly risen, which has aided them with a better living identity.

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Overlap Between GIs and Traditional Knowledge – Feasibility of Merging Them Into One IP Form

- Shreya Jagadish & Harthik Roy

Introduction

Geographical Indications (GIs) are signs or symbols used to identify a product whose distinguishing characteristics are linked to its place of origin. GIs differ from other intellectual property rights in that they can be collectively owned by a group of producers, which makes them distinct. Furthermore, GIs have a connection to the territory from which the products originate, both in terms of geographical origin and product quality and characteristics. For example, silk apparel from Mysore commands value in the market because of its potential being of unique texture and good quality. Other examples are Swiss Watches, Bukhara carpets and Kashmir Pashmina etc. Whereas traditional knowledge refers to the knowledge developed by local and indigenous communities around the world, which has been developed through experience and passed down from generation to generation over time. IP laws provide one of the best solutions for protecting and promoting such Traditional Knowledge. Over the last few decades, there have been extensive efforts from all over the world to protect, promote, and preserve the same.

GIs as Tools for the Protection of Traditional Knowledge

Traditional Knowledge and GIs share a common element in that they both protect accumulated knowledge unique to a specific location. GIs have

indefinite protection, and the possibility of collective ownership of such rights suggests that they may be particularly suitable for protecting Traditional Knowledge. The inclusion of GIs in the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹ was contentious precisely because of differences in some of the theories supporting GI protection between "old world" and "new world" countries. After much debate, GI protection was eventually incorporated into TRIPS and required to be protected in the majority of countries around the world.² The TRIPS Agreement defines GIs as "indications which identify a good as originating in the territory of a member nation, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin."³ GIs are particularly suitable for the protection of traditional knowledge. GIs provide economic benefits and monetary gains to producers who use traditional methods in the region or area where the product has traditionally been produced. GIs are a very suitable form of Intellectual Property because communities rely on collective traditions and a mutual decision-making process. Furthermore, they safeguard and incentivise traditions, allowing them to evolve and improve. They are intended to recognize and reward the goodwill and reputation built over many decades, if not centuries. They also

incentivize every investor who upholds the long-standing high-quality standard established by previous generations. A variety of products result from traditional processes and traditional knowledge implemented by one or more communities in a given region. One of the examples that will be explained in detail is the Pashmina silk from Kashmir.

Pashmina as a GI of Traditional Knowledge

The pashmina fabric is one modernized expression of traditional knowledge. This includes the history of the Kashmir region, as well as indigenous peoples' traditions and culture.⁴ The Kashmir pashmina has been granted GI status following an application by the Craft Development Institute, which was established by the Government of India's handcraft ministry of textiles. The registration of Kashmir Pashmina as a GI is significant at the national and global levels.⁵ The claim of Kashmiri pashmina producers is based on the culture, history, and quality of the specific product. Because GI is the communication form of Traditional Knowledge, many people believe that GIs are the only existing form of protecting traditional knowledge that is strongly associated with that region. The process of manufacture of the pashmina shawl, which is based on the knowledge, innovations, and practices of the local community, developed from experience gained over the centuries and transmitted orally from generation to generation which can be seen in the process and the pashmina product. Therefore, it can be definitely stated that elements of traditional knowledge are involved in the making of the pashmina.⁶

Limitations of GIs for the Protection of Traditional Knowledge

GIs can be used as a method to safeguard traditional knowledge. However, there are several restrictions that prevent its use as a comprehensive instrument. First, only a select group of traditional knowledge may be protected by geographical indicators. All intangible forms of traditional knowledge, such as methods of medical treatment, techniques for dyeing textiles, folk music, and dances, are presumed to be ineligible for protection because only products are designated under the criteria of GI. Nevertheless, GI protection can be attained if this traditional knowledge is used to create a drug, a dye, or a recording of songs and dances. Geographical markers may only be used to safeguard an indication of where something originated; they cannot be used to protect the fundamental knowledge of a community or group. Additionally, GIs that have become generic and widespread lose their value in terms of protecting traditional knowledge. The application of GI protection as a technique is only possible when the knowledge is connected to a specific geographic region. Therefore, it is challenging to preserve the information from geographical indicators if it is dispersed. For instance, a geographical indicator cannot be used for the Ayurvedic medical system since it does not have a distinct geographical location to which it belongs. The use of a geographical indicator to protect some commodities is irrelevant if it just serves to identify the source of the product, which may not be significant to the customer. Therefore, in order to employ GI as an instrument of protection, the item must have and enjoy a good market reputation.

Finally, in order to fully fulfil the need for protection required to protect traditional knowledge, it may be necessary to establish many more particular safeguards to ensure the efficacy of protection for traditional knowledge of communities and groups.⁷

Similarities & Differences Between Geographical Indications & Traditional Knowledge

The comparing factor between them are that, unlike other types of IPs such as copyright and trademark which are more commercial in nature and mostly don't have co-owners, whereas GIs and TKs are more about recognition, protecting your rights against exploitation by other communities, countries, and so on. If your trademark, copyright or patent is copied, you can sue the other party for money, so it's more of a commercial aspect. However, in GIs and TKs, it is done so that vulnerable communities are protected from exploitation. GIs and TKs are owned collectively by the community, as opposed to trademarks and copyrights, which are typically invented by a single person or group of people. The primary distinction between GIs and TKs is that GIs are tied to a specific territory. It is typically a manufacturing product, whereas TKs is more concerned with the protection of culture, expression and practice.⁸

Conclusion

Geographical Indications protects various types of traditional knowledge that have been deeply embedded within the culture of a community or a group of people who have had this knowledge for many decades or even centuries. However, it also has limitations, as restrictions are imposed. It is

unrealistic to expect to protect all types of traditional knowledge with a single form of intellectual property rights; however, GIs do play a complementary role in assisting in the protection of traditional products.

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Case Study: GIs in the Singaporean Context

- Aditi Shandage & Janet Treesa

Introduction

Geographical indications (GIs) are intellectual property (IP) rights that serve to identify a product that originates from a specific geographical area and has a quality, reputation, or other characteristics that are essentially attributable to its geographical origin.¹ Geographical indications from any WTO or Paris Convention member may be registered in Singapore. 142 Indications have been recorded as of August 2021. Geographical indications are registered for a 10-year period which can be renewed.² Singapore is a net importer of commodities, many of which have geographical indication protections. Among other items, this includes agricultural products, wines, and spirits. The focus of GI protection has mostly been on whether foreign GI owners can defend their GIs from infringement because there is a restricted range of legal tools available in the nation. Now that a different government is in place, the City-State is in a position to lead the region in GI protection.

History and Evolution of GI Laws in Singapore

GI in Singapore has evolved, starting with a two-tiered protection that was incorporated into the

Geographical Indications Act (Cap 117B, 1998 Rev Ed Sing) (GI 1999), which enabled Singapore to meet its obligations under TRIPS. GI in Singapore was defined by GI 1999 as an indication used in trade to identify goods as originating from a place where specific characteristics of the goods are essentially attributable to that place (such as a country that is a member of the World Trade Organization or a party to the Paris Convention for the Protection of Industrial Property). According to GI 1999, anyone who misrepresents the origin of goods by using a GI may be prosecuted in court. This includes traders, producers, or an organisation of traders or producers of the goods in question. The court has to decide if the mark was a GI and whether the characteristic of the items in question could be attributed to the area that the GI indicated.³ The Geographical Indications Act (No. 19 of 2014) of Singapore (GI 2014) followed, and came into effect on April 1, 2019. It envisioned a registry and register for GIs and permitted the registration, publication, opposition, cancellation, and renewal of GIs that were specifically listed as registrable, including beers, cheese, spirits, wines, and agricultural products. Secondly, all registrable GIs including cheese and agricultural products

now have greater protection; previously only available to wines and spirits under GI 1999 and TRIPS.⁴ The GI 2014 was made possible by Singapore's heightened GI protection requirements in the 2019 European Union-Singapore Free Trade Agreement (EUSFTA).

Case Study - Prosecco

The Prosecco case - defined GI in Singapore:

The Applicant, Consorzio di Tutela della Denominazione di Origine Controllata Prosecco, sought to get "Prosecco" recognised in Singapore as a Geographical Indication (GI) for wines coming from specific regions of Italy. Under Singapore's Geographical Indications Act (GIA), Australian Grape and Wine Incorporated (the Opponent) rejected the application on two grounds:

1. Prosecco is likely to deceive consumers about the product's genuine origin because it uses the name of a plant type, and
2. It does not fit the GIA's definition of a GI.

The opponent said that because "Prosecco" wines are produced in nations like Australia as well as specific regions of Italy, Singaporean consumers would not recognise the term as referring to wine from solely those regions of Italy. Employing the submitted evidence, the Registrar came to the following conclusions:

- There was no proof that Singaporean customers were deceived. When buying wine, consumers are likely to pay attention to the nation of origin; and traders frequently mention the wine's country of origin.

- Due to consistent sales since 2010, Italian "Prosecco" has gained a reputation in Singapore and has outpaced the sales of Australian "Prosecco". Nonetheless, the evidence did not support the widespread use of "Prosecco." The Registrar concluded that there was no possibility of deceiving customers about their origin.
- The opposition claimed that "Prosecco" is a generic term and that the underlying grape variety, also known as "Glera," is attributable for the quality, reputation, and/or features of "Prosecco" wines rather than the specific local conditions.

Thus, according to the Registrar, "Prosecco" meets the criteria outlined in Section 2 of the GIA, which states that an indication must be "*used in trade to identify goods as originating from a place, and where a quality, reputation, or characteristic of the goods is essentially attributable to that place.*" How consumers view the indication or if it is a generic phrase are not issues addressed in Section 2. As a result, the opposition was defeated. On the date this article was published, no appeal had been submitted.⁵

Furthermore, these three rulings under GI 2014 have been made by the Singapore Intellectual Property Office (IPOS) as of May 2021, one each in 2019 and 2020, and 2021. These are:

1. *Australian Grape and Wine Incorporated v. Consorzio di Tutela della Denominazione di Origine Controllata Prosecco*, [2021] SI POS 4;
2. *Application to File Notice of Opposition in a Geographical Indication Application by*

Bavaria NV and Objection Thereto by Bayerischer Brauerbund E.V., [2020] SGIPOS 12; and,

3. *Application for Extension of Time to file Notice of Opposition and Evidence by US Dairy Export Council and Objection Thereto by Consorzio del Formaggio Parmigiano Reggiano*, [2019] SGIPOS 12.

The decisions for 2020 and 2021 deal with wines and spirits, whereas the decision for 2019 deals with cheese. The 2019 and 2020 decisions pertaining to requests to submit a notice of opposition (NOO) to a GI application or for a request for an extension to submit the same were made at interlocutory hearings. The ruling from 2021 concerned a case that saw full-fledged opposition; however, it was unsuccessful. The US Dairy Export Council requested an extension of time to register its NOO against the GI “PARMIGIANO REGGIANO,” which was requested by Consorzio Del Formaggio Parmigiano Reggiano. Even then, the Registrar denied their request in the 2019 judgement. A request for an extension may be denied if a good and sufficient explanation is not provided for it, according to Rule 30(5) of the Geographical Indication Rules 2019, which was referenced by the Registrar. It went on to say that “Parmigiano Reggiano” is one of 196 GIs included in an annex attached to the EUSFTA that the EU considers being of interest. This list was made public in 2013 after a public consultation in which the opponent took part. Thus, the opponent had ample time to pursue opposition. According to

the Registrar’s ruling in the 2020 decision, a NOO may be filed if the following conditions are met:

- 1) all procedural requirements have been satisfied;
- 2) the subject of the opposition has been accurately identified; and
- 3) the important issues relating to the merits of the opposition are such that an interlocutory hearing is not necessary.⁶

This ruling makes it clear that whether or not consumers view the indication as a generic phrase is immaterial to the definition of a GI in the GIA. IPOS also discovered that consumers weren’t misled about the wines’ country of origin.⁷ When considered in the broader context of ASEAN projects’ interest in GIs, the significance and potential of these developments in Singapore can be understood. For instance, in contrast, the Philippines continues to rely on the certification and collective markings regime to safeguard GIs. At least ten years before Singapore’s GI register was established, several other ASEAN nations, including Indonesia, Thailand, and Vietnam, implemented sui generis GI registration regimes.⁸

Conclusion

When the 2014 GI Act is fully implemented, the protection provided to GI owners will go above and beyond what is provided by the TRIPS Agreement. It was noted during the Second Reading of the GI Bill that the implementation of a GI registration system would enhance the certainty of protection for GIs because the registration would provide the owner with assurance and enable the GI to be protected without the need for parties to file a civil lawsuit to have the Court rule that the name in

question qualifies as a GI. In turn, this makes it simpler to enforce GI rights. As the first of the ten nations that make up the Association of South-East Asian Nations (ASEAN), Singapore's implementation of the EUSFTA will be closely watched in the coming months. Singapore is well-positioned to take the lead in GI protection because of its ASEAN membership and role as a large commercial hub for goods in the EU, ASEAN, and beyond. Singapore's unique GI programme may have begun a little later than anticipated, but it is still off to a strong start.

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A Comment on International Legal Framework Governing GIs

- Melissa Joseph

Introduction

A product's quality, reputation and other features are associated with the place of origin of that product.¹ It is a sign to identify a product that originates at a given place. There has to be an established association between the product and the place of origin.² Geographical Indications offer protection against third parties such that those who have the right to use the indication can prevent its use by third parties whose products do not conform to the standards that are laid out. Nevertheless, a geographical indication holder cannot prevent a third party from making a product when they use the applicable standards set out for the product.³

They are generally used for:

- Agricultural Products
- Foodstuffs
- Wine and Spirit drinks
- Handicrafts
- Industrial Products

International Framework

There are a variety of treaties and agreements in place to offer protection to Geographical Indications. Through these conventions, GIs are placed on a threshold such that nobody on an international level misuses them.

1. The Paris Convention: In 1883, in this Convention on the Protection of Intellectual Property, the phrase "Appellate of origin" was introduced internationally, similar to the current geographical indication scheme. However, the concepts were not defined

and only provided remedies against fraudulent use of indications of source.⁴ Appellations of origin are mentioned explicitly in Article 10 of the Paris Convention. However, because all appellations of origin are regarded as indicating the source of commodities, they are encompassed by the phrase "indications of source." The foundation for protection against deceptive source indications, including appellations of origin, is provided under Article 11 bis of the Convention. It mandates that members protect one another from unfair competition and includes a non-exhaustive list of forbidden behaviours. There are no specific remedies against violating this clause in the Paris Convention.

2. The Madrid System: Under the Madrid System, the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods (consisting of six articles) was the first treaty to
 - prevent the misleading use of indications of source,
 - include an exception for genericity
 - set a regime for wines

The Madrid Agreement on the International Registration of Marks was signed in the same year. This agreement has been used by many countries to collectively protect GIs or guarantee trademarks which led to a split between countries that protect GIs

through an Ad-hoc system and others that use their trademark law.⁵ Two treaties make up the Madrid system:

- (a) the Madrid Agreement Concerning the International Registration of Marks (1891) and
- (b) the Protocol Relating to the Madrid Agreement (1989). All nations that
- (c) filing a single application in one language, with a set of fees in the same currency, to a single Trademark Office.⁶

3. The Lisbon System: In 1958 came the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. This is administered by the World Intellectual Property Organization (WIPO). This was the first international treaty dedicated to protecting appellations of origin; they were also defined in the same.⁷ The key component of the Lisbon Agreement is the appellations of origin being protected in a registry under the territory of all contracting parties. According to the Agreement, nations can enact their own method for designating appellations through judicial, administrative, or both processes. A geographical indicator is protected in other Member states once registered. Except in cases where a Contracting Party certifies, within a year, that it cannot offer the protection for a specific application, Contracting Parties are required to protect the appellation of origin under the international regime that had been

ratified the Madrid Agreement or the Madrid Protocol are subject to the Madrid system of international trademark registration. A trademark owner can have his mark protected in several nations by subm

requested. The Agreement does not include any specific reasons for rejecting names. The protection provided by international registration lasts for the same time as the protection afforded by the country of origin's appellation of origin law. Therefore, worldwide renewal is not necessary.

The above discussion can be summarised using the following pointers:

1. WIPO-administered treaties provide general protection standards
 - Paris Convention for the Protection of Industrial Property: The first major international agreement covering patents, designs and marks.
 - Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods: Prohibits any indications like the publicity that could mislead the public about the origin of the goods with regards to the sale, display or offer to sell of any product or item and reserved to the courts of contracting states to decide which appellations are not within the scope of

the agreement due to its generic character.⁸

- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: It was established to offer international protection to appellations of origin through a simple and a single registration procedure. Examples: Tequila, Sarough Handmade Carpet, Banano De Costa Rica, Herend, Prosciutto di Parma.
 - Madrid Agreement Concerning the International Registration of Marks & the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: To facilitate the registration of trademarks at an international level and to facilitate the management of trademarks after registration. Rule 9(4)(x) of the Common Regulations expressly provides for the registration of collective or certification marks. Examples: Coffee Kenya, Longjing Tea, Shensi Mussei, Chianti Classico.
- 9

The TRIPS Agreement

Only until the TRIPS Agreement was signed in 1995 were geographical indications accorded (almost) universal attention and protection. In general, the TRIPS Agreement protects GIs by protecting consumers and goodwill. However,

2. WIPO-administered treaties governing registration systems for obtaining protection

there are two levels of protection: a base level centred on the so-called "non-misleading criterion" that applies to all goods and a higher degree of protection specifically for wine and spirits. Two clauses in the TRIPS Agreement specify that protection of Geographical Indications is necessary.¹⁰ Article 22 covers all items and establishes a standard degree of protection. Accordingly, geographical indicators must be safeguarded to prevent deceiving the public and unfair competition.¹¹ Geographical indicators for wines and spirits are given more significant or increased protection under Article 23. They must be preserved even if the public is not misled by its misuse, and this is subject to a few exceptions.¹² Geographical indications may not always be protected, or their protection may be restricted in some circumstances. The agreement allows exceptions in certain situations, including when a name has become generic in a certain sense and when a word has already been registered as a trademark.¹³

Geographical Indications Under the EU

Under the EU quality schemes, GI is protected as follows:

- Protected Designations

of Origin (PDO) and Protected Geographical Indications (PGI) for the following:

- ❖ agricultural products
 - ❖ foodstuffs
 - ❖ wines
- Geographical indications (GI) for the following:
- ❖ spirit drinks
 - ❖ aromatised wines ¹⁴

Plurilateral and Regional Agreements for GI

These agreements are also in place for the protection of GI

- The African Intellectual Property Organisation (OAPI) Agreement
- The Banjul Protocol on Marks the African Regional Intellectual Property

Bilateral Agreements by EC for GI

The European Community has had multiple agreements with different countries for the protection of GI

- EC – Australia Wine Agreement
- This Agreement on Trade in Wine is one of the earliest bilateral agreements between the European Community and another country to protect geographical indications¹⁵
- EC – Canada Agreement
- This Agreement between Canada and the European Community was signed on 16 September 2003 about trade on wines and spirits.¹⁶
- EC – Mexico Agreement

Mexico and the European Community signed an Agreement on Designations for spirits and Drinks in 1977. As per this agreement, both parties agreed to offer protection to denominations of origin of drinks and spirits like Tequila and Mezcal, Grappa, Whisky and Cognac.¹⁷

➤ EC – Chile Agreements

These Agreements contain provisions concerning geographical indications and specify the names for the protection in Appendixes.¹⁸

➤ EC – South Africa Agreements

In 1999, the European Community and South Africa signed an Agreement on Trade, Development and Cooperation. Later, in 2002, both parties signed two specific agreements to protect the GIs for wines and spirits.¹⁹

➤ EC – US Wine Agreements

The agreement provides for the following:

- ❖ recognition of each other's existing current winemaking practices;
- ❖ a consultative process for accepting new winemaking practices;
- ❖ the US restricting the use of a few semi-generic names in its market;
- ❖ the European Community allowing, under specific conditions, the use of specific regulated terms on US wine exported to the EC;
- ❖ recognising specific names of origin in each other's market;

- ❖ simplifying certification requirements for US wine exported to the EU.²⁰

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Incorporating Germany's Progressive GI laws in India's Current Legislation: A Comparative Analysis

- Swaroopa Parthasarathi

Introduction

Geographical indications, as the name suggests, are intellectual property that identifies a product that originates from a specific geographical area and has a quality, reputation, or other characteristics that are essentially attributable to its geographical origin. In order to function as a GI, a sign must identify as a product originating in a given place.¹ In India, common geographical indications include Darjeeling tea, Kanchipuram silk, the Chanderi sari, and a multitude of other products belonging to various regions.

GI Laws in India

When India became a signatory to the TRIPS² agreement, a sui-generis legislation was enacted in 1999 to protect geographical indications. The term sui-generis means "one of its own kind." In legal terms, it refers to creating a new law or establishing international norms that would afford protection to intellectual property relating to genetic resources or biodiversity. Articles 22-24 of the TRIPS agreement lay down a certain standard to be followed by WTO members. In India, GI is governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. The aim of this Act can be divided into three primal objectives:

1. To protect the interests of the producers of goods;
2. To protect consumers from fraudulent and deceptive practices and ensure that unauthorized persons do not misuse geographical indications; and,
3. To promote Indian goods bearing Indian indications in the international market.

Registration of a GI is not mandatory in India; however, it gives the IP holder the following benefits:

1. It provides the holder with legal protection against infringement of the GI.
2. It gives the holder assurance about its safety and prohibits unauthorized use of a registered GI by outsiders.
3. Boosts economic growth and prosperity of producers in a particular area.
4. It increases exports of the registered product because it receives identification and invites media coverage.

In order to get the GI tag, the producer must file an application before the Registrar of Geographical Indications, specifying details regarding the process of manufacture, quality, reputation, and other distinct

characteristic features of the product which are unique to that particular region where it was manufactured. If the application is accepted, it will be advertised in the GI journal. Further, if there is no opposition, it will be awarded the GI tag. The Act provides for the protection of these producers, and any case of infringement can be brought before a court of law. Sections 39 and 60 of the Act specify imprisonment between six months to three years and/or a fine of Rs. 50,000 and 2 lakhs. However, in a way, India has made it difficult for manufacturers to get the GI tag. This is because Section 9 of the Act, which prohibits registration of GIs that are determined to be generic names or indications of goods, states that "an indication becomes generic when it goes back to the public domain and is not or has ceased to be protected in their country of origin, or which has fallen into disuse in that country."³

Geographical Indications in the European Union

The EU recognises two forms of protection: Protected Design of Origin (PDO) and Protected Geographical Indication (PGI), both of which protect agricultural products and wines. The third type of protection, which doesn't fall under the category of a GI, is the Traditional Speciality Guarantee (TSG), which underlines the traditional production process. The primary distinction between PDOs and PGIs is dependent on how much of the product's raw materials come from a particular area or how much of the manufacturing process has taken place in that region. Before joining the European Union, Germany

did not have a solid framework for GI laws; however, there has been a rapid progression in the enactment of legislation. The German Supreme Court issued a landmark decision in the "Hohenloher Landschwein/Hohenloher Weiderind" case, which revolves around the registration of a stamp for meat. The decision elaborates on the dual protection of geographical indications under special regulations and trademark laws at both national and European levels.⁴ The EU Regulation No. 1152/2012 protects geographical indications of various forms against infringement. This Regulation replaced Regulation No. 510/2006, which permitted producers from other countries to register their product names in the EU. Two important GI laws in Germany are: Regulation No. 787/2019, which specifies the definition, description, and labelling of spirit drinks; and Regulation No. 1308/2013, which discusses the establishment of a common market in which agricultural products can be sold.

India v. Germany: Comparative Analysis

The key point of distinction between GI laws in India and Germany lies in the fact that Germany has had GI success stories, but India hasn't had a single one. The reason being, GI protection laws in the EU are more stringent. Since the 1800s, Europe has been protecting its GI to the extent that quality control standards are maintained at every stage of the supply chain. Quality control checks are done thoroughly before sending goods into the market. This way, the system's overall reliability is enhanced. However, in the Indian scenario, no such mechanism is in place;

this is where the nation is lagging behind. The laws in Germany are more evolved but also subject to interpretation. India has minimal laws relating to GI, and this is ironic in the sense that Indian GIs have a wide variety of product categories as compared to Europe. From agriculture to handicrafts, India has a lot of scope to improve its stand in intellectual property. According to statistics, India has a share of more than 85% of the global 'Basmati' exports,⁵ and the European Union has a share of about 8% of India's total rice exports. This makes the EU a considerable market for India, especially for rice. In order to build on GI protection, India has submitted two proposals to the WTO on matters relating to geographical indications. India, along with Cuba, Indonesia, Egypt, and Pakistan, has submitted a proposal requesting additional protection to be given to wines and spirit drinks and extended to other food products.

Conclusion

A GI is not a very prominent form of intellectual property rights; wherein a layman producer may not be aware of his rights. It is a field that has a vast scope for improvement and needs to be given more attention. Hardcore legislations have to be implemented, and Germany's is shaping up quite well. India has a skeleton in place, but the gaps need to be filled. Incorporating Germany's progressive laws will definitely aid this process.

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Analysing India's Trend Towards Lack of Enforcement of Geographical Indication (GI) Tags - Mere Recognition on Paper?

- **Shreya Sampathkumar**

Why are GI Tags Relevant?

Place sensitivity and place blindness strongly influence local produce to determine a territory's successful engagement with the global economy. This statement is particularly true in light of the consumable agriculture field, where endemic foods are deeply rooted in their original territory and the social ties that bind them.¹ Permutation and combinations of cultural, historical, institutional, and socio-economic factors set apart place-sensitive produce from their average, ubiquitous counterparts; these factors are derivatives of where they originate. Where there are robust local knowledge exchanges, a community harnessing this collective knowledge emerges², leveraging which those involved in place-sensitive production can accommodate product-differentiation requirements to the monopolistic nature of competition in the agro-food industry. Competitive benefits accompanying GI tags are purported to provide products with an edge in global and domestic markets; this is attributed to an increase in consumer trust in the product's originality, giving them the power to differentiate the product better. Since the price of the product shoots up with the accompanying tag, it allows traditional production methods to persevere despite monopolistic competition and influences the local economy.³ For poorer countries, a GI tag may be perceived as a type of insurance that helps generate equity for producers based in rural areas - they do not possess adequate

resources to invest in marketing. Consider the example of tequila - the place-sensitive characteristic of tequila made in the town of Tequila, which makes its agave sweeter, differentiates it from tequila produced in Nayarit. This very characteristic helped "Tequila" tequila producers set an anchor down in the global market.⁴

Case Studies from India

1. The case of Darjeeling Tea⁵

- With the furore that surrounded the infamous US basmati rice patent case⁶, the substandard qualities of tea labelled "Darjeeling", and the realisation that it has numerous endemic products that it can avail a competitive advantage with, India became one of the first developing countries to implement a GI law compliant with the Trade-Related Aspects of Intellectual Property Rights Agreement (hereinafter referred to as TRIPS) - namely, The Geographical Indications of Goods (Registration and Protection) Act of 1999.⁷
- Darjeeling Tea, India's first GI tag, was a commendable first step for the industry. It guaranteed the authenticity of the tea exported under the title and eliminated players indulging in passing-off. Nevertheless, some manufacturers of Darjeeling Tea claim that stricter implementation of laws clamping down on

such passing-off behaviour ought to be ensured and that it might take a while before the tag is successful. However, during a few years before 2013, when the Gorkhaland agitation was ongoing, tea exports fell drastically, making prices skyrocket, raising concern amongst Darjeeling tea lovers from England, China, Australia and other countries.

2. Karimnagar's silver filigree⁸

- However, the impact of GI tagging on exports is debatable. Consider the instance of Karimnagar's silver filigree - GI tagged in 2007. However, the GI tag appears to have had a negligible impact on GI awareness amongst the locals. The only associated benefit to getting tagged is improved overseas recognition of the silver filigree as a product. Perhaps a prudent assumption to make at this juncture would be that a lack of awareness of GIs affects quality, indigenous produce popularity, price fluctuations and their effect on more significant investments to improve the livelihood of farmers, and rural manufacturers, perhaps resulting in a circular flow if all these interests are balanced.

3. Lucknow's Chikankari⁹

- For Lucknow's famous Chikankari work, the GI registration is done in two steps. Initially, the product and the associated geographical

location are registered, after which users and manufacturers register. Despite the involvement of several thousands of individuals, only four producers of Chikankari have registered themselves. Registration precedes its benefits - for this, relevant GIs' state governments must take action.

- It must be noted that TRIPS was embodied to provide a minimum protection standard. There is no mandate that even sui generis protection be accorded, let alone a specific framework for GI protection. However, borrowing from the EU's rules on GI protection, India's registration rules make it compulsory to have proof of origin - particularly, historical origin by documentary evidence as under the GI Rules, 2002 and the GI Manual.¹⁰ What was the reason for accommodating such a mandate in Indian law when TRIPS itself does not require it? India, which has a historically diverse background, documentary evidence for proof of origin may sometimes be at arm's length - oral history is primarily relied upon, of which there are usually several versions.¹¹

4. The case of Feni

- The registration of Feni, a cashew-based alcohol, is an example of how India's formalities create challenges in the process—having been registered by the

Goa Cashew Feni Distillers and Bottlers and Goa's Department for Science and Technology. Both of them, being users, cooperate and compete with each other. They must abide by specific regulations accompanying registration; however, like other older GIs, product characteristics and production techniques keep changing. Perhaps conventional cultural practices that hinder supply may be abandoned to accommodate buyers' demand. Although Feni's GI is comparatively young, smaller Feni producers operate utterly blind to its GI status.

- As a result, these manufacturers do not benefit and may produce Feni in methods that contravene approved specifications per the GI application filed by its current users. Thus, only some producers of a GI-tagged good may use it properly. In Feni's case, the market offers both registered and unregistered varieties of the same product. It may do the GI good if the current two users of the tag influence all producers of Feni to adhere to the specifications they have applied under or lose their right to call their products "Feni", the latter being under the discretion of the state government.¹²

Lack of Documentary Proof

Assam has been on a rigorous analysis of the potential for its agricultural produce to be recognised as a GI, of which one is a traditional rice wine made by the Dimasa tribe called "Judima". Assam's state

government has been keeping an eye on the academia surrounding it to explore registration possibilities. The obstacle before registering "Judima", as with several Northeastern products, appears to be the difficulty in collecting hard evidence to file for proof of origin. The fact that the word "Judima" is composed of "Ju", which stands for "drink", and "Dima", for "Dimasas", in the lack of any documents to prove the same, is challenging to prove. In the notorious turmeric patent case¹³ filed by India's Council of Scientific and Industrial Research (CSIR) against two scientists, the U. S. Patent and Trademark Office asked for documentary evidence of the usage of turmeric in the manner specified in the patent to revoke it. The provided evidence was declared insufficient, and CSIR launched a project to translate ancient Sanskrit texts, which was later admitted as evidence of usage. What would happen in instances where written history is hard to draw out? Can these products not be GI-tagged? Even if GI registries were to allow etymology as evidence, it could not apply to cases where the procedure requires heavy reliance on documentary proof.¹⁴

Suggestions and Conclusion

The first conclusion derived from the above analysis is that the existing legislation for GIs in India must be reinforced to ensure quality control (QC) and keep abreast of consumer demand by enabling multi-layered QC systems as a prerequisite for registration.¹⁵ Other issues that producers face are market inaccessibility and a dearth of funds for marketing and enforcement. GI protection awareness must be slowly spread to unregistered producers by

the government while consistently comparing progress with successful international systems of enforcement and shaping it to fit the contours of India's developing economy. Since India is a mosaic of locally-produced goods from different regions, sometimes even within the same state, a few significant amendments with robust implementation may be the answer to problems associated with registration (and to improve export rates!).

The goal of GI legislation must be to maintain and preserve high quality, to attribute a competitive edge to GI tag holders and provide enough information on such products to allow consumers to make educated decisions. Another consideration when discussing policy for effective enforcement is making GI tags push exports higher. Relevant problem areas are manifold, including fund shortages amongst already registered GIs, ineffectual remedies for infringement and passing-off, carelessness in the monitoring of marketplaces, haphazard nature of transactions between players on the export value chain. Governments must address these areas on all levels.

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Evolution and Protection of Darjeeling Tea as GI

- Diya Naveen & Neha Srikanth

Introduction

A Geographical Indication (GI) is a term or symbol that is used to identify genuine from counterfeit agricultural, industrial, and confectionery products. An assigned geographic area receives a GI tag (region, country, or state). GI, like other IPR, is a non-physical asset that creates a legal claim to future benefits through its special rights and advantages. The GI products are mainly manufactured, natural, or agricultural goods like handicrafts. It serves as a mark or emblem to distinguish one product from another. GI tags indicate that the product, name, or sign to which they have been applied is unique, has distinguishing characteristics, and was produced using traditional techniques that reflect the area's reputation. This tag can also be seen as a defence against any copyright infractions.

The Need for a GI Tag

Geographical Indications have a crucial role in the development of economic interests. These tags serve as a safeguard for the ownership of manufactured items and natural resources. Since GIs are collectively owned by the state, they cannot be sold, rented, or transferred. Products with GI tags restrict the illicit use of the goods and increase producer profit through exporting the goods. The

primary goal of the geographical indication Tag is to stop unauthorised individuals from using a Registered Geographical Indication. The GI offers security to newly created or distinctive products made or produced by an individual, group of individuals, and so on.

Darjeeling Tea - The History Behind It

The British relied solely on China at the beginning of the 1800s for their tremendously successful and expanding tea trade. Because of the hostile atmosphere between the two superpowers, the British searched for a closer, simpler-to-control tea supplier. India was governed by the British. Therefore, the subcontinent made sense for their tea research. Due to its essential military location at the confluence of the Kingdoms of Bhutan, Nepal, and Sikkim, the British had lately established a base in Darjeeling, leasing the land from the Kingdom of Sikkim. But since it offered British soldiers respite from the oppressive heat of the Indian plains, it gained popularity as a tourist resort. The East India Company launched a significant initiative to create an Indian tea industry from scratch once the British learned that Assam was the second native location of the tea plant. Since they were aware that the most

fabulous teas grew in the highlands, the first Darjeeling tea garden was established in 1841 by Arthur Campbell, a British surgeon who served as the district's supervisor. Darjeeling was then governed by the Kingdom of Sikkim, which granted the British a lease on the territory. However, the Sikkimese ruler promptly imprisoned Campbell and another explorer/botanist Joseph Hooker in 1848 for trespassing outside the rented property. The two soldiers were rescued by British forces, which started a conflict that the British ultimately won. By the terms of the 1865 treaty, the British took control of Darjeeling from the Kingdom of Sikkim and used it to further their tea empire. Between Campbell's first bush-planting and the British annexation of Darjeeling, 24 years later, Campbell had tried to entice labourers from the adjacent Nepal region to help cultivate the slopes and expand trade prospects. His strategy was successful, and sales of Darjeeling teas soared. The British quickly introduced the tea estate model to Darjeeling, a problematic business model they had been refining for decades in lower-lying Assam, India. They used seedlings from *Camellia sinensis*, the plant from which all tea is grown, to cover enormous areas of the highlands, bringing with them all the drawbacks of monoculture, such as the quick loss of soil nutrients and crop vulnerability to disease. At the same time, the British provided all housing, food, education, medical attention, and a very meagre wage "in exchange" for the labour of the Nepali immigrants working in the Darjeeling tea gardens. The majority of the basic needs of the Nepali communities were

quickly dependent on the estate owners, creating a cycle of dependence that still affects many of these families today.

Tea Board of India

Whenever instances of the unauthorised use, attempted, or accurate registration of Darjeeling and the Darjeeling emblem was brought to its attention, the Tea Board of India adopted the role of a complainant in making and filing an opposition or other legal measures. Usually, when negotiation fails, such legal action is initiated. For instance, the Tea Board of India opposed the registration of the trademark "Darjeeling Tea" with a map of India by Yutaka Sang Yo Kabushiki Kaisha of Japan, the registration of the "Darjeeling Women" device by International Tea KK of Japan under class 30/42 (tea, coffee, and cocoa), and the use of the "Divine Darjeeling" logo in advertising by Mitsui Norin KK. These opposing parties supported invalidation action against them. Through negotiations with the involved international corporations with the assistance of their respective governments, the Tea Board of India has been able to resolve some problems involving Darjeeling tea. Thus, the Tea Board continues to engage with France on various levels with the assistance of the Indian government over the actions of the French trademark authorities. Additionally, BULGARI, Switzerland, consented to remove the legend "Darjeeling Tea fragrance for males" after receiving legal notice and negotiating with the company.

Challenges Faced by the Tea Board

The Tea Board of India has encountered several obstacles, difficulties, and challenges in defending and enforcing the use of the word "Darjeeling" and the Darjeeling logo. To safeguard the name "Darjeeling" and the Darjeeling logo in nations like Japan, France, Russia, the United States, and others, the Tea Board has faced several significant obstacles: Unlicensed registration and use of the Darjeeling Tea and logo in Japan: In this instance, the Tea Board filed a trademark invalidation action against International Tea KK, a Japanese company, over the November 29, 1996, trademark registration of the Darjeeling women "selling tea/coffee/coca/soft drinks/fruit juice" in the Japanese Patent Office (JPO). The Tea Board of India registered the identical Darjeeling logo mark in Japan on July 31, 1987, with trademark registration number 2153713, and this registration is being challenged. Additionally, the Tea Board brought a non-use cancellation action. The JPO Board of Appeal ruled on August 28, 2002, that the pirate registration was unlawful since it was against morality and public order. Regarding the Tea Board's decision to cancel its non-use. Additional instances of developed countries being defended against by GI: France. While the Indian system offers protection to French GIs, France does not provide a comparable or reciprocal level of protection to Indian GIs. Therefore, if the items covered differ from those represented by the GI, French law does not permit any challenge to an

application for a trademark that is similar to or identical to a GI. Only once the contested application has advanced to registration can the GI's owner initiate the necessary legal action. This clause has led to the misappropriation of the Darjeeling trademark for several class 25 goods, including clothes, footwear, and headgear, despite India's protestations. Despite finding evidence in favour of the Tea Board, the French Examiner costs of government and industry protection and enforcement: The Tea Board of India also has to deal with expensive legal and registration fees, the cost of engaging a global watchdog, and the expenditure of defending against violations in foreign countries. The Tea Board of India has invested almost \$200,000 for these purposes during the past four years. This sum excludes administrative costs, such as salaries for staff who work for the Tea Board, the price of setting up monitoring systems, the price of developing software, and so on. Every owner of a geographical indicator right cannot afford to pay these costs for protection. A country may also be prevented from hiring a lawyer to oppose the lawsuit due to the enormous cost of legal action, similar to managing, overseeing, and implementing GI protection, however solid and sincere the argument may be.

Registration of Darjeeling Tea as a GI

The Tea Board of India registered the marks as trademarks/CTM in several nations, including the United States, Canada, Japan, Egypt, the United

Kingdom, and some other European countries, to protect the "Darjeeling" and "Darjeeling logo" as GI. The UK Trade Registry granted registration of the word "Darjeeling" as of March 30, 1998, under the UK Trade Marks Act 1994 on August 3, 2001. This is important to mention in this context. The Tea Board's application to register "Darjeeling" as a CTM in the United States was likewise approved in October 2002. To stop the misappropriation of the name "Darjeeling" and the emblem, the Teaboard has worked with Compumark, a World-Wide Watch organisation, since 1998. All instances of unauthorised use and attempted registration must be tracked by Compumark, who is also obligated to report them to the Tea Board. Numerous attempted registrations and unauthorised use of the terms "Darjeeling" and "Darjeeling Logo" have been recorded due to Compumark's appointment.

What Is Its Position in India?

First used in France in the early 20th century under the name appellation d'origine controlée (AOC), geographical indications (GI) have since spread to other nations, including India, that are members of the World Trade Organization (WTO), thanks to the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Geographical Indication Registry, a division of the Department of Industry Promotion and Internal Trade, Ministry of Commerce and Industry, is responsible for issuing GI tags in India by the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which went into effect on September 15, 2003.

Any producer may apply for a GI tag, whether an individual, a group of people, an organisation, or a legal entity. The application must be submitted to the relevant authorities in the correct format and with the appropriate charge. A GI tag is only suitable for ten years, though it may be periodically renewed for an additional ten years during each renewal. The first GI tag in India was given to Darjeeling Tea in 2004 or 2005; since then, the quantity of registrations and applications has grown significantly.

Involvement of Local & External Players

Implementing governmental rules and policies is the sole responsibility of the Tea Board of India, which represents India's tea producers. Through different orders issued by the government, it is responsible for overseeing all phases of tea cultivation, processing, and sale (including the Darjeeling portion). It works closely with the Darjeeling Planters Association, the only organisation representing Darjeeling tea producers. The "Darjeeling tea" and "Darjeeling logo" have been subject to various levels of protection and defence by both the Tea Board and the Darjeeling Planters Association (DPA). The main goals are to stop the misappropriation of the term "Darjeeling" for tea sold worldwide and (ii) to provide consumers with the right product. (iii) to make it possible for the Indian tea industry to profit commercially from the brand equity and subsequently the plantation workers; (iv) to gain global prestige comparable to champagne or

Scotch whiskey in terms of brand and equity governance/administration.

Protection of Darjeeling Tea as a GI

- (I) Registration of CTM: The "Darjeeling logo" and the phrase "Darjeeling" were registered as certification trademarks (CTMs) under the (Indian) Trade and Merchandise Marks Act, 1958, to offer legal protection in India (now the Trade Marks Act, 1999).
- (II) Registration of GI: In addition to the CTMs, as mentioned earlier, the Tea Board of India has also applied for the registration of the terms "Darjeeling" and "Darjeeling logo" under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the Act), which took effect on September 15, 2003.

Based on the Act:

- (a) No one shall have the right to bring a lawsuit to stop or compensate someone who violates an unregistered geographical designation.
- (b) The registered proprietor and all authorised users whose names have been recorded in the register are given the right to seek redress for infringement of the geographical indications by registering those geographical indicators. However, the sole and exclusive use of geographical indicators concerning the items they are registered with shall belong to

approved users only.

- (c) A person violating a registered geographical indication is not its authorised user.
1. employs such geographical markers in the designation or presentation of products in a way that deceives the public by indicating or implying that the products' genuine place of origin is somewhere else geographically;
 2. knowingly engages in unfair competition by using any geographical indications, including passing off registered geographical indications; or
 3. uses a different geographical indication for the goods that, while accurate in terms of the territory, region, or locality where the goods originated, misrepresent to the public that the goods were made in the area covered by the registered geographical indications.
 4. The GI Act's goal is to establish a public register, and
 5. The GI Act grants public rights.

Conclusion

Geographical Indication is still a young idea in India. The protection afforded to wines and spirits by TRIPS (Trade Related Intellectual Property Rights), for instance, Scotch

Whisky, which is covered by an Act, still needs to be made available to products like tea on the international market. However, it is progressing because of government interventions and consumer awareness. Darjeeling tea might be the best illustration because of its colour, flavour, and scent!

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Analysing the Scope of Protecting GIs in the Agricultural Industry

- **Karan Mathias**

Introduction

According to World Trade Organization, Geographical Indication means “*Indications which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin.*”¹ A GI tag or geographical indication refers to a form of intellectual property that helps with the identification of particular articles and their relation to a specific geographical origin. The direct beneficiaries of this form of intellectual property are restricted mainly to the recognized and admissible producers of the said product or the inhabitants of the said region in question. A few of

the main elements required for an agriculture product to obtain protection through a GI tag are as follows:

- Firstly the origin from an area must be found by creating a firm division of the said area into specific administrative zones through the process of delimitation.² This process would help in restricting the exact origin of the product to a specific location in a region.
- Secondly, there must be a factor of natural and manufacturing quality that is restricted to the product of that particular region. An example of the same could be the “*Mizoram Chilli*,” as it obtains its quality due to the rich fertility of soil available in Mizoram. Another example of the same is the

renowned “*Palakkadan Matta*,” which has garnered a lot of attention due to its incredible and immense flavour that is an outcome of the highly fertile black alluvial soil in Kerala.³

- The last and most significant step of obtaining a GI tag for a particular product is to determine whether the said goods have an attached historical importance which would help in determining an aspect of differentiation from other products or goods of the exact nature. It is for this reason that during the process of registration of the Geographical indication tag, the candidate would be required to show that there is an attached history to the product in question. Products related to agriculture, textiles, food, etc., are those which are capable of obtaining a geographical indication tag. The requirement for a tag to be legally valid is that it must be in the form of a geographical name or an allegorical representation of the product, or both.

Case Study – Indian Context

September 15, 2003 was seen to be the exact day that the first agricultural product, “Darjeeling Tea,” received a GI tag. India currently holds 289 GI tags for agricultural products.⁴ Currently, the country of India provides for only a meager amount of eleven states that allow a product to be registered with for GI registration. Agricultural products are seen to have the second highest number of GI-tags, which mainly surrounds fruit-related produce. The Indian

rural agricultural sector immensely benefit from the extremely high benefits that accrue from these GI tags as it provides a more extensive range of clientele and markets to access the crops produced as a unique product that is fixed to the specific region.

The two major cases in the agricultural-related sector that induced the need for GI tagging of the products are:

- 1) Darjeeling Tea issue⁵ - The Northern Indian State of West Bengal is known for its special tea crops from the district of Darjeeling. This tea has come to be known as “*Darjeeling tea*”. The farmers from this district faced a lot of issues and unfairness when it came to the international markets and the sellers of tea on an international scale. A lot of companies were found to be free riding on the reputation of the tea from Darjeeling and selling their tea products or powder and labeling them as Darjeeling tea. This caused a decline in the global market reach of the actual producers of Darjeeling tea. The matter was addressed in the Parliament, where both Houses passed a Bill known as the Geographical Indications of Goods (Registration and Protection) Bill, 1999⁶ which later became the sui generis Act in India. This enabled the producers of Darjeeling tea to obtain a GI tag and thereby afford protection as officially the first product in India to receive the GI tag registration.

2) Basmati Rice controversy - An American company by the name of Ricetec Inc. was granted a patent for their latest version of “*Basmati*” rice that had all the features of the originally Indian-grown Basmati rice. Indian rice growers and various NGOs were unsatisfied with this decision by the US Patent and Trademark Office and claimed that marketing and distribution of Basmati rice affected the well-being of the actual Basmati rice growers who hold the GI tag for the same. The patent office argued that Basmati could not be considered a Geographic indicator as it can be seen that a multitude of States in India grow different varieties of Basmati rice, unlike an example of Nagpur Oranges which is specific to the city of Nagpur. This incident was seen as a threat to traditional knowledge and an infringement of intellectual property, and under the 1999 GI Act, the geographical indicator “*basmati*” has been registered for only a few of the Indian states such as Haryana, Uttar Pradesh, Punjab, Jammu & Kashmir, Uttarakhand, Delhi, and Himachal Pradesh.

Conclusion

In today’s world, the current trend among consumers, especially in the agricultural sector, is the necessity to purchase products of the utmost quality. When we talk about the assignment of GI tags in the agricultural context, there are references often made to the technical and historical origin of the said

product. Certain geographical and natural factors are seen to affect the quality of a crop from a specific region, such as the “*Ratnagiri Alphonso mango*”. It is therefore a significant necessity, especially in the field of agriculture, to grant GI tags as it protects not only the ancient production and practices of the region⁷ but also reduces the harsh exploitation of the crop as there now will exist a high demand which will attract high benefits to the local producers.

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