



IMPACT OF GEOGRAPHICAL INDICATION PROTECTION AND ITS LEGAL STRUCTURE

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Abstract

Protecting GIs through registration is the most talked about strategy, but other strategies provide encouraging prospects for doing so in emerging markets. The diversity of legal and institutional frameworks in developing countries suggests that some of these possibilities may be helpful configurations that are progressing toward increasing protection for GI. In addition, the GI procedures may vary from country to country as a result of trade globalization, making it all the more important for producers to research and get familiar with the legal framework in the nation of good fortune as export markets become an opportunity for them.

1.1 Introduction

Numerous brand names, such as "Drum Beater" and "God Tycoon," may be found among the various types of "blended scotch whisky" or "Blended with Scotch" found in Indian whiskey. The Bombay High Court reviewed the case and ruled in favor of the plaintiff, finding that the plaintiff had shown sufficient grounds to prevent the defendant from passing off the Indian whisky he had created as Scotch whisky. Con artists were misrepresenting their products as blended Scotch whisky while in fact they were selling something very different. As a result, the situation was sufficiently serious to warrant the temporary restriction. The defendants used slanted methods, such as the 'Blended with Scotch' lyrics and "cosseted in colorable take and the bigoted dealing," in an effort to profit illegally from the use of the plaintiff's name and likeness without his consent. The Bombay High Court's decision in this case demonstrates that protecting GIs has consistently been at the forefront of the Indian judiciary's agenda, even when appropriate and accurate laws protecting GIs did not previously exist, especially in light of a global perspective or in regions where GIs are particularly vulnerable to infringement. When it comes to defending GIs, the Indian judiciary has become the gold standard for countries without such rules.

1.2 LEGAL STRUCTURES OF GEOGRAPHICAL INDICATIONS

When it comes to protecting GIs, it all comes down to who has the exclusive commercial right to use a given appellation. The existing legal framework lays out the potential avenues of application for this privilege¹. As such, it pays to be aware of the many options available for safeguarding manufacturers' exclusive use of a geographical name in commerce. Those who are already well-versed in the legal frameworks for GI protection may choose to skip forward to the GI cases. Any sign with a predicable meaning can be used as a GI, including words or axioms, distinguishing marks, symbols, signs, or groups of the typescripts or uniqueness. They convey information clearly and introduce customers to a variety of

¹ R Saha, "Management of Intellectual Property Rights In India", pp. 1, 2006.

items in the same category; nevertheless, for a sign to have a stable meaning in the marketplace, customers must be able to instantly recognize it and associate it with a certain brand and item.²

1.3 Role of Geographical Indication Protection and Its Legal Structure

For a country like India, which is blessed with an abundance of natural and agricultural goods, having strong protection for GIs was crucial. An emphasis on GI indication's significance in safeguarding genetic resources demonstrates the potential utility of GIs in thwarting biopiracy. The legislative framework then goes on to provide specifics on how GIs are safeguarded on both the global and national stages. Uniqueness is often signaled by means of identifying characteristics or by way of a person's or group's reputation for having certain characteristics. The search expenses of customers are reduced when reputation is communicated via a distinctive indicator. As a result, retailers may recoup some of the expenditures they've invested into building a solid image by charging higher prices for well-known brands' wares. This is especially true of items with a known geographical origin, whose superior quality and long-standing history have earned them a stellar reputation and a premium price. Protecting a product's good name through the courts is common practice when it has gained such a reputation. GIs are one such tool. They specify a region's manufacturers and allow them the right to use a trademark only within that region³. When utilized correctly and properly safeguarded, GIs let companies to send a substantial amount of information to customers and become a profitable marketing tool.

1.3.1 Pre-registration challenges on GI

All the scenarios analyzed here need assistance from outside parties in order to pursue GI registration. Typically, small producers in developing countries lack the resources to navigate the complicated bureaucratic procedures involved in GI registration and product marketing without assistance from external entities (e.g., state governments, civil society groups, funders, etc.). The Rajasthan Urban Development Authority and the United Nations Industrial Development Organization collaborated in the registration of Kota Doria. A number of Indian goods have been registered with the help of UNCTAD.⁴ Himachal Pradesh and Punjab have state governments that have taken the initiative to encourage and facilitate the GI registration of a number of different items. An application for Cinnamomam Tamala, a plant that grows between 1,500 and 2,700 meters above sea level, was recently submitted with the help of UNDP India by medicinal plant collectors and farmers in the Himalayan state of Uttarakhand. It is a plant that grows organically and is used as a spice in many different Indian recipes as well as for the treatment of diabetes. The United Nations Development Programme (UNDP) educated and rallied cinnamomam collectors and farmers in seven areas of the state about the benefits of registering this widely used plant, in particular due to its unique therapeutic characteristics. It united collectors and farmers in those seven areas to create the UttarakhandTejpattaUdpadakSamiti (UttarakhandCinnamomam Growers Association), a legally recognized group. Once the plant receives a GI, the group will register the 4,000 collectors and farmers who are its members as authorized users. It's possible that this is the first GI for a product of its kind. Most small producers do not have the time or finances to invest in the lengthy registration process that is required. The Navara rice case has highlighted the challenges that small farmers encounter when attempting to register their farms. Mobilizing farmers, setting up the organization that will submit the GI registration application, hiring a legal expert to build the case—all of which takes time and money—and gathering the necessary documentation to prove that the product originates from and retains the essential

²Michaela Antoukova, Jana Mikulec, "use of GIS to study tourism burden - case study of protected landscape area", pp.5, 2008.

³Meghha Banerjee & Susanah Nausand, "grant, of geographical indication designation to tirupatiladdu: commercialization of faith?", March 2010.

⁴Ruchi Pant, "Protecting and Promoting Traditional Knowledge In India", May 2015.

characteristics of a specific location are all part of the pre-registration process. It usually takes a year to do this. There is just one GI Registry office, and it requires many trips to India.

1.3.2 Post-registration challenges on GI

All the examples in this report demonstrate that registering biocultural products for GI is not sufficient to ensure producers will reap benefits; rather, there are substantial costs associated with the post-registration phase that are essential for the GI to be effective, such as making sure the GI is known in the market and sought out by consumers⁵, as well as the price of keeping tabs and enforcing the law. To attract customers, GI owners may need to spend money on things like prominent advertising. Again, external help from government, nongovernment, and donor agencies is usually necessary for small producers and disadvantaged communities to engage in marketing, product development, and market formation.

Because the GI Act considers 'natural plants' to be within Class 31 of the fourth schedule, this possibility is available to those who qualify. It's possible that the already-scarce biological resources required to make these goods may come under even more strain if demand rises following GI registration. As of yet, no goods in this category have been recorded as posing a danger to these conservation efforts. However, there is a wealth of information about species that have been lost or are in danger because of excessive collection for commercial purposes. Therefore, GIs can only work as a tool to save TK and biodiversity if they are collected, used, and cultivated in a sustainable manner. A growing market for an endangered resource (such as older crop types or animal breeds) might help bring it back from the brink of extinction. Standardizing cultivation procedures for important species, or establishing checks and balances via the use of certification labels like the Good Field Collection procedures or the Forest Stewardship Council, are alternative ways to assure sustainable collection in addition to GIs. In addition to the 2015 application submitted through the United Nations Development Program (UNDP) for a geographical indicator on a natural plant, the Department of Science and Technology of the state of Himachal Pradesh submitted an application for the first time in 2014 for a natural plant named kalajeera. When cooked, this non-timber forest product is used as a seasoning for vegetables and pulses. The government is also attempting to boost kala-jeera production. One probable explanation for the paucity of GI applications for wild plants is that the people who gather them are members of extremely underprivileged tribal tribes who are either unfamiliar with the GI Act or lack the financial means to apply for registration.

1.4 CHALLENGES AND ISSUES OF THE GEOGRAPHICAL INDICATION ACT

Legal protection that is available in several countries is a crucial factor in establishing a GI's position in the global market⁶. However, depending on the legal frameworks of the various target nations, acquiring statutory armor might become a daunting task. The Trade Related Intellectual Property Rights (TRIPS) establishes minimum requirements for the protection of WTO members who comply with rules that integrate with their respective national laws. However, there is a challenge due to hierarchy in the extent of safeguarding GI under TRIPS, as established by the legal system traditionally. Article 22 of TRIPS mandates a two-tiered system of safeguarding the fundamental protection suited to all GIs generally since it has a single, unified description for every Gk. irrespective of product groupings.

GIs must be registered by countries using a sui generis system, and applicants must assemble proof specific to their goods, manufacturing methods, market niche, country of origin, etc. Nothing in this Act is intended to impact rights of action with respect to an individual for passing off the items identified as the products of an individual or the solutions relating in that order, as provided for in the Indian GI Act. However, unlike the common law of many other nations, India does not have a decree specifically addressing discriminatory

⁵Shashikant B Bagade and Deven B Metha, "Geographical Indication In India" pp.1225, MarchApril 2014.

⁶Kasturi Das, "Socioeconomic Implications of Protecting Geographical Indication in India". August 2009.

business practices, albeit most of them may be illegal under the doctrine of passing-off⁷. In these situations, the right holders are typically asked to provide evidence that the geographical indicator in question is not a generic term and has developed distinguishing qualities. It is necessary to protect and enforce GI rights after they have been gained through registration. Most trademark infringement cases center on whether or if a competitor's goods or advertising tactics are violating GIs⁸.

Even in India, it would be quite difficult to implement OI concerning such venerable arts and crafts items⁹. Because of the abundance of legal and informal routes through which handlooms and handicrafts are exchanged in India, preventing counterfeits is an enormous challenge. Moreover, there are so many hybrid and machine-made product variants available on the market that controlling this art is anything from serene. It is comforting to see that the owners of certain registered GIs in India have started enticing businesses to carry out the exercise of their legal rights inside Indian territory.¹⁰

However, in its efforts to ensure the proper implementation of 'Darjeeling' under GI protection, the Tea Board has run against a number of obstacles. The Darjeeling Tea Board was able to successfully protect the brand in certain places where it was being stolen because of its strong financial footing. Not every factory can achieve the same level of success as the Darjeeling Tea Board. The Indian government should advocate for and put pressure on other countries to create a comprehensive enforcement system.¹¹.

Unfortunately, the Indian government has not yet developed effective methods to brand, promote, sell, and distribute GI certified items in foreign export markets. This might be explained by the fact that India, as a developing nation, lacks the resources to engage in such extensive lobbying, and the enthusiasm of the stakeholders could also play a role. Nevertheless, the country's government cannot afford to ignore this for much longer, since success in worldwide markets for GI goods now depends primarily on changing customers' minds via effective marketing and PR campaigns. Unlike the Tea Board, which received funding and support from the Government of India's Ministry of Commerce and Industry, it's possible that other Indian GIs won't be able to afford the same level of investment. The high costs associated with designating a global regulator agency and engaging in legal battles abroad are anticipated to severely limit the capacity of GI right holders in India to ensure execution of their rights in international markets, even if they are granted government assistance. Importantly, uniformity and uniqueness control are crucial to the success of any brand-building activity using GIs. Using the hedonic pricing approach, empirical studies have shown that the uniqueness of a GI-product is directly connected with the willingness of customers to pay a higher price for it. After consensus on Standards is reached, all parties involved in the GI must acknowledge that strict adherence to the agreed-upon norms is necessary for its continued growth and development. However inadvertent, any violation of the norms by even a single actor may have lasting negative effects on the GI's standing in the market¹².

On the other hand, strict standardization and uniqueness control may impose negative rigidities on the system, reducing its adaptability to innovations and experiments in step with technology progress and shifting customer tastes and preferences. The creativity and flexibility that has helped build successful companies in countries with less lax geographic indicators regimes may be threatened. These kind of inflexibilities might eventually make GIs unable to compete in their respective marketplaces. *Sui generis*

⁷ R Saha, "Management of Intellectual Property Rights In India R Saha", pp.1-29, 2006.

⁸ Tim Jay, "A Case of Champagne: A Study of Geographical Indications",7-15-2013

⁹Shashikant B Bagade and Devon B.Metha, "Geographical Indications In India: Hitherto and Challenges", pp. 1225, March-April 2014

¹⁰ Michael Blakeney, "Geographical Indications and TRIPS",2012

¹¹Kasturi Das, "International protection of India's Geographical Indication with special reference to Darjeeling Tea". (2006) J. of world Int. Prop. 459-495

¹²Kasturi Das, "Socioeconomic implications of Protecting Geographical Indications In India", August 2009.

systems require countries to register for GIs, and GI applicants must gather proof of the distinctiveness of their goods, manufacturing methods, geographic origin, etc. Indian GI Act provides that no provision of this Act will affect any right of action with respect to any person for passing off the items mentioned as the products of any other person or the solutions respecting such persons. According to the act's "passing-off doctrine," no one may falsely represent their own goods or services as those of another. Taking legal action to prevent passing off is essential in order to safeguard producers' and sellers' goodwill, brand recognition, and other intangible assets from exploitation by unfair competitors. (Emphasis added) "in the specific territory region or locality mentioned in the application." The 'if any' provision indicates that the supervision structure is not a necessary condition for GI registration in India.

1.5 LEVEL OF PROTECTION OF GI UNDER INDIAN LEGAL SYSTEM

1.5.1 Why GIs need a level protection

Only like any other self-aware brand does the GI acquire value. A level of protection for what has come to symbolize a product's brand name may be gained via the use of GI makers' gel to convene required or differentiate. AN Well The GI stance may seem to minimize the informational difficulties buyers confront when the product's characteristics are not readily visible due to the legal protection value structure. While copyright might be rewarding for some, it can be rather costly for others when it comes to attempts to "free-ride" on their reputations by using similar or identical phrases in their businesses. Until now, it has been difficult to draw clear conclusions about the relative merits of various forms of security. As a result, the most suitable next step of the protective deed should be determined after carefully weighing the requirements, as well as the impact and costs. Because there are always others trying to "free-ride" off their good names by using confusingly similar terminology, and GI needs a lot of money to keep its name safe¹³. Until now, it has been difficult to draw clear conclusions about the relative merits of various forms of security. As a result, the most suitable next step of the protective deed should be determined after carefully weighing the requirements, as well as the impact and costs.

It is not always simple to approve a GI's legal status. No country is obligated to accept, register, or provide legal protection for a GI if it does not conform to the legal standards of the nations that import it. Approval of a GI should, in theory, satisfy consumer needs by helping them make more well-informed decisions and protecting private interests without jeopardizing public ones. Several countries, especially those in the "New World," are also passionate about safeguarding domestic companies that have flourished by adopting the appellations of foreign GIs that were previously safeguarded. Sometimes such private rights are granted in the trademark structure and cannot be easily cancelled.

Disputes almost always arise when certain product or place names are legally protected in one jurisdiction but freely used in another. Common foods and drinks like Basmati rice, Feta cheese, and Port wine may be safe in the United States but may not be in other countries.¹⁴ Several countries may therefore argue that the items in question do not properly belong to any one region or set of manufacturers due to their ubiquitous nature in the market. The Greek cheese "Feta" is a good example of this phenomenon; it is legally protected in its home country of the European Union for being unique to Greece, yet non-Greek producers from as far afield as Denmark and Wisconsin may freely sell it in the United States. Therefore, the rights to protect the brand, product, or technique in other countries are unlikely to be achieved if the product is not registered

¹³ N.S. Gopalakrishnan, Prabha S. Nair & Aravind K. Babu, "Exploring the Relationship Between Geographical Indications and Traditional Knowledge", August 2007

¹⁴ Kal Raustiala and Stephen R. Munzer, "The Global Struggle over Geographic Indications", the European Journal of International Law Vol. 18 no. 2, 2007,

and reliably guarded at hand. Unfortunately, efforts to reach a more robust global accord or a unified GI registration system have hit somewhat of a standstill due to the global nature of the subject at hand.

Some of the current GI-related worldwide rigidity is connected to concerns about potential product reversals. Due to the strong relationship and continuous protection decisions by the genuine owner, namely the Tea Board of India, courts in both the European Union and the United States have recently recommended protection in front of usurpers using the tags Darjeeling. Similarly, the Swiss name is not protected for cheese in many countries, but it is for chocolate, in large part owing to the ongoing preservation efforts of the Swiss themselves. However, judges are less likely to plead for the preservation of a name if it has not been strongly safeguarded or if it has become fairly disconnected from a specific region. The original nation is usually the first stop on the way to legal protection¹⁵. If the local foundation isn't sturdy enough to warrant protection, seeking refuge in another country is unlikely to succeed. In some cases, the reasons given for protection may be unique, observable properties and features or groups relating to elements of the soil, water altitude, temperatures, and even the extent of radiation that are relatively unique to the region and tangential to the unique manufacturing of products.

India has implemented the legislation regarding protection for GIS as per the requirements of the TRIPS Agreement in 2003. There has been a significant improvement in claims for GIS registration, including those for Darjeeling tea, Mysore silk, and PochampalliIkat textiles, in large part due to the efficient implementation of the GI Act 1999. Foreign claimants, however, are outed when they fail to appear in court. Many international connections may be on the fence about registering in India because of lingering questions. However, given India's status as one of the world's fastest-growing economies, it is imperative that the legal rights be preserved in the country from the outset, regardless of the economic use they may have within the context of this authority. Those who own IP are aware of the fact that their rights are not guaranteed by law, and that the fear of a GI being watered down is a genuine possibility. Although the steps involved in establishing a GI in India are straightforward, manufacturers seeking to secure their product via GI registration may find difficulties due to a lack of consumer awareness and local institutional capacity.

Two to two and a half years after the GI Act was passed in 2003, the registration of GI in India is observed to be proceeding at an exceptionally quick pace, and the system is not yet burdened by the work and the light of the resulting backlog.

Through conformity with rules integrating with their own national laws, WTO members are afforded minimal protections according to the TRIPS. However, there is a challenge due to hierarchy that the legal system traditionally maintains that arises when considering the extent of safeguarding GI under TRIPS. That's because Article 22 of TRIPS mandates a two-tiered system of safeguarding the basic protection applicable to all GIs generally, and since the TRIPS rules comprise a single, unified description for all GIs, regardless of product groupings. The GI alone is the only beneficiary of the additional safeguards. If a country wants to register a GI, it must do so under a sui generis system, and those applying for GIs must gather data that proves their product's originality, manufacturing method, geographical origin, etc. To put it plainly, the passing-off doctrine of the act declares that people are not permitted to pass-off their goods or products as those of another, and the Indian GI Act explicitly states that nothing in this act is supposed to affect the rights of action relating to an individual for passing off the products specified as the products of an additional individual or the solutions concerning in that order.

1.6 Conclusion

¹⁵ Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny, "Investor Protection: Origins, Consequences, Reform".

However, there is no dedicated court for violations; instead, victims must seek redress in civil court, where their cases are often heard after many procedural hurdles have already been cleared. As is well-known, delaying methods should never be used to risk losing a country's valuable geographical indicator, which is inextricably tied to economic advantages. Fast resolution of GI disputes may also be achieved by the creation of dedicated fast track courts to hear cases involving this area of law. As with any hasty disposal, a strict time limit should be mandated beforehand. The application cost, now set at Rs 5,000, should be lowered to Rs 500 in exceptional circumstances, such as those involving products from economically disadvantaged groups.

An additional application for GI registration processing assistance that is quickly resolved should be submitted. Using cutting-edge research and technology, we can assist this process forward and solve any resulting practical difficulties. Criminal penalties for the unauthorized use of a Geographical Indication should be increased. An offense for this form of breach should be rendered cognizable, nonbailable, and tryable only in the court of sessions. There should be a tenfold increase from the current maximum fine of two million rupees. Educating the public through traditional and emerging channels (print, digital, and social) is essential in tandem with efforts to streamline the registration process. So that it becomes possible to register a growing number of products as geographical indications.

To prevent others from passing off their items as their own, GI holders must also devote resources to surveillance and vigilance. For example, in order to safeguard the interests of Authorized Users of Darjeeling tea GI, the Tea Board (under the purview of the Ministry of Commerce and Industry) has funded the expenses of various lawsuits and retained the services of a monitoring agency. The benefits of GI registration are not fully realized by authorized users because of insufficient regulatory and monitoring mechanisms and inadequate execution of the legislation, as is the case with Darjeeling tea. Protections for authorized users' rights have been put in place through a regulatory and inspection structure created by the GI Act, however this process is mostly ineffective across the nation.

It is not certain that small producers or those in possession of traditional knowledge would receive any benefits from obtaining a GI. Benefits, such as increased profits, may not be transferred to producers due to the current configuration of supply chains and the character of trading relationships. Traditional knowledge holders in India, such as those responsible for weaving the Kota Doriasarees, may possess the expertise required to create an item with special qualities, but they may lack the means to acquire the raw materials necessary to do so. Therefore, they must rely on wholesalers and intermediaries to provide them with raw materials, pay them a wage or a piece rate, and then sell the finished goods.

While protecting traditional knowledge is important, the real beneficiaries of the GI status are the intermediaries and dealers who facilitate the exchange of goods and services. Small producers or craftsmen, in this case the women employees, have had to rely on the master weavers for the selling of their products and have so reaped less economic gains from the GI in the case of Kota Doria. The majority of GI Act-eligible items are those derived from some kind of biological resource. Many types of bio cultural goods, such as non-timber forest produce, medicinal, aromatic, and coloring plants and seeds, are suitable for GI certification since they are made almost entirely of natural ingredients. Academics, practitioners, and non-governmental organizations are looking at the idea of registering medicinal plants and other non-timber forest produce as GIs, despite the restricted chances provided by current legislation.

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