



Nuances Of Geographical Indications: An Analysis Of Geographical Indications Law In India

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“Intellectual property is the oil of the 21st century. Look at the richest men a hundred years ago; they all made their money extracting natural resources or moving them around. All today’s richest men have made their money out of intellectual property.”

– Mark Getty, Co-Founder of Getty Images

Abstract

This paper attempts to analyze the importance and benefits of Geographical Indications (hereinafter referred as GIs) as one of the fast-evolving Intellectual Property Right (hereinafter referred as IPR), which contributes in boosting national economy at local level. Observing the nature of right provided by GIs to local producers and manufacturers, that is best appropriate to benefit them with material rights and economic benefits¹. GIs when acknowledged by the competent authority as IPR, then the product qualifies to be called as GI tagged product. When a product gets recognition as GI then it is eligible for legal protection and business expansion. GIs ecosystem helps to improve the nation’s soft power, which ultimately contributes in economic prosperity through increasing exports, tourism, etc. Today, the consumers demand the original products and be ready to pay the required cost also, therefore GI acts as bridge between the original product and marketplace. Today, the world is converted into global village due to internet and globalization, the original products backed by traditional knowledge and acknowledged through GI tagged, contributes in the national economy. In recent times, we see the biopiracy is one of the main concerns for IPRs that other countries and big giants’ companies practice, to gain profits over it. So, it is important to register and protect the traditional knowledge and provide benefits to those who originally owns it. In modern times GIs is considered as a means of sustainable development, as the indications are given to those products which are backed by traditional knowledge or regional environmental condition. Apart from benefits, there are some implications of providing GI also. But the contribution of GIs as IPR to any country is incredible.

Keywords: - IPRs, GI, Soft Power, Exclusive Rights, TRIPS, etc.

Introduction

Geographical Indications (GIs) are the newest type of Intellectual Property Right (also known as "IPR") that is becoming more and more significant in many developing nations. The fact that GIs are collective rights rather than individual rights, sets them apart from other types of IPRs. This means that by granting them unique rights, a single registered GI can transform the lives of numerous people. GIs assist producers and manufacturers in creating additional revenue streams and commercial opportunities.

GI can be defined as a resource that is supported by traditional knowledge or the physical characteristics of a specific geographic area, is needed to manufacture or produce a particular, unique good or product, and has the potential to produce both economic benefits and a way to preserve the traditional knowledge that goes into it. GIs are not the same as conventional property rights. However, the idea of GI evolved centuries before. France was the first country to formulate the idea of GI law in the fourteenth and fifteenth centuries. Many IPRs, including patents, copyrights, trademarks, and others, have progressively evolved alongside IPRs. Geographical indications are referred to as industrial property in Article 1(2) of the Paris Convention of 1883, which also defines "indication of source" and "appellations of origin." The definition of "industrial property" is also explained, emphasizing that it encompasses not only "industry and commerce," but also "agriculture, extractive industries, and all manufactured or natural products, including wines, grains, minerals, fruits, etc." From the Paris Convention, which recognized GIs on a global scale, the Madrid Agreement and Lisbon Agreement are two further conventions that have GI-related provisions.

Lastly, there are provisions for the protection of GIs under the current TRIPS accord, which is a comprehensive accord pertaining to intellectual property. The term "indications which identify a good as originating in the territory of a member (World Trade Organization), 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" is another comprehensive definition of "GI" that can be found in the TRIPS Agreement.

This paper focuses on the nuances of GIs and the position of GIs in India. The newest and important IPR which has the capability to attain sustainable development at the same time provide business avenues or livelihood is GI. Most of the countries are striving to register more GIs in their countries so that they can preserve their traditional knowledge as well as they can secure the trading or economic rights of the local areas or region. Germany have 15,566 GI tagged products, China with 7,247 products, middle-east countries have over 4,000 products (data as of 2018), India still stand among countries with least GI tagged productsⁱⁱ.

This article describes the main reasons why India, a country rich in culture and traditional diversity, is unable to obtain its products as GIs. These reasons may be related to legal, social, or political nuances. The federal and state governments have been introducing numerous rules these days to acknowledge and promote GI products. The author attempts to offer some suggestions on how to locate additional items for GI identification. The sole goal of this article is to increase awareness about GIs and how they might impact the economy and politics in a way that enhances the "Local to Global" concept.

Importance of GIs

When a nation achieves economic prosperity, it is either self-sufficient or reaches a point where its imports are lower than its exports. The GIs are important in several ways:

- Encouraging the local community: The GIs are essential to the local community's development. Since there is no competition for the product because of its uniqueness, it can command a higher price and contribute to local area development.
- Encourage travel: When a product has a GI registration, it is praised globally, drawing attention of customers to the region and fostering travel and tourism avenuesⁱⁱⁱ.
- Inflow of foreign currency: When a product with a GI is progressively well-received in the global market, customers from outside India place demands for that product, which in turn contributes to an increase in foreign currency.
- Soft Power: Rather than being drawn to political power, people in today's world are more interested in soft power. Economic gains are generated with the aid of soft power. GI has a significant impact on advancing the nation's soft power.
- Affable Economy: To develop a flourishing economy, GI is a useful and friendly resource. In order to protect the trading right connected with a certain place, the GI regime was devised, and registration of the product is required even though it is currently being utilized for trade. A product's economic benefits are ultimately intended to be transferred to its true owners by registering it as GI. The

Darjeeling Tea industry, in which the local Darjeeling producers solely profit economically, is the best illustration of India's GI policy.

- **Effective Resource:** Protecting locally made or produced goods that have traditional knowledge (natural or man-made) behind them is the goal of GI. Being able to provide tangible rights and economic stability to actual or genuine individuals makes it effective. If GIs are not protected then the major firms or corporates make profit from products linked with certain regions and individuals involved in production or manufacture will receive nominal livelihood from that product. Protecting the GIs and giving them certain material rights is essential to ensuring a product's independent character as well as the growth of the area.
- **Unique:** Products that are unique due to local environmental conditions or knowledge that cannot be found elsewhere are eligible for GI protection. GI is thus a convenient resource to support the exclusive economic rights. Because the GI is a collective or community right, it fosters growth for the entire community. It is an independent system with several advantages. If the group of people (the manufacturers or producers) are able to demonstrate the product's uniqueness, registration of product as GI will be given to them.

Criticism of GI regime

The domain of Intellectual Property Rights (IPRs) comprises of various rights, but the ground reality is that many people are familiar with some IPRs only and form a perception that IPRs have a limited scope. Most people think that it merely comprises the rights which are associated with the commercial or industrial purposes. Nowadays, the words 'Trademark', 'Patent' has become a cliché for all the other types of IPRs.

Still GIs and trademark have interchangeably used, which is altogether incorrect. It is evident that the international position as well as India position on this is almost the same, that the trademark given to GIs are given under the GI regime only and is altogether different from that of the trademarks. But still, most of the giant companies fool the local manufacturers and attain the trademark and make big businesses out of this loophole.

In many cases it is evident that the GIs are given in the work where the product is well known, but the fact that the traditional knowledge might not be known by all the people in the locality or local region. GIs also raises more diffuse concerns about heritage, authenticity, and locality in this fast-growing globalizing society^{iv}. In the international platform, there is concerns over the misuse of GIs by other countries as a source to include other country's heritage and this is commonly called as "the ultimate deal-breaker."^v Nowadays, GIs are treated as the fame game in the global market and this has become a new source to incorporate or pirate other's property into our domain, with a legal coating.

The developing countries, like India, needs to protect their heritage with the help of registering GIs and procure traditional knowledge. In the coming years, when the petroleum products or fossil fuels get vanished, then this traditional knowledge led businesses will prevail throughout the world. There will be a new industrialization in the form of sustainable development and these GIs will prove their importance in the coming years.

A sneak peek into GI law of India

Despite India's membership in the Paris Agreement, unethical business practices by numerous large powerful corporations seeking to increase profits have impacted Indian traditional knowledge and products that are recognizable by their country of origin. However, through the provision of passing off action, Indian courts have also been instrumental in safeguarding the rights of those involved in the manufacturing and production of goods having a certain geographical origin against the dishonest business activities of corporations. India also passed the GI Protection Act in 1999^{vi} (also known as the GI Act, 1999), a "sui generis" law that protects GI at the national level in accordance with the TRIPS Agreement. As a result, in 1999, India gave GIs statutory protection, which became effective in 2003. As similar to the TRIPS Agreement, the definition of GI is provided by Section 2(e) of the GI Act. The Act shields GIs against unauthorized usage and forbids its misuse.

The Act is extensive and includes two rules and IX chapters. The Act is divided into 87 sections that cover topics such as the registration process, what happens after registration, how long it lasts, renewals, appeals, offenses, and fines. The Act stipulates that GIs must be registered and have the exclusive right for

ten years, with periodic renewals thereafter. Section 9, which lists the products that cannot be registered as GIs, was the subject of discussion in the Act over the prohibition of registration. The term "high court" replaces the tribunal following the revision in 2021, meaning that appeals to the high court are given priority if someone is aggrieved by the Registrar's decision. The offenses and their consequences are listed in Chapter VIII.

Challenges - GI law in India

The GI legislation in India is a commendable move in the right direction for the GI's protection. However, the GI Act has a number of shortcomings, including:

- Even after receiving protection under the Act, GIs are still subject to the issue of biopiracy.
- The GI Act contains a number of loopholes that allow middlemen and traders to profit from GI instead of the real right-seekers.
- Because producers, manufacturers, and consumers were unaware of GI, this Act amounted to a simple bureaucratic requirement.
- Lack of quality check and feedback provisions after GI is granted depicts another disadvantage of the Act. This is a major shortcoming because exports associated with GI represent local reputation, which in turn influences national reputation, which ultimately impacts the economy and prosperity of the country^{vii}.
- Regardless of whether they are supported by traditional knowledge and linked to a specific location, the Act forbids the registration of "generic products." Foreign nations and big giant corporates now have more room to generate ready-made business ideas.

Legislators should address and give attention to various difficulties that exist inside the Indian GI regime. Firstly, only a small number of product categories—such as food items—are subject to quality checks even after GI registration. Quality checks are not offered for all product categories. Secondly, the issue of GI product imitation is significant and requires careful consideration and response. For instance, under the brand name "original Morena Gajak," Morena Gajak is being sold everywhere even after receiving a GI tag. Thirdly, a decentralized implementation approach could eliminate the issue of the GI's ineffective enforcement. Fourthly, for the products to succeed in the global market, image-building is another crucial factor for GI certified products in India. To fully realize the economic potential of any GI-tagged product, we require a potent strategy similar to that of Basmati rice and Darjeeling tea. Fifthly, a thorough analysis of consumer psychology is necessary in order to market the goods to them and create a simple purchasing process^{viii}.

Suggestions

To deal with the difficulties, there are some recommendations. Firstly, the registration process must be centralized, the GI execution must be dispersed. This facilitates more effective grassroots implementation. Incorporating local self-help groups, Anganwadi workers, NGOs, legal clinics, law students, and other entities at the local level, which contributes in raising consumer and producer/manufacturing awareness. Furthermore, it is imperative that items bearing the GI label are advertised in both traditional media and alternatively, social media channels. Thirdly, state governments everywhere should adopt the "One District, One Product" approach from Uttar Pradesh. Fourthly, awareness campaigns and the GI Expo ought to be started in every state. Fifthly, certifications and facilities for marking must be offered, and occupational trainings must be scheduled in accordance with the college and school curriculum. Sixthly, in order to familiarize students with the idea of the GI framework, school textbooks ought to contain one or two chapters about GIs around the globe, including those in India. Seventhly, a hallmarking system needs to be implemented for products with GI tags in order to verify the product's validity. Eighthly, reconsider the laws pertaining to generic products because they are a loss to India's traditional expertise. Ninthly, strict regulations need to be implemented to combat biopiracy. Last but not the least, in order to prevent other nations from profiting economically from our extraordinary knowledge, India needs to provide GI protection on a global scale.

Conclusion

“GI is a bridge between product and a place.” GI enhances both soft power and economic growth. Over the last ten years, India has improved GI registration, and positive changes to the GI Act will improve the protection of products with tags. Even though the Indian GI Act is modelled after the European system, we are still unable to register and obtain our distinctive goods that are supported by traditional knowledge. Since we are ranked 24th out of all the countries with GI protected items as of 2021, we need to examine the practices of other nations, particularly China (9052 products obtain GI protection as of 2021), the European Union, the UK, Ukraine, etc. Till date, India has approximately 643 products that has GI protection.

It is praiseworthy that India has taken proactive measures in the last few years to protect GIs. However, while GI tagging is crucial to our nation's economic growth, more products must be registered as such. Since GI protection will inevitably lead to the creation of jobs and the local and sustainable development of that area, efforts like "Atmanirbhar Bharat" and "Local for Global" may be readily accomplished with its assistance. We must acknowledge that the government is finding it difficult to create jobs due to the population explosion, and the private sector is unable to manage large workforce. As a result, we must look for new opportunities for economic upliftment, and GIs naturally possess the capacity to meet all of the needs necessary for development and survival. The key to the nation's stability is economic stability, which GI offers along with sustainable development. In the modern world, sustainable development is essential to securing the present and preserving it for the future, and GI is effective in achieving this in a friendly and timely manner.

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