

Nuances on Geographical Indication (GI) with the support of Article 23 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement- As a Glance

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Abstract- Geographical Indication (GI) is a sign used on a product that originates from a specific geographical location. The product must possess reputation and qualities of the place of origin. GI are generally registered on products produced by rural, marginal and indigenous communities over generations that have garnered massive reputation at the international and national level due to some of its unique qualities. GI tag gives the right to only those registered users the right to use the product name, and prevents others from using the product name that does not meet the standards prescribed. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. Geographical Indications of Goods are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

INTRODUCTION

Geographical Indications, the potential messiahs of farmers, weavers and local traders came to India with the Geographical Indications of Goods Act, 1999. Ever

since, a lot of government entities have advocated for an increased number of registrations; providing a glimmer of hope to communities that things would change for good. This paper briefly introduces you to the concept of GIs and its history. Things have not been so black and white in this context for India. There are various problems faced by producers post the registration process and the GI remains somewhat symbolic in nature. The paper highlights how much of these GI-tagged products stand marred by those disadvantages which come with lack of quality control and scientific vigour. The Banarasi and Venkatagiri sarees¹, along with the Pashmina Silk face adversities even though they are registered as GIs. The issue of genericide is also discussed, emphasising on how we ought to have kept its scope narrower than it is in India. However, there also exists a silver lining. There are also some success stories, which although are less in number, provide deep insights into how we can improve the status quo. The Darjeeling tea and Chanderi saree are foremost examples. By showing our successes and failures as two parallels, this piece advocates for betterment through resolution of the different problems highlighted. Strict legal vigilance is required to inhibit the threats faced by these indigenous products and their producers.

DEFINITION OF GI

‘Geographical Indication’, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory,

¹See PV Prasad, GI tag fails to help Venkatagiri Saree (Jun. 29, 2015, 10:14 AM),

<https://www.thehansindia.com/posts/index/Andhra-Pradesh/2015-06-29/GI-tag-fails-to-help-Venkatagiri-sari/160174>.

where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be'². Under the act, names that do not denote the name of a country or region or locality can still be considered for registration as long as they relate to a specific geographical area and are used in relation to goods originating from that region. This provides the leeway for extending protection, to other symbols, such as 'Alphonso mangoes' and 'Basmati rice'³.

HISTORICAL DEVELOPMENT

The term 'geographical indication' (GI) is a relatively new concept introduced by the TRIPS Agreement (WTO1994). However, evidences suggest that the practice of using other closely related concepts existed even in the pre-industrial times. The concepts such as 'appellations of origin', 'indications of source' 'designations of origin' and 'protected geographical indications' used names of places and distinctive signs for variety of products as 'indications of geographical origin' (IGO). Foreexample: Mt. Fuji sake and Pisa silk, Champagne, Florida Oranges, New Zealand lamb, Murano Glass, Swiss Watches, Bukhara carpets etcM⁴. Prior to the TRIPS agreement of the Uruguay round which concluded in 1994, there were mainly three international conventions dealing with protection of IGOs, i.e. the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). While the Paris Convention and the Madrid Agreement dealt with 'indications of source', the Lisbon Agreement focused on protection of 'appellations of origin'⁵.

2Section 2(1)(e) of The Geographical Indications of Goods (Registration and Protection) Act, 1999.

3Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia-Pacific (Irene Calboli & Ng-Loy Wee Loon eds., 2017).

4Ministry of Textiles, Government of India, A Compendium of Indian Handicrafts & Handlooms

Global Protection

In terms of providing global protection to these IGOs, however, these multinational treaties offered limited scope as these conventions were ratified only by few countries. Hence, signing of the TRIPS Agreement, which brought GI to the fore in multilateral negotiations; by more than 150 member countries was an important step forward for the international protection of IGOs. The agreement provided the 'minimum' standards of protection for GIs (along with all other IPRs) backed by an enforcement mechanism⁶. However, there remains the problem of a hierarchy in the levels of protection based on an arbitrary and specious categorisation of goods under the TRIPS Agreement.

INTERNATIONAL TRADE NEGOTIATIONS ON IPRS.

Protection of GI goods

The European Union has always shown keen interest and even aggression in seeking effective protection to GI goods. The negotiations, particularly on the GI section of the TRIPS Agreement, were among the most difficult and this stemmed from clear division between the main proponents of the TRIPS agreement-the US and EU. The European Union constantly emphasised on inclusion of GI in the TRIPS during the Uruguay rounds of negotiation. The fact that GI was finally included in the TRIPS agreement can be attributed to the EU's remarkable negotiating capacity. The final outcome was tilted in the interest of the European countries. The Current TRIPS text provides a basic standard of protection to all other goods and higher standards of protection to wines and

Challenges and Problems in the Post GI Act and rules
The Government of India has established the Geographical Indications Registry with all-India jurisdiction at Chennai, where the GIs can be registered. Authority's claim that this Act has two key

covered under Geographical Indications (GI) 159 (2017).

5See SK Soam & M Hussain, Commercialization of Indigenous Health Drinks as Geographical Indications, JIPR Vol. 16(2) 69, 173-174 (2011).

6Kundan Kishore, Geographical Indications in Horticulture: An Indian Perspective, JIPR Vol. 23 (4-5) 151, 159(2018)

characteristics; (i) protection of producers against counterfeiting and misleading commerce, and (ii) striking of balance between trademark and GI protection. According to this Act, once a GI is registered, any person claiming to be the producer of the good designated by the registered GI can file an application for registration as an authorised user. The GI Act is to be administered by the Controller General of Patents, Designs, and Trademarks – who is the Registrar of GIs. The registration of a geographical indication is for a period of ten years. Renewal is possible for further period of ten years. If a registered GI is not renewed, it is liable to be removed from the register⁷.

Infringement of GI

A registered geographical indication is infringed by a person who, not being an authorised user, uses the G.I. on the goods or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the public; or uses the G.I. in a manner that constitutes an act of unfair competition; or uses another G.I. to the goods in a manner, which falsely represents to the public that the goods originate in the territory, region or locality in respect of which such registered G.I. relates⁸. A suit for infringement of a registered G.I. is to be instituted in a District Court having jurisdiction to try the suit. Appeals against an order or decision of the Registrar or the rules framed under the Act lie to the Appellate Board, established under the Trade Mark Act, 1999. The aggrieved person may prefer an appeal to the Appellate Board normally within three months from the date on which the order or decision is communicated. After this period, no appeal is admitted.

Remedies

The law provides both civil and criminal remedies. Civil remedies include injunctions (Interim and permanent), damages, and delivery up of the infringing goods for destruction and forfeiture of the goods that bear false representation of an existing Geographical Indication. The criminal remedies may

involve punishment to the offender which can be a minimum mandatory sentence of 6 months imprisonment and maximum of 3 years and the minimum mandatory fine of Rs.50,000/- and a maximum of Rs.2 lakhs. In case of subsequent convictions of the same offence, the minimum mandatory sentence will be one year imprisonment and fine of Rs.2lakhs⁹.

CONCLUSION

There is no justification for two levels of protection for GIs. The difference in treatment according to products concerned is an anomaly in the IP system of the TRIPS agreement. GIs stand on equal footing with other IP rights such as Trade marks or Copyright. In none of the other fields of IPRs is a difference made in a level of protection of those rights according product categories. Since the adoption of the TRIPS Agreement, member awareness of the need for justification protection of GIs for all products has continued to grow. Also, the ongoing negotiation in the field of the industrial and agricultural products, as pursued by the WTO, show the growing importance of extending the level of protection for GIs for wines and spirits for GIs to all products. Such protection is an invaluable marketing tool and an added value for exports because it increases the chance of market access for such goods. The extension of the so called “additional” protection of Article 23 to GIs for products other than wines and spirits must be part of the global vision of a multilateral trade system. Nations have to understand the fact that the protection for GIs is best provided under national laws because it is not the provisions of the treaty but actual national laws that provide protection in relation to GIs. For example, even if a general extension of the Article 23 is provided, it may not result in an effective protection of GIs unless the laws of the member countries at the national level have a uniform protection regime.

⁷Sarah Bowen & Ana Valenzuela Zapata, Geographical indications, terroir, and socio economic and ecological sustainability: The case of tequila, 25, J. Rural Stud. 108, 108 (2009)

⁸International Symposium on Geographical Indications, WIPO & SAIC, Beijing, 2007.

⁹Geographical Indicators Goods (Registration and Protection) Act, 1999.