

# A Critical Examination of the Legal and Institutional Barriers to Enforcing Geographical Indications in India: Evaluating Compliance with the TRIPS Agreement and the Role of Regulatory Bodies.

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**Abstract**—Geographical indications (GI) are a unique kind of intellectual property which have become a key source for protecting traditional knowledge, cultural heritage and rural economies. With the onset of globalization and increasing competitive pressures in the market place, GI has been viewed as an important mechanism in Indian law for protecting the distinctive identity of certain regional products. The present dissertation "Evaluating the TRIPS Compliance and Enforcement Gaps in India's GI Regime" is a doctrinal and analytical examination of the legal framework of GIs in India in relation to its compliance with the TRIPS Agreement and the enforcement problems encountered by the regulatory authorities.

Chapter 1, provides the problem statement, objectives and research questions and discusses the significance of this research.

The second chapter of the paper is an exposition of the literature review and how this research fits into the larger context of academia. The challenges associated with protecting GI in India, in terms of law, culture, and economics, have been highlighted in this chapter. Additionally, it sheds light on how India has been keeping up with its commitments to the TRIPS agreement and the interplay between the local indigenous system and GI protection. This chapter also provides details of the research methods used in the study.

The third chapter focuses on the legislative provisions and analyzes the Geographical Indications of Goods (Registration and Protection) Act, 1999. It has also discussed the provisions of the Act, the judgments of the Indian courts regarding it, and whether India's legal system complies with Article 22 to Article 24 of TRIPS. It also highlights some positive points and some negative aspects of this aspect of the legal system. The fourth chapter will cover the institutional challenges and limitations that come in the way of TRIPS compliance.

Chapter 5 examines through comparative analysis the following famous GIs from India: Darjeeling Tea, Pochampally Ikat, Alphonso Mango, Mysore Sandalwood, and Banarasi Silk. Their performance is reviewed using criteria such as legislative support, TRIPS compliance, institutional backing, market penetration, and socio-economic implications. Discrepancies in enforcement, differences in producer awareness, and shortcomings in worldwide protection and promotion become apparent throughout the investigation of these GIs. Chapter 5 provides an insightful review of the functioning of the Indian GI system in different industrial sectors.

The concluding Chapter 6 presents the results of the study, emphasizing critical legal and institutional impediments, assessing India's compliance with the TRIPS Agreement, and evaluating the efficacy of the GI enforcement mechanism. Legal recommendations for improvement are proposed, including reforms of regulatory bodies, enhancing producer awareness and access, increasing international collaboration, and aligning the GI protection regime with the SDGs. Finally, areas of further research are outlined within the dynamic field of GI law and governance.

## I. INTRODUCTION

### I) Introduction

Geographical Indications (referred to hereinafter as "GI" for brevity) form a crucial part of intellectual property rights as these products denote their association to the place of production. According to the TRIPS agreement of the World Trade Organization, GIs offer legal protection and help preserve both the value and the cultural significance of the product. These offer producers an added advantage in terms of commanding higher prices and protecting

their products from abuse, preservation of traditional knowledge, and economic development of rural regions. GIs are of great importance in India as besides offering economic advantages, they offer cultural advantages as well.

The diversity of India in terms of culture and geography ensures that there is a large variety of products eligible for GI protection in the country. In order to ensure protection under this category, the Geographical Indications of Goods (Registration and Protection) Act was brought into effect in the year 1999 in accordance with the TRIPS agreement. This ensures protection of these products by enabling their registration with only producers of that particular area having access to the use of these names.

However, there are numerous obstacles in implementing the GI regulations in India effectively. The existence of the legal infrastructure does not necessarily guarantee the success of the enforcement procedures as there are still some deficiencies in the mechanisms and strategies for their implementation, including poor administration, inefficient marketing, and the lack of adequate enforcement measures. Moreover, the enforcement of GIs in India may become problematic due to the dual approach outlined in the TRIPS Agreement, where wines and spirits are provided with an increased level of protection compared to other products. As a result, the issue of extending the higher degree of protection to all types of goods covered by GIs has become a subject of international controversy, which is directly relevant to the interests of India owing to its wide array of registered GIs. Therefore, the purpose of this study is to explore the legal and institutional factors that undermine the enforcement of GIs in India. Specifically, it will discuss whether the existing legal provisions are sufficient to ensure the adequate protection of Indian GIs both nationally and internationally.

## II) Statement of the Problem

There have been quite a number of legal and institutional hurdles involved in the protection and enforcement of geographical indications in India. Despite having passed a piece of legislation called the Geographical Indications of Goods (Registration and Protection) Act, 1999, in order to align itself with the requirements of TRIPS agreement, it looks like this

measure may not be sufficient enough. This inadequacy can be seen in a variety of aspects.

Even though the enactment of the GI Act in India was meant to ensure its compliance with the TRIPS agreement, there seem to be concerns about the degree of conformity with international standards, especially the two-level protection of GIs provided for by the TRIPS agreement. According to Article 22 of TRIPS, there should be basic protection for all geographical indications. The Indian GI Act's effort in providing enhanced protection for a wider range of goods shows its intention to protect its cultural goods. However, this approach also creates complexities in ensuring that Indian GIs receive equivalent protection internationally, as other WTO members are not obligated to offer the same level of protection to Indian GIs, leading to potential misappropriation in global markets.

This problem is further complicated by the international environment, in which the discussion on the inclusion of GIs under Article 23 continues within the World Trade Organization (WTO), thus raising concerns about the possible difficulties that could arise from the implementation of the current strategy in India. The continued existence of such problems requires a closer look into the existing legal and organizational structures in the country and into measures for ensuring their effective operation to bring out the true advantages of GI protection.

## III) Research Questions

### IV) Research Methodology

"In what ways is the enforcement of Geographical Indications by Indian authorities effective in accordance with the TRIPS Agreement, and what factors stand in the way of this enforcement?"

1. In what ways is the enforcement of Geographical Indications by Indian authorities effective in accordance with the TRIPS Agreement?
2. How do some Indian GIs measure up against the TRIPS Agreement, and in what ways are there gaps in their enforcement?"

The researcher has chosen to use the Doctrinal Methodology, which is based on a detailed analysis of:

- Primary legal materials like the Geographical Indications of Goods (Registration and Protection) Act, 1999, and other associated legislative instruments.

- International laws, especially the TRIPS Agreement.
- The case law, with special emphasis on judicial pronouncements regarding the protection of GIs.
- Academic articles, periodicals, scholarly literature, and comments on intellectual property rights and GI enforcement. The researcher has decided to undertake a comparative analysis of selected GIs in India, determining the legal loopholes in the enforcement of those GIs.

#### V) Limitations of the Study

1. Geographical Scope: The study is confined to the Indian jurisdiction, with occasional reference to international standards.
2. Nature of Research: The study shall primarily concern itself with adherence to the TRIPS Agreement and shall not delve into other international agreements or regional organizations.
3. Source Limitations: The use of secondary source materials and case law might restrict the scope of empirical research due to the inherent nature of the doctrinal method.
4. Linguistic and Cultural Nuances: The complex nature of incorporating culture and traditional knowledge in GIs might restrict further research.

#### VI) Linked to SDG Goal

##### 1. SDG 1: No Poverty

Effects of GIs on Rural Development: Through GIs, rural and marginalized groups will be lifted up, as the marketing potential of the regional products becomes high. Through the improvement of the legal framework for enforcing GIs in India, the economic prospects of the people within the rural areas will increase. The effects of the economic value of their geographical products will help lift them out of poverty.

##### 2. SDG 8: Decent Work and Economic Growth

Encouraging Sustainable Economic Development: GIs encourage sustainable economic activities through the development of local entrepreneurship and safeguarding local artisanal and agricultural goods. Through the enforcement of GIs, it becomes possible for producers to remain competitive in the market and contribute to local economies through job creation,

especially within industries such as agriculture and food production.

3. SDG 9: Industry, Innovation, and Infrastructure  
Catalyzing Industrial Development Using GIs: By improving enforcement and strengthening the legal framework surrounding GIs, innovation in existing industries is stimulated. This ensures improvement in the quality of the product being produced and, consequently, helps in building up industrial infrastructure, such as processing facilities, marketing, and distribution.

##### 4. SDG 10: Reduced Inequalities

Ensuring Equitable Trade and Access: GIs can help address inequalities by ensuring that the communities and indigenous groups benefit equally from their products. By enforcing GI protection systems, the vulnerable producers are safeguarded against exploitation in the market environment, which ensures equitable distribution of GI benefits to the community members.

##### 5. SDG 11: Sustainable Cities and Communities

Conservation of Cultural Heritage: GIs are usually associated with traditions and cultural practices that are part of the culture of people over the years. Through the conservation of products under GIs, the communities would conserve their culture at the same time benefiting from the current economic environment.

##### 6. SDG 12: Responsible Consumption and Production

Production Practices Sustainable in Nature: It is a fact that many products under the GI category make use of traditional methods which are sustainable in nature from the perspective of the environment. The strengthening of the legal regime surrounding GI can encourage producers to follow such methods.

##### 7. SDG 15: Life on Land

Biodiversity Conservation: The safeguarding of agricultural products via GIs may foster biodiversity conservation, as many of the GI products are made through agricultural processes that fit well with the natural ecology. Strengthening the implementation of GIs would avoid the commercial exploitation and industrialization of these processes and help in conserving biodiversity.

Through this study, the nexus between the implementation of GIs and SDGs will be explored in detail. This would show that the implementation of GIs in India is consistent not only with intellectual property laws and the TRIPS Agreement but also with the objectives of sustainable development, inclusive growth, and cultural heritage preservation.

## VII) Tentative Chapterisation

### Scheme of Presentation

#### Chapter 1: Introduction

##### 1.1 Introduction

##### 1.2 Statement of Problem

##### 1.3 Research Objective

##### 1.4 Research Questions

##### 1.5 Limitation

##### 1.6 Structure of dissertation

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##### 2.1 Issues Associated with Geographical Indications in India

##### 2.2 Geographical Indications and Legal Issues Involved in India

##### 2.3 Protection of Geographical Indications in India – A Brief on Indian Laws and TRIPS Agreement

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#### Chapter 3: Legal Framework for Geographical Indications in India

##### 3.1 Geographical Indications of Goods (Registration and Protection) Act, 1999 – An Overview

##### 3.2 Provisions of the 1999 Act – An Analysis

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##### 3.4 Courts and GI Law Enforcement

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#### Chapter 4: Institutional Barriers and Regulatory Challenges: TRIPS AGREEMENT

##### 4.1 TRIPS Agreement & Geographical Indications

##### 4.2 Difference between Article 22 and 23: Dual Protection for Geographical Indications through TRIPS

##### 4.3 Compliance with TRIPS Agreement in India: Legal & Institutional Approach

##### 4.4 Regulatory Agencies for Geographical Indications in India: Functions & Difficulties

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#### Chapter 5: Comparative Analysis of Selected Indian GIs

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#### Chapter 6: Conclusion and Recommendations

##### 6.1 Key Findings – Legal and Institutional Constraints

##### 6.2 Assessment of India's Compliance to TRIPS Agreement

##### 6.3 Effectiveness of Regulators in Implementing GIs

##### 6.4 Legal and Policy Advice to Strengthen GI

##### 6.5 Improving Cooperation at International Level for GI Implementation

##### 6.6 Harmonizing GI with SDGs

##### 6.7 Areas for Further Research on GIs

##### 6.8 Conclusion

## II. LITERATURE REVIEW

### Literature Review- 1

Title: Geographical Indications in India: Major Issues and Challenges<sup>1</sup>

Author(s): Ashwathi T.M

Source: National University of Advanced Legal Studies, Kochi (2019-2020). Dissertation submitted in partial fulfilment of LLM in International Trade Law. Publication Date: October 2020

#### Introduction

In her PhD dissertation "Geographical Indications in India: Major Issues and Challenges," the researcher delves into the problems concerning the protection and

Legal Studies) (on file with the National University of Advanced Legal Studies Library, Kochi).

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<sup>1</sup> Ashwathi T.M, *Geographical Indications in India: Major Issues and Challenges* (2020) (unpublished LL.M. dissertation, National University of Advanced

enforcement of Geographical Indications (GI). In this paper, the author examines the existing legal system of protecting GIs in an international and national sense and highlights difficulties encountered by Indian producers in this process. According to Ashwathi T.M., the dissertation aims to evaluate how well the Geographical Indications of Goods (Registration and Protection) Act, 1999 succeeds in accomplishing its goals. Additionally, some critical issues that require attention will be examined in the research including illegal use of GIs, fraud among consumers, and the ability of GIs to contribute to economic development in rural areas.

#### Summary of the Article:

The dissertation comprises six chapters beginning with the theoretical background of GI. Then the author discusses the development in the area of GI protection internationally. This discussion covers the TRIPS Agreement that requires member states to protect GI products and then proceeds to discuss India's law on GI including the 1999 Act. Issues discussed include the difficulty of enforcing the provision, lack of awareness among producers, and difficulties faced in international markets. The research methodology adopted by the author involves empirical analysis based on both primary sources such as international laws and national laws and secondary sources including literature and case laws. Ashwathi further discusses the advantages and limitations of India's system with comparison to the systems employed in the European Union and the Lisbon Agreement.

#### Literature Review- 2

Title: Geographical Indications and Legal Framework in India<sup>2</sup>

Author(s): Suresh C. Srivastava

Source: Economic and Political Weekly, Volume 38, Issue 38, Pages 4022-4033

Publication Date: September 20-26, 2003

#### Introduction

Geographical Indications and Legal Framework in India by Suresh C. Srivastava highlights the dynamic nature of the legal regime surrounding geographical

indications in light of the current international intellectual property law regime, especially the provisions of the TRIPS Agreement. It gives a detailed analysis of how India has developed an elaborate framework for addressing GIs that corresponds with global practices. The central idea revolves around the difficulties of meeting the requirements of the global framework within the realm of domestic economic considerations. Some of the key topics that have been analyzed include the controversial provisions of TRIPS Article 23 on wine and spirit.

#### Summary of the Article

Srivastava starts by discussing the significance of the GIs as one of the means of intellectual property rights that aid in ensuring the quality and reputation of products, linked with their geographical source. Next, he explains the provisions of the TRIPS Agreement in terms of minimum protection provided for in Articles 22 to 24 and the difference in protection accorded based on the type of product, especially the increased protection provided only to wines and spirits under Article 23.

India's approach towards TRIPS in view of the protection offered to GIs is discussed through the adoption of the Geographical Indications of Goods (Registration and Protection) Act, 1999. The author discusses the provisions of the Act concerning GI protection and registration, paying special attention to the use of the passing off concept for GI protection in India before its implementation.

Finally, Srivastava discusses the global controversy about the extension of Article 23 protection to other goods such as Basmati rice and Darjeeling tea and the conflicting proposals in terms of a multilateral system for GI registration.

#### Literature Review- 3

Title: Protection of India's 'Geographical Indications': An Overview of the Indian Legislation and the TRIPS Scenario<sup>3</sup>

Author(s): Kasturi Das

Source: ResearchGate

Journal: Not specified. Available on ResearchGate.

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<sup>2</sup> Suresh C. Srivastava, Geographical Indications and Legal Framework in India, 38 Econ. & Pol. Wkly. 4022 (Sept. 20-26, 2003).

<sup>3</sup> Kasturi Das, Protection of India's 'Geographical Indications': An Overview of the Indian Legislation and the TRIPS Scenario, *ResearchGate*

### Introduction

Kasturi Das provides an analysis of the protection of Geographical Indications (GIs) in India and its relevance to the international regime of the TRIPS Agreement on intellectual property rights. The author argues that there is a need for proper protection of GIs, particularly in countries such as India that have many world-famous GIs, such as 'Darjeeling' tea and 'Basmati' rice. The argument presented by the author is that although the TRIPS Agreement offers certain levels of protection, it is insufficient, especially when not dealing with wines and spirits.

### Summary of the Article

The article examines the development of GIs as an intellectual property and provides the protection system created by TRIPS, analyzing India's GI Act of 1999. These aspects are covered in the following parts:

Section I: Covers the basics of GIs, their importance, and significance for countries such as India.

Section II: Describes the requirements for GIs stipulated by TRIPS and makes a comparison with the Indian GI Act.

Section III: Examines Uruguay Round discussions that have resulted in the creation of TRIPS.

Section IV: Considers the current discussion of extending the coverage of the protection of GIs from wines and spirits at the WTO forum.

Methodological considerations involved comparing the legal frameworks and analyzing the background of creating the system for protecting GIs. The issue is supported with relevant examples and cases, for example, the misappropriation of the 'Darjeeling' and 'Basmati' GIs.

### Literature Review- 4

Title: Challenges Posing to Geographical Indication in India<sup>4</sup>

Author(s): Shilpa Rathod

Source: IPR Journal of Maharashtra National Law University, Nagpur

Publication Date: June 2023, Volume I, Issue I, Pages 16–25

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<sup>4</sup> Shilpa Rathod, Challenges Posing to Geographical Indication in India, 1 IPR J. MNLU Nagpur 16 (2023).

### Introduction

In this paper, the changes occurring in the field of geographical indications (GIs) in India are being addressed. In particular, the problems associated with the introduction and use of the Geographical Indications of Goods (Registration and Protection) Act, 1999 will be considered. The paper highlights the advantages offered by geographical indications for the preservation of cultural identity and the development of an economy, but at the same time, considerable difficulties exist which undermine this possibility. The author aims at analyzing the challenges faced from different perspectives to provide solutions to them.

### Summary of the Article

The piece opens with the definition of Geographical Indications (GI) as identifiers that establish the connection between goods and their geographical source, which give unique attributes, characteristics, or reputation to the area. The importance of GI in cultural heritage preservation and economic development is highlighted. Notable controversies, including those on Basmati Rice and Darjeeling Tea, reveal why there was an urgent need to develop legal frameworks, thus leading to the enactment of the Geographical Indications of Goods (Registration and Protection) Act of 1999 in India.

Some crucial obstacles that hinder effective enforcement of GI legislation are identified in the article. In terms of legal challenges, the article shows major differences in GI registrations among Indian states, in which some regions perform well, whereas other areas are underrepresented. Besides, the lengthy registration process complicates the matter further, as there are more than 250 applications awaiting approval. Other problems include genericide, which involves the use of terms that have lost their unique character and become common in language usage.

Economically and technically speaking, the article mentions that there are disparities in the advantages gained from GIs. While the producers are supposed to be the main beneficiaries of the GIs, they often only gain a part of the economic rewards from it; the rest goes to intermediaries and merchants. Furthermore, the costly nature of enforcing and monitoring the protection of GIs makes it challenging. There is a lack

of assistance economically and technologically to promote GIs internationally, which limits the reach of many products.

The sociological barriers raised in the article concern the lack of knowledge in rural artisans about how important GIs can be and the procedures required to secure the GI protection. Many artisans face many difficulties when trying to navigate the bureaucracy in order to gain and protect the GI rights.

Lastly, geographical barriers also exist with regards to protecting GIs. Often there are disputes between countries as to the exact geographic location of the product, especially with agricultural products since the goods could have been grown in several regions. In addition, having a centralized GI registry in Chennai poses problems for producers elsewhere.

The article employs a comprehensive methodology by utilizing secondary sources such as data from the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and IP India. Case studies, academic literature, and visual tools like pie charts and bar graphs are used to present and analyze the challenges systematically. This approach ensures a detailed and well-supported examination of the obstacles facing India's GI framework.

#### Literature Review- 5

Title: Indian Path Towards TRIPS Compliance<sup>5</sup>

Author(s): Prabuddha Ganguli

Source: World Patent Information, Vol. 25 (2003),

#### Introduction:

In the article "Indian Path Towards TRIPS Compliance," the author, Prabuddha Ganguli, explores the legal reforms undertaken by India towards ensuring full TRIPS compliance. The author focuses on India's achievement in modifying the existing intellectual property law, which relates to designs, trademarks, copyrights, geographic indications of goods, plant varieties, patents, and biodiversity. The author gives an extensive evaluation of India's legal system before and after the coming into existence of the TRIPS agreement.

Summary of the Article:

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<sup>5</sup> Prabuddha Ganguli, Indian Path Towards TRIPS Compliance, 25 World Pat. Info. 143 (2003)

<sup>6</sup> Lalit Jajpura, Bhupinder Singh & Rajkishore Nayak, An Introduction to Intellectual Property Rights and

The author first gives an insight into the history of intellectual property (IP) rights in India beginning from the time when the Indian Patent Act of 1856, inspired by English legislation, came into force. Among the important pieces of legislation are Patents and Designs Protection Act of 1872 and the Indian Patents Act of 1970. These were some of the most influential statutes in India's intellectual property law. But the TRIPS agreement posed a great challenge since India became its signatory through the World Trade Organization.

In the post-TRIPS context, Ganguli reviews critical changes to Indian IP laws, such as:

- Designs: Introduction of the Designs Act, 2000, which expanded the definition of "article" and "design" to be TRIPS-compliant.
- Trademarks: The new Trade Marks Act, 1999, includes protection for service marks, collective marks, and international classifications.
- Geographical Indications: The Geographical Indications of Goods (Registration and Protection) Act, 1999, was implemented to protect India's unique regional products like Basmati rice and Darjeeling tea.
- Patents: Amendments to the Patents Act of 1970, including the harmonization of patent terms to 20 years and the introduction of product patents for pharmaceuticals, were necessary to meet TRIPS requirements.

Ganguli also addresses the impact of these changes on biodiversity, plant varieties, and farmers' rights, which are closely intertwined with the protection of indigenous knowledge and resources.

#### Literature Review-6

Title: An Introduction to Intellectual Property Rights and Their Importance in Indian Context<sup>6</sup>

Author(s): Lalit Jajpura, Bhupinder Singh, Rajkishore Nayak

Source: Journal of Intellectual Property Rights, Vol. 22, January 2017, pp 32-41.

Their Importance in Indian Context, 22 J. Intell. Prop. Rts. 32 (2017).

## Introduction

### Introduction to Intellectual Property Rights (IPR)

In this article, there is a brief discussion about Intellectual Property Rights (IPR). The discussion centers on the importance of intellectual property rights from the perspective of encouraging innovation and creativity. This paper is an attempt to discuss the importance of intellectual property rights in the globalization era, along with India's role in the global arena of IPRs. The main aim of the discussion is to explain the significance of awareness regarding intellectual property rights and its implementation in the development of India.

### Summary of the Article

The article covers the definitions and classification of IPRs such as patents, trademarks, copyrights, industrial designs, and geographical indications. It states that intellectual property rights provide exclusive rights to inventors, who are encouraged to innovate by providing incentives economically. Nevertheless, the country's poor standing in the global IP index calls for increased awareness. The authors cover the Indian laws relating to intellectual property rights and explain why India is behind when it comes to patents and trademarks registration in comparison with other countries.

Further, the authors cover various international agreements related to intellectual property rights such as the PCT and WIPO. In addition, they talk about geographical indications as an instrument of safeguarding traditional knowledge. Geographical indications are related to specific goods from a specific region.

### Literature Review- 7

Title: Importance of Intellectual Property Rights<sup>7</sup>

Author(s): Dhaval Chudasama

Source: Journal of Intellectual Property Rights Law, Volume 4, Issue 2, 2021, pp. 16-22.  
DOI: 10.37591/JIPRL

### Introduction

The research paper, "Importance of Intellectual Property Rights," by Dhaval Chudasama discusses the importance of intellectual property rights (IPRs) in

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<sup>7</sup> Dhaval Chudasama, Importance of Intellectual Property Rights, 4 J. Intell. Prop. Rts. L. 16 (2021)

innovation, growth, and international business. The author stresses the importance of having adequate knowledge about intellectual property rights (IPRs) in the modern competitive economy, particularly in India. This paper seeks to demonstrate how lack of knowledge about intellectual property laws and rights hinders the socio-economic progress of the nation.

### Summary of the Article

This article defines all the categories of intellectual property rights, including patents, trademarks, copyright, industrial design, and geographical indication. The author explains how each type of intellectual property right aims to protect the rights of the creator of the innovation, giving them an incentive to innovate. The article focuses on the role of WIPO in protecting IPRs in the global economy. It also gives the requirements of patentability, which include utility, novelty, and non-obviousness.

According to Chudasama, the low ranking of India in terms of registration of IPRs is due to the lack of awareness about IPR strategies in the country. The article describes the process through which patents can be registered in India starting from applying for the same to the process of getting grants and opposing any patenting that takes place. In addition to that, there is a brief mention of the issue of protecting industrial designs and trademarks in India and their relevant laws.

### Literature Review- 8

Title: Intellectual Property: General Theories<sup>8</sup>

Author(s): Peter S. Menell

Source: Book Chapter, 1999. University of California at Berkeley, Berkeley Center for Law and Technology. Published under © Copyright 1999 Peter S. Menell.

### Introduction:

This chapter presents a thorough analysis of theories of intellectual property (IP). It highlights utilitarian and non-utilitarian justifications for the use of IP laws in protecting innovations. The main aim of Menell is to bring together diverse theories and show how they relate to contemporary technological developments, especially in the realms of digitization and decoding of

<sup>8</sup> Peter S. Menell, Intellectual Property: General Theories, in *Encyclopedia of Law & Economics* (1999)

genes. He emphasizes the increasing importance of IP theories amid changing times.

#### Summary of the Article:

In his analysis of theories behind IP, Menell divides his study into two categories: utilitarian and non-utilitarian approaches. In the utilitarian approach, Menell highlights the benefits of IP in terms of the social value of innovation created for inventors and their incentive through monetary gains. This chapter also outlines the development of utilitarian theories in IP, their connection to economic theories as proposed by scholars including Adam Smith, Jeremy Bentham, and John Stuart Mill, as well as the economic reasoning behind the creation of patent laws in the US. The non-utilitarian approach, focusing on the moral right of creators of the works, is another subject discussed in the chapter. This approach, mainly used in discussions about copyrights, explains the increasing complexity of IP due to the evolution of technology such as biotechnology and telecommunications. Another topic in this chapter includes the evolution of patent law from mercantilist economies to capitalist economies. The chapter then proceeds with criticism of the current IP law regarding such aspects as patenting overinvestment, first-mover advantages, and network externalities.

### III. LEGAL FRAMEWORK FOR GEOGRAPHICAL INDICATIONS IN INDIA

#### Introduction

A Geographical Indication is a special type of intellectual property that identifies a product based on its association with a particular geographical location, its reputation, and the quality it possesses. Apart from indicating the uniqueness of a good, GIs are also indicative of the unique cultural heritage associated with the region they belong to. Whether it is the uniquely flavored Darjeeling Tea or the intricately designed Pashmina Shawls, these products reflect the rich cultural heritage of India. In an effort to protect and promote these GIs, the Geographical Indications of Goods (Registration and Protection) Act, 1999 (referred to hereafter as the GI Act) was formulated. In this chapter, the history and architecture of the GI Act will be discussed. The Act itself was passed in order to meet the requirements of India towards the TRIPS Agreement (Trade-Related Aspects of

Intellectual Property Rights) of the World Trade Organization (WTO). The purpose of the Act is not only the protection of intellectual property rights of the producers, but there are other aspects as well, including the preservation of the traditional knowledge, the promotion of rural development and socio-economic growth. The provisions of the GI Act are designed to provide the opportunities for protecting unique products through registration from any possible infringement and guaranteeing proper recognition. In this chapter, the main provisions of the GI Act will be analyzed. Particular attention will be paid to the types of products that may be protected by means of the Act, among them agricultural, handicraft and manufacturing products. Further, the extent to which the Act satisfies the requirements of the TRIPS Agreement, which is an international standard of GI protection, will be evaluated. Furthermore, this discourse brings out the socio-economic significance of GIs in India. There is a heavy dependence on GIs in the case of the country's rural economy and the artisanal communities because such designations will create greater value, job creation, and cultural conservation. Nevertheless, the Indian GI system is not without problems, such as a lack of understanding among key actors, difficulties with enforcement, and the need for a dispute resolution process. This chapter endeavors to examine the Indian GI system in an all-encompassing way so that its relationship to international norms as well as sustainable development may be understood. Both the successes and shortcomings of the Indian GI Act have been identified so that suggestions for improvements in the legal regime may be made. Thus, this chapter provides the fundamental understanding of GIs that would allow the reader to analyze GIs' function within India's IP system.

#### 3.1 The Geographical Indications of Goods (Registration and Protection) Act, 1999: Overview

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) is aimed at providing adequate legal protection and promotion of Geographical Indications (GIs). As per India's commitments under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the GI Act brings India's intellectual property laws at par with international standards. It received its assent on 15th September 2003, and provides a legal basis for

securing products which are associated with geographical origin.

#### Purpose and International Obligation

Under the WTO agreement, known as Trade-Related Aspects of Intellectual Property Rights (TRIPS), each member nation is required to give protection to geographical indications for the prevention of deceptive practices and misrepresentation. Under Article 22 of TRIPS, a geographical indication refers to any sign which identifies goods as those having their origin in the territory or region in which a certain quality, reputation, or characteristic of such goods is essentially attributed to its geographical origin.

#### Understanding Geographical Indications

GI products act as indicators that signify the source of the products and bring out the special qualities associated with the source. These products often reflect the traditional cultural practices followed by the people producing them. The following are some examples of GI products in India:

1. Darjeeling Tea: Famous across the globe for its unique taste and aroma produced only in the region of Darjeeling, West Bengal.
2. Mysore Silk: Specialized for its fine quality and colors produced using traditional methods in the state of Karnataka.
3. Pashmina Wool: Luxury wool made from Changthangi goats in Ladakh region, known for its softness and durability.
4. Kanjeevaram Sarees: Traditional silk sarees known for their patterns and bright colors woven in Tamil Nadu.

#### Objectives of the GI Act

GI Act was created for accomplishing three basic aims related to legal, economic and social aspects of the problem:

##### 1. Prohibition of Unauthorized Use

Under the provisions of the GI Act, no person can use a registered GI without prior authorization. According to these provisions, only producers belonging to the defined geographical area have the right to use GIs in commercial activities. Thus, any unauthorized use of a registered GI by a third party can mislead the customer. The act protects the uniqueness of these

geographical products and gives legal authority to communities to protect their identities.

#### 2. Economic Development

One of the key benefits provided by the act is that it helps in the stimulation of economic development. The GI registration not only raises the market value of the product but makes it suitable for export purposes as well. It has been noticed that with the help of this provision, the export worthiness of Basmati Rice and Alphonso Mangoes has improved significantly.

#### 3. Save Cultural Heritage

GI marks are extremely vital in saving the ancient art forms and practices from extinction. The GI Act helps promote and give recognition to those special techniques which are transmitted from one generation to another. This becomes significant in case of countries like India, where each part of the country holds unique culture and tradition. For instance, the GI mark on the Channapatna Toys helps preserve the technique of toy-making that exists in the region of Karnataka.

##### 3.1. Relevance of the GI Act

In addition to the protection of intellectual property, the GI Act holds significance for the Indian economy in other ways too. It helps in bridging the socio-economic gap by empowering the rural population, providing employment to women artisans, and helping the development of local industries. The Indian government can also establish its position in the international world of GIs by implementing the GI Act in compliance with international laws and standards.

##### 3.2 Key Provisions of the 1999 Act

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) sets out the legal framework in detail in order to outline the procedures, rights, and methods of enforcement needed to effectively protect GIs in India. Not only does it define the nature and purpose of GIs but also provides a systematic way of registering and enforcing the rights, ensuring the process remains fair and transparent. The below sections provide a more elaborate explanation of the important provisions in the act:

#### Definition of Geographical Indications

According to Section 2(1)(e) of the GI Act , 'Geographical Indications' means any indication that

identifies goods as originating in the territory of a country or a region or locality of a country, where the quality, reputation, or any other characteristic of the goods is essentially attributed to their geographic origin. This provision highlights the association between the qualities of the goods with their geographical location.

This provision is in accordance with Article 22 of the TRIPS Agreement, which requires member states to provide protection of geographical indication linking the attributes of the product with its place of geographical origin. For example, Darjeeling Tea, Alphonso Mangoes, and Mysore Silk come under this provision

#### Eligibility for Registration (Sections 8–26)

The GI Act outlines the eligibility criteria and procedures for registering GIs:

##### 1. Who Can Apply?

Anyone can register GIs for their products. However, the applicant must be an association of people or an organization representing the interests of producers. Furthermore, the applicant should prove that there is a need for registration of the particular GI, and the GI should be relevant to the product's qualities.

##### 2. Application Process

An individual interested in registering their GI must file an application with the Registrar of Geographical Indications. During the filing of the application, the following documents are required:

- Description of the goods
- The GI's connection with the geographical origin
- The product's reputation, quality, or characteristics

##### 3. Examination and Opposition

After filing an application, the registrar of geographical indications will examine the application to ensure that it complies with the provisions of the GI Act. This includes the distinctiveness of the geographical indication and whether the GI is a generic name for a product or service. An opposition may be filed against the application by any person or entity.

##### 4. Registration and Renewal

If the GI satisfies the requirements, it will be registered.

#### 3.3 Compliance with TRIPS Agreement: An Evaluation

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) is the enactment formulated to bring Indian intellectual property law in sync with India's international obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, an important part of the World Trade Organization's (WTO) regulatory framework. The WTO's TRIPS Agreement lays down minimum standards of protection against the use of GIs in a manner likely to cause deception or confusion on the part of consumers and ensure effective protection of GIs against acts of unfair competition. It can be safely stated that India's GI Act, in essence, follows the principles laid down in the TRIPS agreement in relation to GIs. The conformity of GI Act and the TRIPS agreement can be studied under the following points:

##### Definition and Scope

The GI Act defines geographical indication in Section 2(1)(e) in accordance with Article 22 of the TRIPS agreement. Both agree on the essentiality of defining GIs as signs which indicate that the goods in question originate from a particular geographical region where certain essential characteristics of those goods are due solely to their origin from the region.

For example: Goods such as Darjeeling Tea, Kanjeevaram Sarees, Pashmina Wool

##### Additional Protection for Wines and Spirits

Article 23 of the TRIPS Agreement<sup>9</sup> this provision offers increased safeguards for wines and spirits, mandating that these GIs receive protection irrespective of whether there is any confusion among consumers. For instance, terms such as “Champagne” and “Scotch Whisky” enjoy global protection even if used as generics for sparkling wines and whiskies respectively.

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<sup>9</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights art. 23, Apr. 15, 1994, Marrakesh

Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299

Although the Indian GI Act does not specifically incorporate this extra level of protection, the general provisions of the Act are sufficiently robust to offer adequate protection. For instance, foreign GIs including “Champagne” have received appropriate legal protection under the Indian GI Act as evident from the case of *Champagne v. Champagne Indage Ltd.* (2009 SCC Online Del 3804). In fact, the lack of explicit provisions for wines and spirits has never resulted in any conflicts or disputes before the Dispute Settlement Body of the WTO.

#### Dispute Resolution

Moreover, the GI Act provides mechanisms in keeping with the enforcement measures of TRIPS agreement through Article 22 and 23. Such enforcement measures include the following:

- Injunction against unauthorized use of the geographical indication.
- Damages to compensate for any economic injury suffered as a result of such infringement.
- Seizure of Infringing Goods so as to prevent further unauthorized usage.

This is evident from one of the landmark judgments passed by Indian Judiciary in *Darjeeling Tea Case* (Tea Board, India v. ITC Ltd., (2011) 45 PTC 86). In this case, it was clearly upheld that the GI should be enforced as per the requirement stipulated by the TRIPS agreement.

#### Challenges in Complying with TRIPS

Although the Indian GI Act is almost fully compliant with the TRIPS agreement requirements, there are some issues that pose a challenge to full compliance.

##### 1. Non-existence of Clauses to Address Trans-Boundary Disputes Involving GIs

One of the challenges in full compliance with TRIPS is that the Indian GI Act fails to provide provisions for resolving trans-boundary disputes concerning GIs. It means that there are no procedures set in place to resolve any dispute between India and other nations relating to the use of GI.

##### 3.4 The Role of Courts in Enforcing GI Law

The Indian judiciary has been instrumental in giving meaning to Geographical Indications (GI) laws and settling disputes relating to such laws under the Geographical Indications of Goods (Registration and

Protection) Act, 1999. The decisions made by these courts have added substantially to the law relating to GIs and highlighted their significance from an economic and cultural perspective.

Judicial Contribution:

*Darjeeling Tea Case* (Tea Board, India v. ITC Ltd. The Tea Board of India lodged a suit against ITC Ltd. It claimed that the use of “Darjeeling Lounge” by ITC Ltd. for its premium lounges was diluting the GI of Darjeeling Tea. The court decided in favor of the Tea Board, pointing out the necessity to prevent the dilution and misuse of GI. This verdict highlights the significance of protecting GIs from any possible misuse.

##### *Champagne v. Champagne Indage Ltd*

In a dispute between the producers of champagne in France and the company called Champagne Indage Ltd. of India, the producers wanted the latter not to use the word “Champagne” for its sparkling wine produced in India. In this case, the Delhi High Court upheld the concept of reputation across borders and decided in favor of the French producers, barring any abuse of the geographical indication (GI) “Champagne.”

*Khadi Trademark Case* (Khadi and Village Industries Commission v. Rural Development Society, The Khadi and Village Industries Commission (KVIC) attempted to get exclusive right to use the mark “Khadi” as a GI since it was being used without proper authorization by other organizations. This attempt was supported by the court, who granted the rights to the KVIC because of the cultural and traditional value attached to the product.

The Indian judiciary played a significant role in GI protection due to several reasons:

1. Preserving Traditional Knowledge Courts protect GIs, and, therefore, products which have been created within the framework of traditional knowledge.
2. Economic growth Through the protection of GIs, the Indian economy is growing.
3. Preventing unfair competition Courts protect GI owners from any form of competition since the products of unauthorized parties could not be compared to the GI products.

Still, the implementation of the Indian courts' rulings is difficult due to:

1. Time-consuming procedure in most cases, courts take much time while making rulings.
2. Low level of awareness Many people do not even know about the rights provided by Indian laws.
3. Problems in global enforcement Protecting GIs across the world is a difficult task for the Indian courts.

**3.5 Conclusion: Strengthening India's Geographical Indication Framework**  
The Geographical Indications of Goods (Registration and Protection) Act, 1999 is a cornerstone of intellectual property law in India, offering robust protection for GIs and aligning the country with international standards under the TRIPS Agreement. By granting legal recognition to geographical indications, the Act supports the preservation of traditional knowledge, the protection of cultural heritage, and the economic empowerment of regional producers.

**Achievements of the GI Act, 1999**

- 1. Alignment with International Standards**  
Compliance with the TRIPS Agreement indicates India's alignment with global intellectual property standards and fosters international cooperation and mutual respect for GIs.
- 2. Cultural Preservation**  
Protection of goods such as Darjeeling Tea, Mysore Silk, and Banarasi Sarees preserves the cultural heritage and practices of communities, thereby ensuring that they do not get exploited due to unauthorized usage of such goods.
- 3. Economic Development**  
A system of GI helps create a niche market for goods specific to each geographical area and helps provide sustainable livelihoods for the rural/traditional producers.
- 4. Judicial Relevance**  
Several landmark judicial decisions in relation to the interpretation of the GI Act such as the case for Darjeeling Tea, Khadi and Champagne have ensured clarity and effective enforcement of GI laws.

**Challenges Facing the GI System**

There exists a lack of awareness amongst many communities about the concept of GIs and the benefits associated with it, leading to low uptake rates of GI registration. There is also a problem of enforcement of GI rights with regards to products sold in other countries. Litigation can prove to be long drawn and expensive, leading to difficulty in implementation of GI protection rules. Although the GI

**The Way Forward**

- 1. Alignment with Global Standards**  
Compliance with the TRIPS Agreement means that India aligns itself with global standards in the field of intellectual property which facilitates international collaboration and cooperation along with respecting GIs worldwide.
- 2. Cultural Protection**  
Protection offered for goods like Darjeeling Tea, Mysore Silk, and Banarasi Sarees means that the cultural identity of communities is protected and not abused due to the illegal use of such goods.
- 3. Economic Protection**  
Having an effective GI system would enable the creation of a niche market for goods produced in specific geographic regions which could help in ensuring sustainable livelihoods for the rural/traditional producers.
- 4. Judicial Precedent**  
There have been several important judicial precedents established in cases relating to interpreting the provisions of GI law such as in case of Darjeeling Tea, Khadi and Champagne which ensures efficient implementation of the act.

**1. Concluding Remarks**

India's Geographical Indications (GI) regime stands as a significant and strategic legal instrument that not only safeguards the nation's rich tapestry of traditional knowledge and cultural identity but also contributes meaningfully to rural development, heritage preservation, and international trade. It embodies a unique intersection of intellectual property law and socio-economic empowerment, enabling communities to gain formal recognition and economic benefit from their historically rooted skills, practices, and regional products.

However, as this study has shown, the current framework while robust in structure is often limited in reach and effectiveness due to several enforcement, inclusivity, and awareness-related gaps. The lack of consistent post-registration monitoring, limited international protection for many GIs, and the exclusion of individual producers from the benefits of GI registration all contribute to a system that risks becoming symbolic rather than transformative. Moreover, regional disparities, bureaucratic hurdles, and the absence of standardized quality control further dilute the intended impact of GI protections.

To ensure that India's GI regime functions not merely as a legal formality but as a living, dynamic tool of empowerment, it is imperative that the framework evolves through inclusive, adaptive, and forward-looking reforms. These should not only address the procedural and institutional voids but also respond to the lived realities of marginalized artisans, small-scale farmers, and micro-entrepreneurs many of whom form the backbone of India's cultural economy.

#### IV. KEY SUGGESTIONS MOVING FORWARD

- **Legislative Reform for Inclusive Participation:** Introduce amendments to the GI Act or Rules to allow for a more flexible registration mechanism that accommodates individual artisans and certified producers without undermining the collective ownership model. A tiered or hybrid system can ensure authenticity while promoting inclusivity.
- **Establishment of Regional GI Facilitation Centres:** Set up decentralized GI support centres at district or state levels to provide legal aid, registration assistance, quality certification, and export facilitation services—particularly targeted toward underrepresented communities.
- **Mandatory Post-Registration Compliance Audits:** Introduce a statutory mechanism that requires GI-holding associations to undergo periodic audits to ensure adherence to quality standards, fair representation, and benefit-sharing among members.
- **Capacity-Building and Digital Literacy Programs:** Launch sustained training programs and digital literacy initiatives that educate producers on the legal, commercial, and cultural significance of GIs.

Partnerships with NGOs, educational institutions, and local government bodies can improve outreach.

- **Strengthen International Cooperation and Branding Efforts:** India should actively pursue mutual GI recognition agreements and strategically promote GI-tagged products through embassies, global exhibitions, and trade delegations. Branding campaigns that link GIs with sustainability, authenticity, and heritage could enhance global demand.
- **Introduce Benefit-Sharing and Community Welfare Mechanisms:** Ensure that revenues and market gains from GI-tagged products are equitably shared with grassroots producers. This could include community welfare funds, artisan insurance schemes, or reinvestment in skill development and infrastructure.

Ultimately, India's potential to be a global “guardian of heritage” depends on how it balances protection with promotion, legal rigor with social inclusion, and tradition with innovation. A modernized, inclusive GI framework can serve as a blueprint not just for India but for other culturally rich but economically diverse nations seeking to leverage their intangible heritage for equitable and sustainable growth.

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