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Traditional Knowledge Protection through Geographical Indications: A Legal Perspective

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ABSTRACT

Traditional Knowledge (TK) represents the cultural, agricultural, and artisanal practices that have been developed and preserved by communities over generations. In recent years, the increasing commercialization and misappropriation of traditional products have intensified the need for effective legal mechanisms to safeguard such knowledge. This article examines the role of Geographical Indications (GIs) as a significant intellectual property tool for protecting traditional knowledge within the framework of international and Indian law. It analyses how GIs establish a connection between a product's geographical origin, reputation, and traditional methods of production, thereby preserving authenticity and promoting economic interests of local communities. The paper explores the conceptual relationship between TK and GIs by referring to international instruments such as the TRIPS Agreement, the Convention on Biological Diversity (CBD), and the initiatives of the World Intellectual Property Organization (WIPO). Further, the article evaluates judicial and practical instances including Darjeeling Tea, Basmati Rice, Kashmir Pashmina, and Assam's Muga Silk to demonstrate the effectiveness of GI protection in preventing misappropriation and preserving cultural heritage. At the same time, the study critically highlights the limitations of geographical indications in protecting all forms of traditional knowledge, particularly intangible and geographically dispersed knowledge systems. The article concludes that although GIs cannot function as a complete mechanism for protecting traditional knowledge, they serve as an important complementary legal instrument for preserving traditional products, cultural identity, and community-based economic development in the contemporary global market.

Keywords: *Traditional Knowledge (TK), Geographical Indications (GIs), Intellectual Property Rights (IPR), Cultural Heritage Protection, Community-Based Economic Development*

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I. CONCEPTUAL UNDERSTANDING

The relationship between traditional knowledge (TK) and geographical indications (GIs) is an important intersection of intellectual property law, cultural heritage, and community-based practices. Geographical indications, as acknowledged by the TRIPS Agreement, are intended to safeguard the connection between product, place, and reputation, thereby establishing a link between market identity and embedded traditional knowledge.¹ Within this context, geographical indications have emerged as a pertinent legal mechanism for granting a degree of protection; however, their purview is restricted. The primary objective of geographical indications is to safeguard the market expression of traditional knowledge, specifically the products that embody it, rather than the knowledge systems themselves.² Although they protect the economic value and reputation of these commodities, they do not directly regulate access to or use of the underlying knowledge.³ Consequently, this paper examines the role of geographical indications as a mechanism for safeguarding traditional knowledge. Traditional knowledge is challenging to define precisely, as it encompasses a variety of knowledge passed down through the ages. The World Intellectual Property Organization (WIPO) defines traditional knowledge as the knowledge, skills, and customs passed down through generations within a specific group, region, or community. Traditional knowledge is not protected by Indian law on its own; however, a robust intellectual property regime can be instrumental in safeguarding TK and cultural practices.⁴

In the current era of global commerce and mass production, GI tags serve as a critical seal of authenticity, connecting products such as Darjeeling Tea, Banarasi Saris, and Madhubani Painting to their origins. The significance of GI branding is not limited to mere labelling; it is a strategic instrument that ensures the integrity of products, provides legal protection, strengthens local economies, and safeguards traditional knowledge. The preservation of intangible cultural heritage is one of the primary objectives of GI labelling. Identifying the specific regional origin of GI-tagged products, whether handicrafts, agricultural products, or foodstuffs, is crucial to safeguarding traditional knowledge from erosion or misrepresentation, since these products are made using centuries-old techniques handed down through generations. Kashmir Pashmina illustrates the effectiveness of this protection: the GI tag for Kashmir Pashmina guarantees that

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

² WORLD INTELLECTUAL PROPERTY ORGANIZATION, GEOGRAPHICAL INDICATIONS: AN INTRODUCTION 8–10 (2017).

³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, PROTECT AND PROMOTE YOUR CULTURE: A PRACTICAL GUIDE TO INTELLECTUAL PROPERTY FOR INDIGENOUS PEOPLES AND LOCAL COMMUNITIES 16–18 (2017).

⁴ N.S. GOPALAKRISHNAN & T.G. AGITHA, PRINCIPLES OF INTELLECTUAL PROPERTY 310–12 (2d ed. 2014).

only genuine, handcrafted shawls from the region bear the name, thereby safeguarding skilled artisans from unauthorised duplication. Geographical indications are currently experiencing a worldwide increase in prominence as a means of preserving and disseminating traditional knowledge in a positive manner.⁵

Throughout history, human communities have consistently produced, refined, and transmitted knowledge from one generation to the next. This traditional knowledge is frequently a significant component of their cultural identities. However, the international community has only recently endeavoured to acknowledge and safeguard it. A model law on folklore was adopted by WIPO and UNESCO in 1982.⁶ The FAO introduced the concept of farmers' rights into its International Undertaking on Plant Genetic Resources in 1989.⁷ Subsequently, the Convention on Biological Diversity (CBD) underscored the necessity of preserving and promoting traditional knowledge in 1992.⁸ Final and universally acceptable solutions for the preservation and promotion of traditional knowledge have not yet emerged, despite efforts spanning two decades. In contrast to other intellectual property rights (IPRs), GIs possess unique characteristics as instruments of intellectual property protection: they do not safeguard novel elements but rather an accumulation of goodwill established over time, resulting from a recognised or perceived connection between a product and a geographical area. GIs could serve as a vehicle for rural producers in developing countries to target niche markets or command a premium, thereby improving their living conditions through increased incomes.⁹

II. ROLE OF GEOGRAPHICAL INDICATIONS IN PROTECTING TRADITIONAL KNOWLEDGE

GIs function as a mechanism for preventing the misappropriation and misrepresentation of products by restricting the use of geographical names to authorised producers, thereby safeguarding authenticity and integrity. This is evident in cases such as *Tea Board of India v. ITC Limited*¹⁰, concerning the protection of 'Darjeeling', and the Basmati Rice Case (*India v. RiceTec Inc.*),¹¹ which highlighted the risks of misappropriation of traditional agricultural knowledge. In addition, geographical indications enable the economic valorisation of traditional

⁵ DEV GANGJEE, RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS 25–28 (2012).

⁶ UNESCO & WORLD INTELLECTUAL PROPERTY ORGANIZATION, MODEL PROVISIONS FOR NATIONAL LAWS ON THE PROTECTION OF EXPRESSIONS OF FOLKLORE (1982).

⁷ FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES (1989).

⁸ Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79.

⁹ U.N. CONFERENCE ON TRADE & DEV. & INT'L CTR. FOR TRADE & SUSTAINABLE DEV., RESOURCE BOOK ON TRIPS AND DEVELOPMENT 405–07 (2005).

¹⁰ *Tea Bd. of India v. ITC Ltd.*, 2011 SCC OnLine Cal 1083 (India).

¹¹ *India v. RiceTec, Inc.*, Opposition to U.S. Patent No. 5,663,484 (U.S.P.T.O. 2000).

knowledge by linking it with reputation and origin, allowing communities to derive enhanced market value and sustain livelihoods. Enforcement actions such as *Scotch Whisky Association v. Golden Bottling Ltd.*¹² demonstrate how the protection of geographical names helps preserve the integrity of traditional production methods. In addition:

First, geographical indications do not grant a single holder the right to benefit from the protection; rather, they provide a collective right to use the indication, so that an indeterminate number of persons within the region of protection may enjoy exclusive protection against outsiders.

Second, geographical indications are not subject to novelty assessments, unlike the patent system; they may be employed to safeguard traditional products, provided that their attributes can be traced to a specific geographical location.

Third, geographical indications do not imply monopoly control over the knowledge incorporated in the protected indication, which remains accessible to the public.

Fourth, the inability to transfer geographical indications outside their region of protection is a significant advantage in the context of traditional knowledge. This raises questions about potential claim overlaps when comparable knowledge is found and used in different regions, which could be resolved through a set of fundamental procedural rules facilitating the assessment of each claim. Thus, if Basmati rice is cultivated in both India and Pakistan over the years, the Basmati-growing region of each nation would be entitled to comparable protection.

Fifth, geographical indications offer traditional-knowledge holders an advantage over other forms of intellectual property in that protection can extend to indications that are presently non-existent as well as to indications likely to be used in the future.

III. INSTANCES OF GEOGRAPHICAL INDICATION LAW PROTECTING TRADITIONAL KNOWLEDGE

Assam, India, holds a trove of traditional knowledge. Successful GI registrations have substantially increased the income of producers and artisans and have facilitated the conservation of genetic resources. For example, Muga silk, available exclusively in Assam, is one of the rarest and most organic types of silk; its longevity surpasses that of its owners, and its golden hue deepens gradually with age. It was conferred GI status in 2007. Sualkuchi, known as the ‘Manchester of Assam’,¹³ is the epicentre of Muga silk production, with nearly all families

¹² *Scotch Whisky Ass’n v. Golden Bottling Ltd.*, (2006) 32 P.T.C. 656 (Del.) (India).

¹³ GOV’T OF ASSAM, HANDLOOM AND TEXTILES POLICY REPORTS 14–16 (2018).

participating in the handloom weaving of Muga silk.¹⁴ Another example is the bell-metal industry of Assam, a long-standing tradition dating back to the seventh century A.D., with Sarthebari, Hajo, and Raha as significant centres.¹⁵ The metal is used to fabricate implements for domestic and religious purposes, and scrap metal is frequently recycled, rendering it a sustainable industry. The metals are pounded into the necessary shapes after being melted in coal furnaces, and the articles are manually polished after being submerged in water to ensure durability. It is among the oldest of crafts.¹⁶

IV. SCOPE OF GI AS A TECHNIQUE TO SAFEGUARD TRADITIONAL KNOWLEDGE

There are several restrictions on the use of GIs as a technique to safeguard traditional knowledge, which prevent them from serving as a comprehensive instrument for that purpose:

First, geographical indications can safeguard only specific categories of traditional knowledge. The concept is said to apply exclusively to tangible objects, making it impossible to safeguard all intangible forms of traditional knowledge, including methods of medical treatment, textile-dyeing techniques, folk music, and performances.¹⁷

Second, a geographical indication is intended solely to secure an indication of the origin of an object and cannot be used to safeguard the underlying knowledge of a community or group.

Third, the effectiveness of geographical-indication protection depends on the knowledge being associated with a particular geographic region; the preservation of knowledge through geographical indications is therefore difficult when that knowledge is dispersed. For example, the Ayurvedic medical system is not eligible for a geographical indication, as it lacks a distinct geographical region to which it pertains.

Fourth, safeguarding specific commodities with a geographical indication is of little value if consumers are uninterested in the source, since a geographical indication only identifies the product's origin.¹⁸

V. CONCLUSION

Geographical indications facilitate the preservation of a variety of traditional knowledge that has been deeply ingrained in the culture of a community or group for many years, or even centuries. In general, it must be acknowledged that the concept of geographical indications is

¹⁴ GEOGRAPHICAL INDICATIONS REGISTRY, GOV'T OF INDIA, GI Application No. 46, Muga Silk of Assam (registered 2007).

¹⁵ GEOGRAPHICAL INDICATIONS REGISTRY, GOV'T OF INDIA, GI Registration, Assam Bell Metal (2008).

¹⁶ MINISTRY OF TEXTILES, GOV'T OF INDIA, HANDICRAFTS OF ASSAM 22–25 (2017).

¹⁷ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *supra* note 3, at 25–27.

¹⁸ U.N. CONFERENCE ON TRADE & DEV. & INT'L CTR. FOR TRADE & SUSTAINABLE DEV., *supra* note 9, at 415–17.

designed to safeguard product names rather than knowledge per se. Consequently, although they provide some level of protection for traditional knowledge, that protection remains limited, since these indications are employed for marketing purposes rather than to safeguard the knowledge underlying the product. Nevertheless, geographical indications may serve as a complementary mechanism for safeguarding traditional products. It is, however, impractical to safeguard all traditional knowledge by relying on a single type of intellectual property in isolation.
