

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

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Geographical Indications Act and Cultural Appropriation in Northeast India: Scope and Analysis

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ABSTRACT

Cultural appropriation is not a new phenomenon, but it has become a serious threat to the culture and identity of a particular group of people, including the tribals in Northeast India. The Act of using traditional designs without acknowledging the source is another way of ignoring the existence of the people to whom they belong. In this day and age where technology has taken over even the smallest detail of our day to day lives, the Act of misappropriation has gained momentum. There are several ways to protect the rights of an individual under intellectual property law, but there is no law to protect the rights of the community. The most plausible way to protect the cultural heritage belonging to a particular community is through the Geographical Indications Act. This article is an attempt to analyse the meaning of cultural appropriation and its impact on the lives of tribals in Northeast India. It will highlight the importance of the GI Act with a particular focus on traditional designs from Northeast India and whether the Act is sufficient to deal with the phenomenon of cultural appropriation taking place in Northeast India.

I. INTRODUCTION

Geographical indication (GI) recognises goods (natural, manufactured, agricultural, handicraft) because of the uniqueness in their description, which they have acquired due to their respective geographical location. Globalisation has not made much difference with regards to the importance of a place in granting GIs. GIs are defined in Article 22.1 of TRIPS Agreement as signs ‘which identify a good as originating in the territory of a Member... where a given quality, reputation or another characteristic of the good is essentially attributable to its geographical origin.’ The best examples illustrating this link can be seen in regional products such as Darjeeling, Champagne, Swiss. It is this link between product and place which sets GIs apart as a distinct legal category.

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India adopted the Geographical Indications of Origin of Goods (Registration and Protection) Act, 1999. The Act requires all GI applications to describe the uniqueness of the product, the history, the method of production and shall be examined by a panel of experts. Since then, India has registered 370 GIs as of November 2021.² In fact, India has been one of the most dynamic countries among the Third World countries with such a large number of registered GIs. All the participants involved are concerned, be it government bodies engaged in protecting the Indian culture, lawyers providing help in documenting the products, and their regions or universities convinced about the benefits of intellectual property rights. It is an irony that it is only the producers who are often unaware of the existence of GIs or what a GI tag is.

In India, there has been an interest not only in the natural factors contributing to the quality of the product. In fact, the inclusion of crafts and textiles as GI protected goods seems to have incorporated human or cultural factors and skills connected with such products. India has a strong cultural identity and offers many products which are locally rooted. India strongly propagates the idea that the ‘Indian tradition in the area of “material know-how” is as legitimate as any other tradition and is extremely important and viable for nation building’.³ It is this notion that has expanded the scope of protection under the GI Act, providing an opportunity to the indigenous community in Northeast India, making their products eligible for protection. The know-how involved becomes the criteria for justifying the uniqueness of the product. Since the know-how has been passed down from one generation to another, history becomes the deciding link between the product and the place of origin. Today, there are 32 registered GI tags from the Northeast, and several applications are pending. Therefore, understanding the importance of GI protection and at the same identifying areas to promote the tagged GI products is of utmost importance for Northeast India and its people.

II. HOW IT ALL BEGAN IN ASSAM

The most renowned silk in Assam, *Muga Silk*, received a GI tag in 2007. A GI logo for trademark purposes was granted in the year 2014. *Muga Silk* is not only the first registered GI in the Northeast, but it is also the first product to receive a GI tag in Assam. It was with the initiative of the Assam State Technology and Environment Council (ASTEC). The ASTEC was able to prove the uniqueness of the product as belonging only to Assam with references ‘from Kautilya’s Arthashastra and Edward A Gait’s A History of Assam’ placed before the

² Available at: https://ipindia.gov.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf. (Visited on 9th November, 2021 at 1:45 pm).

³ Delphine Marie-Vivien, *The Protection of Geographical Indications in India: A New Perspective on the French and European Experience*, SAGE Publications India Pvt Ltd (2015).

panel of experts. It was also submitted that *Muga* is obtained from a ‘semi-domesticated multivoltine silkworm called *Antheraea assamensis*, which again is unique only to Assam. The distinct characteristic of the *Muga Silk* is its durability and its natural golden yellow tones with a rare sheen which becomes more lustrous with every wash’.⁴

Although *Muga Silk* received a GI tag in 2007 and a GI logo in 2012, it did not have registered users enough to produce and promote it in an extensive manner which is the most important aspect sought to be achieved through registration of a product under the GI Act, 1999. It was with the initiative of Tezpur University IPR Cell (funded by MHRD Chair Professor) and the Dibrugarh University with faculty members and volunteers of the North Lakhimpur College that helped in bringing transformation in upping the numbers to make *Muga Silk* an acclaimed and renowned product of Assam as it is known today. Therefore, the experience of *Assam’s Muga Silk* shows that GI registration alone does not guarantee growth to the economy of the state. The government agencies have an important role to play in creating awareness to the producers on the importance of GI and their place in achieving success with the help of it.

In the Northeast, Assam has the highest number of GIs, having registered 10 products. The maximum number of goods registered is agricultural products. Also, when we look at the list of the 35 registered products from the Northeast, the majority are agricultural products, followed by handicrafts. Apart from these products, there are several pending applications with the registry, and the majority of the products are again in the category of agricultural and handicrafts. Below is a compiled list of registered GI products of Northeast India:⁵

III. GIS NORTH EAST INDIA

Arunachal

- | | | |
|------------------------|--------------|--------------------------------|
| 1. Arunachal Orange | Agricultural | Application No 375 (2014-2015) |
| 2. Idu Mishmi Textiles | Handicraft | Application No 625 (2019-2020) |

Assam

- | | | |
|------------------------------|--------------|------------------------------------|
| 3. Muga Silk of Assam | Handicraft | Application No 55 (2007-2008) |
| 4. Assam (orthodox) | Agricultural | Application No 115&118 (2008-2009) |
| 5. Muga silk of Assam (Logo) | Handicraft | Application No 384 (2013-2014) |

⁴ Assam muga silk gets GI registration. Available at: <http://archive.indianexpress.com/news/assam-s-muga-silk-gets-gi-registration/212312/> (Visited on 29th November, 2021 at 3:14 pm).

⁵ See, *Supra* note 1.

6. Assam Karbi Anglong Ginger Agricultural	Application No 435 (2014-2015)
7. Tezpur Litchi Agricultural	Application No 438 (2014-2015)
8. Joha Rice of Assam Agricultural	Application No 439 (2016-2017)
9. Boka Chaul Agricultural	Application No 558 (2018-2019)
10. Kaji Nemu Agricultural	Application No 609 (2019-2020)
11. Chokuwa Rice of Assam Agricultural	Application No 572 (2019-2020)
12. Judima Agricultural	Application No 643 (2021-2022)

Manipur

13. Shaphee Lanphee Handicraft	Application No 371 (2013-2014)
14. Wangkhei Phee Handicraft	Application No 372 (2013-2014)
15. Moirang Phee Handicraft	Application No 373 (2013-2014)
16. Kachai Lemon Agricultural	Application No 466 (2014-2015)
17. Chak-Hao (with Nagaland) Agricultural	Application No 602 (2019-2020)
18. Tamenglong Orange Agricultural	Application No 590 (2020-2021)
19. Hathei Chilli Agricultural	Application No 592 (2021-2022)

Meghalaya

20. Khasi Mandarin Agricultural	Application No 465 (2014-2015)
21. Memong Narang Agricultural	Application No 437 (2015-2016)

Mizoram

22. Mizo Chilli Agricultural	Application No 377 (2014-2015)
23. Pawndum Handicraft	Application No 586 (2019-2020)
24. Ngotekherh Handicraft	Application No 587 (2019-2020)
25. Hmaram Handicraft	Application No 588 (2019-2020)
26. Tawlhloh Puan Handicraft	Application No 582 (2019-2020)
27. Mizo Puanchei Handicraft	Application No 583 (2019-2020)
28. Mizo Ginger Agricultural	Application No 630 (2021-2022)

Nagaland

29. Naga Mircha Agricultural	Application No 109 (2008-2009)
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30. Naga Tree Tomato	Agricultural	Application No 374 (2014-2015)
31. Chakhesang Shawl	Handicraft	Application No 542 (2017-2018)
32. Naga Cucumber	Agricultural	Application No 640 (2021-2022)

Sikkim

33. Large cardamom	Agricultural	Application No 376 (2014-2015)
34. Dalle Khursani (with West Bengal)	Agricultural	Application No 636 (2021-2022)

Tripura

35. Tripura Queen Pineapple	Agricultural	Application No 436 (2014-2015)
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The objective of the GI Act and increasing awareness of it in the region have made some difference, but there are many hurdles yet to be crossed. We must also keep in mind that due to the homogeneity existing amongst and between the tribes, there is bound to be overlapping claims for GI protection. The list of registered GIs (as per the list) in the Northeast gives us a clear picture that it is in agricultural goods and handicrafts that the people in this area are seeking protection. As has been seen in the experience of the renowned Muga Silk, there is much that remains to be done in order to achieve the desired objective of the GI Act for these states.

IV. EXPERIENCE OF CHAKHESANG COMMUNITY IN NAGALAND

In the year 2016, the Chakhesang tribe in Nagaland registered their shawls *Rira* and *Rura* under the GI Act, 1999. The Chakhesang Women Welfare Society (CWWS) were the registered proprietors. In February 2020, in the much-acclaimed Surajkund Crafts Mela, which is held every year in Faridabad, TRIFED (Tribal Cooperative Marketing Development Federation of India Limited) was established under the aegis of the Ministry of Tribal Affairs, Govt. of India, in collaboration with designer Ritu Beri, organised a fashion show in which CWWS alleged that these shawls had been wrongly represented which led to a civil suit. It was contended by CWWS that these two shawls, having been registered under the GI Act due to the important cultural and traditional significance they carry for the said community, gives them the exclusive right to use the shawls according to the Act. It was the claim of CWWS that the said shawls were used without their permission, and the shawls were represented in a manner that was contrary to the significance indicated for which their GI application was granted. It has claimed damages on the grounds of “wrongful and illegal infringement of registered GI”. The most

important question required to be determined through this case is whether the CWWS can protect the *Rira* and *Rura* shawls assuming that permission to use was given by CWWS to TRIFED and Ritu Beri.

Another case concerning the Chakhesang shawl has to do with designer Ritika Mittal. It is the case of the Chakhesang community that the designer has launched her new collection called Mora collection “without consent and correct accreditation”. It was contended that several notices had been served on the designer who has not been replied to. It is interesting to note in this case that even the local dialect of the Chakhesang tribe “Thevo”, a name used by the tribe for textile made from the stinging nettle plant, which is registered under the GI Act. The main grievance of the community is that Ritika Mittal “has no right to re-define the societal and traditional operations according to her self-interests”. The allegations of the CWWS have been rubbished as baseless and without cause by the designer. She has stated, “I do not believe in exclusivity clause, copyrights, GI tagging, anything for my own self or for Mora. I do not believe in the burden of ownership, possessiveness and protection. I believe in the resilience of accountability, fearless sharing and preservation. I have continued to share designs without fear. Drop ‘exclusively’ and adopt ‘inclusively’. Give thought to understanding the roots to create natural preservation”.⁶

As has been discussed, the shawls *Rira* and *Rura* are registered handicraft products under the Act. In fact, the Chakhesang community has a strong case in getting a favourable judgment. However, the case poses an important question on the accountability of someone like Ritu Beri and a governmental organisation given the sole task to promote and protect the interests of tribals. To what extent can they be made liable, assuming an agreement had been entered into between the parties? Does the Act provide for such redressal? Section 22 of the Act provides that infringement occurs when a registered GI is used by a person (not being an authorised user) in a manner that establishes an act of unfair competition. Therefore this section can provide relief to the community on the basis of misrepresentation, which amounts to unfair competition as it has the capacity to mislead others as to the nature and characteristics as well as the purpose for which they are to be used. Therefore a plausible argument can be made that utmost disregard as to the social and cultural use connected with the Chakhesang shawls infringes the rights of CWWS over their exclusive right to the shawls granted under the GI Act.

⁶ Nagaland: CWWS condemns designer of using its textile ‘without consent’ by EMN Available at: <https://easternmirrornagaland.com/nagaland-cwws-condemns-designer-of-using-its-textile-without-consent/> (Visited on 30 Nov. 2021 at 1:03 pm).

In the case concerning designer Ritika Mittal⁷ as viewed from the provisions granted under the Act, no one can use ‘Thevo’ for their own products irrespective of it is similar to CWWS’s product or not. The scope of the exclusive right granted under the Act has been clarified by the Calcutta High Court in the case of Tea Board of India v ITC Limited.⁸ It was stated that “registered GI allows the holder of the GI to prevent any person or entity from using such registered mark or its name, is a product which might be similar or deceptively similar to the registered product or it might not be similar to the registered product but have the registered name in it”.⁹ The issue, in this case, is one of cultural appropriation. It remains to be seen to what extent the designer can be held liable, considering that she went ahead without acknowledging the rightful owners of the designs on her collection and refused to comply with the agreement entered into between the parties.

V. MIZORAM REGISTERS 5 TRADITIONAL CLOTH (*PUAN*)

In August 2019, 5 very important traditional cloths (called *Puan*) *Pawndum*, *Ngotekherh*, *Hmaram*, *Tawlhloh Puan*, *Mizo Puanchei* were successfully registered under the GI Act by the Directorate of Science and Technology, Mizoram. The GI applications were filed by the Mizoram Art and Cultural Society, and the importance and significance of these cloths are wide-ranging and elaborated.¹⁰ Mizoram is famously known for colourful and intricate designs in the weaving of these traditional clothes. Each motif and design on these cloths portrays deep traditional meaning to the Mizos. The achievement is a big one, and the state hopes to witness better economic growth through the GI tags.

The 5 traditional clothes having been registered are now protected under the GI Act. However, a recent case¹¹ emerged where Levis was accused of copying the design of another traditional cloth *Thangchhuah* belonging to the Mizos. It may not necessarily have been blatant copying of the cloth itself but could be seen as an inspiration taken from the *Thangchhuah* cloth by the brand Levis. Even so, it still amounted to cultural appropriation, and Levis should have acknowledged their mistake, whether unintentional or not. The *Thangchhuah* cloth originally

⁷ *Ibid.*

⁸ Tea Board v ITC Limited (2019).

⁹ Surabhi Lal and Devanshi Saxena, Can the Geographical Indications Act Provide Relief to Nagaland’s Chakhesang Women? Available at: <https://thewire.in/rights/geographical-indications-act-nagalands-chakhesang-women> (Visited 30th Nov. 2021 at 1:43pm).

¹⁰ See, Geographical Indications Journal Available at https://ipindia.gov.in/writereaddata/Portal/IPOJournal/1_4730_1/Journal_119.pdf (Visited on 7th Dec.2021 at 12:08 pm).

¹¹ Kimi Colney, “Major Brands and the Mainland Appropriate, Misrepresent Traditional Attires: Northeast Indians” Available at <https://caravanmagazine.in/culture/brands-mainland-appropriate-misrepresent-traditional-attires-northeast-indians> (Visited 7th Dec. 2021 12:50 pm).

was used as a *diar* (head-band) and was a symbol of dignity earned by men for killing animals. It was an important title given to the man in the society accompanied with duties. Today the head-band is tailored into a shirt and is a must-have for a *Mizo* man. The community must take additional steps to register *Thangchhuah* as well so as to protect its cultural significance for its people.

VI. CULTURAL APPROPRIATION AND GIS IN NORTHEAST INDIA

The definition of cultural appropriation simply means the unauthorised use of cultural expressions of minorities in a society by the dominant group belonging to it. It is an act seemingly common in the fashion world, and there have been several instances in the past many years without much intervention from the groups whose culture has been threatened. The use of the internet and other cross-boundary communications led to the promotion of commercial exploitation of culture. This has opened up local communities to become warier before such exploitation further hampers their culture and its expressions.

There has been an increasing awareness of misappropriation of expressions of culture belonging to the people in the Northeast. It was until recently only that cases of cultural appropriation have started to raise eyebrows of the people in this region and the GI Act has a huge role to play. The recent news of the Levis company copying a traditional design (*Thangchhuah*) originally belonging to the *Mizos* in Manipur, mass production in Barabanki, UP of the *Leirum Phee* (a scarf held in high esteem) by the *Meiteis* in Manipur and the cases involving designers Ritu Beri and Rita Mittal concerning the Chakhesang tribe in Nagaland are some of the important cases which deserve attention. It is not an exaggeration to say that many of the traditional designs alleged to have been appropriated/misappropriated all have significant importance to the people in the region. It is only because these cultural expressions have not been documented that no protection has been granted to them yet.

GIs may well be the answer to the preservation and promotion of culture as it is based on old traditions. It helps to protect and preserve collective traditions and at the same time improvise on them according to modern ways. The GI tag granted to the design and the technique used in the particular territory or place concerned is attributable to that region alone. However, several products with GI tags in India are still being appropriated, as we have seen in the case mentioned. One of the biggest reasons is that the artisans do not receive help from the government in promoting or selling their GI. Therefore, it does not have recognition at the national level, much less internationally, as a unique design or cultural expression. This, in turn, leads to unfavourable market access to the artisans, the holders of the GI tag. The other

difficulty is with the enforcement mechanism of GI, which is long and tedious, expensive and not likely to help achieve the desired conclusion.

The experience of Northeast India and cultural appropriation has pre-dominantly been with handicrafts. The traditional designs or motifs have all been passed down from one generation to another. It, therefore, has its genesis in the community. No one person has a right to claim the designs belonging to the community. This is why GI protection goes a long way in satisfying the collective legal protection existing in the community belonging to this region. However, since handicrafts are not the only “traditional cultural expressions” of the community, we have to continue working towards providing holistic protection to “traditional cultural expressions”.

VII. CONCLUSION

It is no doubt true that the GI Act, unlike other IP tools, is the most suitable law to protect traditional designs belonging to the people in Northeast India. Unlike the other IPRs, GI protects community rights. This is especially relevant with handicrafts and handloom products. However, it is not the best protection against misappropriation and unauthorised use of goods. GI was not meant to be a mere heritage tag. The GI tag gives recognition to the producers of the goods, which in turn would lead to increased exposure of the goods to generate greater sales. This has, however, not been possible in many of the cases which have received GI tags so far. State governments must put in efforts to utilise the GI Act to its utmost potential and to provide the beneficiaries of the Act support through incentives in the form of government schemes. This will further be a boon to the economy of the state and help to contribute further to the overall growth of the country’s economy.

GI protection granted to traditional handicrafts has not been able to promote innovation of goods from these communities. Technology has become a bane rather than a boon in safeguarding traditional cultural expressions of indigenous peoples. Cultural appropriation must be discouraged, and measures in conformity with local customary laws of the people must be put in place. There must be a provision for Prior Informed Consent (PIC) for the use of traditional designs belonging to indigenous communities.
