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Geographical Indications and its Protection Under IPR: A Thorough Study on Cross Border GI Disputes between India and Other States

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ABSTRACT

The term Geographical indication was first introduced in the year 1883 during the Paris convention in which geographical indications were defined as an element of the IPRs. Since then, GI went through many reforms and changes along the years and was enacted by India under the geographical indications of the goods (registration and protection) act,1999. This article deals with the development of GI, the correlation between GI and The Intellectual Property Rights, the mechanisms of Geographical Indication , the article also incorporates the challenges/issues faced by India, with an overview of the complications encountered during the implementation of GI in India. This article focuses upon the challenges and disputes faced by the states in India. The complexity of origin of the property is faced by various inter and intra states resulting in several disputes. Since the introduction of GI in India, the awareness and knowledge about GIs efficiency and benefits have been limited. In all, this article not only gives an overview of GI Tags but also addresses the issues and complications at present.

Keywords: *Geographical indication , GI , disputes.*

I. INTRODUCTION

Geographical indication (GI) is a sign used to protect a product, which hails from a specific area or location that gives such product its quality and reputation.

In order to safeguard such products geographical indication or GI tag is issued which means that that specific product is exclusive and unique to its origin.

In this article I will discuss geographical indication and its relation with intellectual property rights, its history and the challenges that are currently being faced by India to safeguard her geographical indication exclusivity.

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I will further discuss the contemporary as well as past difficulties faced by India and also talk about some characteristics and benefits of geographical indication.

(A) What is Geographical indication?

Geographical indication or GI tag is given to certain products, which are exclusive and hold its quality and reputation because of hailing from a specific geographical location that gives such product its exclusivity.

GIs are registered on products, which are indigenously produced by rural people and craftsmen over generations and now such products have gained national and international recognition and in order to safeguard such works GI tags are given.

- Article 22(1) of trade related aspects of intellectual property rights (TRIPS), defined GIs as “**indications which identify a good as originating in the territory** of a member, or a region or locality in that territory, where a given **quality, reputation or other characteristic** of the good is essentially attributable to its geographic origin”.
- Under section 2(e) of the GI act 1999 defines geographical indication as “an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”
- Geographical indication is governed by the agreement of TRIPS at WTO and was later enacted by India under the geographical indications of goods (registration and protection) act 1999.

As of March 31st 2024, the total number of products given GI tag is 635 and more than 500 applications are still pending and await to be given GI recognition.

In recent years, India has seen a massive surge in GI registration and among some leading factors aiding to such is the government’s introduction of ‘Make in India’ initiative, which boosted domestic manufacturing of goods that further aided the economy massively.

Geographical indication is a tool that aids local manufacturers in showcasing their product at national as well as international market. There is a state wise lists which contains all the GI products and below are few examples based on the type.

Types of products that comes under Geographical indication:

- Handicrafts- products such as Blue pottery a treasured art from Rajasthan, leather puppets from Indore are among the few handicrafts, which are GI protected.
- Food items- example Besan ladoo from Hanuman Garhi, Banglar Rasogolla from west Bengal
- Wine and drinks- Cashew Feni from Goa, Judima rice wine from Assam
- Industrial products- Meerut scissors, Mysore aggarbatti
- Agricultural products- basmati rice, Darjeeling tea

Above are listed the types of GI along with the few products under such type.

II. BENEFITS OF GI TAGS

- Legal protection to the products

The GI tag holder has exclusive rights over such product, which helps them protect and preserve their local biodiversity.

Internationally, the WTO provides a minimum standard for protection, which the wto members are bound to comply with under article 22(1)

India has a sui generis system of protecting GI which means they enacted an act which specifically deals with geographical indication which the geographical indications of goods (registration and protection) act 1999 also known as the GI act and the geographical indications of goods (registration and protection) rules, 2002.

- Preventing unauthorized use of GI tag products

The legal protection also includes protection against unauthorized use of the GI products and the GI act gives the owner rights to sue. For infringements of such rights remedies such as injunction damages in civil remedies as well as criminal remedies has also been provided to the GI tag holder.

- The GI Tag provides authenticity and desired quality product to customer

GI tagged products gives the consumer a tag of authenticity and quality, which the consumer so desires when buying a product. It is generally seen when the demand of a product increases, it is likely that pirated or copies of such products are made which hinders both the quality and reputation of such product. Thus, stringent legal protections help to eliminate such piracy thus ensuring that the consumer gets the desired product.

- Provides economic prosperity

Promotes economic aid to producers producing GI tag goods by enhancing their product's demand in national and international markets. The demand of the product further boosts the exports.

III. GEOGRAPHICAL INDICATION: ITS RELATION WITH INTELLECTUAL PROPERTY RIGHTS

In order to understand the relation between the two, it is necessary to understand as to what are intellectual property rights. So Intellectual Property Rights are those rights, which are given to a creator or inventor to protect their creation or work for a certain period of time. During such period, the creator/ inventor enjoys exclusive rights over such creation and has a right to utilize their creation to the fullest. IPR is divided into two branches and Geographical indications (GI) come within the ambit of industrial property under IPR. Other types of rights under IPR include patent, trademark, copyright, industrial design, plant varieties, semi conductor integrated circuit layout designs.

From the above description we can understand that GI is a form of IPR and it plays a pivotal role in securing traditional knowledge by preserving the products reputation and cultural labor that further aids in regional development.

Where IPR secures the creative genius of man, GI protects the product, which is already in existence and present in nature and is a result of the works of human efforts and their cultural homogeneity.

(A) Geographical indication rights under IPR

Once the GI certificate is secured the holder can exercise many rights under IPR. The rights secured under GI are very similar to what IPR offers under its ambit. Chapter 4 of the GI act 1999 includes effects of registration/ rights conferred under the act enjoyed by the GI holder.

Some rights which a GI holder enjoys include-

- Exclusive rights: the GI holder enjoys exclusive rights over the product i.e. only the holder with the registered GI has the exclusive rights to sell the product and no producer or entity other than the GI holder has the right to sell the same product unless they are authorized users.

This prevents unauthorized producers from selling copied or pirated version of the original product, which brings us to the second right which is-

- **Right against misuse:** if a producer is reported of unauthorized selling of copies or pirated version of such GI product, the holder of such GI has the right to sue such producer or entity as copies creates confusion and misleads the consumer and further degrades the distinctiveness and reputation of such product.
- **Tag of authenticity:** GI tag is a certificate of authentication so it is the responsibility of the GI holder to maintain the necessary quality standards to secure that product's authenticity. The consumer expects a quality product for which he/she solely relies on the GI authentication. So it is the duty of the GI holder to hold such standards necessary.
- **Right to license:** the GI holder has the right to authorize other producers to use the GI on their products provided that such quality standards are met by the producer.
- **Legal rights and remedies:** in case of unauthorized use of GI or for any such infringement or violation the GI holder has the right to sue and can secure both civil as well as criminal remedies provided under the law.
- **Rights in International trade:** products, which are GI certified and protected by one nation is, respected the same by all the signatories of the trips agreement under WTO. This provides the GI holder international recognition across all signatory states thus facilitating more export.

IV. GEOGRAPHICAL INDICATION IN INDIA

The geographical indication in India is governed by geographical indications of goods (registration and protection) act, 1999 which came into force 15th September 2003 and further rules regarding the act has been laid under Geographical Indications Of Goods (Registration and Protection) Rules, 2002. The GI act is an act, which provides better registration and protection to geographical indications relating to goods. The act contains 87 sections and is divided into 9 chapters. The headquarters of the GI registry is situated in Chennai.

(A) Registration

- In order to register the GI in India the applicant must go through certain conditions, which are provided under **chapter 2 of the GI act 1999**. According the act **sec.11** - any association of persons or producers or any organization or authority established by or under any law who in interest of the goods are desirous to register their product can submit in writing to the registrar of GI in prescribed format along with prescribed fee.

(B) Term of registered GI

- **Under sec 18** of the GI act 1999: term duration for the validity of a registered GI is provided which is 10 years from the date of registration provided that such expired GI can be renewed from time to time upon failure of such renewal the registered GI is liable to be removed from the register.

(C) Procedure for registration

Chapter 3 of the Geographical indication act 1999 provides procedure for registering a GI under this act. In order to register a GI the interested person or such entity has to:

- File an application under section 11 of the GI act 1999 in which the person filing it has to pitch the product by stating as to how the product holds quality and reputation that is unique to its geographical origin or concerned locality. The application has to include every such information, which is necessary to prove the product's uniqueness.
- After the filing of the application, the application undergoes examination by the registrar and is thoroughly checked for errors. After such examination, the registrar can accept or refuse or accept with such modifications, conditions or limitations, if any, as he thinks fit.
- After the acceptance of the application the registrar advertises such in the GI journal. The objective behind such advertisement is that if anyone has an objection regarding such GI can approach the registrar.
- After all the above procedures the GI is then entered into the register by the registrar under sec 16 of the GI act 1999. Particulars of the registered GI are mentioned under part A of the register while the particulars regarding the authorized users are mentioned under part B.
- After completion of the registration process the registrar issues a certificate sealed with a seal of the geographical indications registry to the applicant and the authorized users each.

(D) GI tag registration in India

During the last decade, India has seen a massive surge in GI registration. In the year 2023-2024 a total of 160 products were registered under the prestigious GI category among which 63 products were given GI tags on March 30,2024.

Recent registries include-

- **Tiranga Barfi** of Varanasi and
- the **Dhalua Murti Metal Casting Craft**
- Assamese Dhol, also known as Pati Dhol
- **Assamese Jaapi of Assam**
- Mising Taat or Mising Handloom Products

In India, there is a state wise list of registered GIs and Uttar Pradesh tops the list with a total of 75 registered GI comprising of 58 handicrafts and 17 agricultural and food products followed by Tamil Nadu with 58 registered GI. (Data based as of 16th April 2024)

V. INTER AND INTRA STATE DISPUTES WITH CASES

During the middle ages, India gained its fame as a land rich in spices, silks and many such treasures, which were in itself unique. Explorers all across Europe sailed to India in search of these treasures. Such treasures were the result of human mind, nature and traditional knowledge passed on to generation after generation that made it so unique and reputed.

During the British withdrawal in 1947, India was divided into 565 princely states. Post independence, 565 princely states were segregated into 28 states with 9 union territories.

India has seen conquests, war, strife and migration, which give it such unique cultural diversity. India being so vast and culturally diverse is what makes up, as the challenge for GI holders. Most of the GI disputes in India are related to the people of different states and sometimes people of the same state, claiming a GI of a specific product where each side claims the origins of such GI.

(A) Major GI inter state disputes in India

1. Banglar rasogolla v. odisha rasogola

In 2017, Bengal government filed for GI recognition for banglar rasogolla to which the odisha government opposed by filing a petition claiming the origins of the sweet. The petition was later dismissed on the grounds that substantial evidence to the claim were insufficient and the GI tag for rasogolla was awarded to Bengal.

After two years the odisha government filed a second petition in which the state alleged that the texture and taste of the sweet in their state differs from the neighbouring state and demanded the GI recognition for odhisha rasogola. The dispute finally came to an end when Odisha rasogolla was given the GI tag in 2019.

2. Kadaknath chicken GI dispute

Kadaknath is a chicken breed distinctive due to its black meat and certain nutritional benefits. In 2012, Jhabua district in Madhya Pradesh filed for GI recognition for the kadaknath chicken meat. The dispute arose when a Chhattisgarh based organization opposed to such claim by alleging that the kadaknath chicken was originally bred in Dantewada district, Chhattisgarh. The claim by Jhabua district Madhya Pradesh prevailed and the GI tag was awarded to Madhya Pradesh.

3. Darjeeling tea dispute

Darjeeling tea has been in cultivation since the 1850s and holds a global reputation for its quality, texture and aroma. Darjeeling tea was the first product to be GI certified in the year 2004-2005. Due to its reputation, the tea has been subjected to many disputes. One such case is the tea board of india v. ITC ltd. In this case the tea board of india filed a dispute against ITC ltd on the grounds that the defendant used the tea board logo i.e. the darjeeling tea logo for a lounge named darjeeling lounge in his hotel in Kolkata , contending that such use of logo by the defendant led to infringement of trademark u/s 29 of the trademark act and further contended that the defendant also infringed sec 22(1) of the GI act by using the darjeeling tea logo as a trademark for darjeeling lounge. The tea board contested that such usage of logo is likely to create confusion for the customer as they will likely link the lounge with the darjeeling tea leading to unfair competition.

In this case, the Calcutta high court held that, the suit by tea board of india is barred by limitation as the lounge was started in 2003 and the case was filed in 2010 which elapsed the limitation of 5 years as given under sec 26 of the GI act. The court pointed out that there is no connection between the two as darjeeling lounge is a place/hotel and darjeeling tea is a product. The court opined that the darjeeling is not a trademark, it is only used to indicate the origin of the tea. Hence, no relation between the darjeeling lounge and plaintiff rights under the trademark or the GI ACT.

4. Navara rice dispute

Navara rice is a unique grain, originated in Kerela and was GI certified in 2007. The dispute arose when the navara rice farmers society got exclusive rights over the produce of the rice which enraged the other growers of the rice as it was also grown by farmers across kerela and tamilnadu. The dispute arose on the basis of the origination of the grain.

Since the introduction of the GI in india, similar cases have surfaced along its way questioning the origins and rights of other growers and producers contesting further reforms in the law.

VI. CROSS BORDER GI DISPUTES BETWEEN INDIA AND OTHER COUNTRIES

Since the GI introduction in India, it has been subjected to many disputes both inter and cross borders. Under this heading we will discuss India's cross border disputes with United States of America, Pakistan, Nepal and Bangladesh.

1. Basmati rice disputes

India is the largest producer of basmati rice, accounting for 70% of the world's demand. Basmati rice is a long slender grained rice, known for its unique aroma and shape which makes it one of the most preferred rice used in cuisines around the world.

a) India and Pakistan

Basmati rice is traditionally grown in India, Pakistan and Nepal but is exclusive to India and Pakistan owing to the geographical exclusivity of the lands. India is the largest producer of basmati rice whereas Pakistan is the second largest producer of the basmati.

In 2008, India and Pakistan decided to jointly submit an application to register the GI for basmati in the European Union but the plan was dropped due to Mumbai terrorist attacks in 2008. In 2016, domestic GI status was granted to basmati rice in India under the geographical indications of goods act 1999 after which in 2018 India filed for PGI status for basmati in European Union which was opposed by Pakistan in 2020. After the filing of opposition by Pakistan, European Union asked both countries to settle their differences and mutually agree to a solution through talks. Till today, no solution can be reached by both the states and basmati rice international GI status remains an issue.

b) India and USA

India is the largest producer of basmati rice exporting 70% of the global demands and one of the major importers of rice from India is the United States of America. Each year, India exports more than 10% of its total exports to the USA.

Seeing such global demands, a company named RiceTec inc. decided to manufacture its own basmati through designing a rice grain identical to that of basmati. The company got patent for basmati in 1997. The company successfully replicated the rice and entered the international market with brands like Texmati and Kasmati.

India being the largest producer of basmati heavily lost on exports that year and faced severe losses.

“Patenting basmati in the US is like snatching away our history and culture” (Indian economic

times,2013). This became a major issue as basmati rice is associated with the Indian soil and a company overseas patented the same to its name. India opposed to it and filed a notice in the US patent office and urged to re examine the patent.

After the investigation, it was observed that granting of patent to Rice Tec inc. was a violation of the geographical indication act under the TRIPS agreement. The granting of patent of basmati to RiceTec defeated the purpose and concept of GI. Geographical indication is a status given to product which is unique and such uniqueness comes from the geographical area where it originated.. In this case, the product belonged to India and because RiceTec took the same rice and grew it in the USA, the rice differed both in quality and taste and this led to creating deception for the consumers. In the end, the RiceTec lost and withdrew all its claims to basmati.

c) India and Nepal

After Pakistan opposed to India's claim to Basmati rice, Nepal became the second country to oppose such claim and made headlines by claiming the GI to basmati rice. Nepal opposed to India's claim to basmati on three major grounds.(1) Nepal claims that basmati rice is traditionally grown and consumed by the Nepalese people,(2) that it was their local basmati grain which was used to develop different varieties of basmati which we see today,(3) that basmati rice is a part of the culture of the Nepalese people.

2. Dispute over pashmina

a) India and pakistan

Pashmina wool is unique due to its origin as Pashmina wool is harvested by Changpa tribes of Ladakh who herd Changthangi goats.

This makes the product exclusive to India and was given the GI status in the year 2005. Pashmina wool became a popular demand in the international market owing to its soft silky by warm texture. When a Srinagar based craft development institute filed an application for pashmina GI Pakistan based Rawalpindi chamber of commerce and industry opposed to such GI recognition and claimed that pashmina shawl are also woven in the parts of Pakistan's Gilgit Balistan region and due to which India cannot be the sole claimant of the GI. Pakistan approached the GI registry contending jointly rights over pashmina by Pakistan and India. The situation further worsened when another local body named Kashmir handmade pashmina promotion trust also opposed the application.

In the end, the Pakistan claims were denied and in the year 2008, pashmina became a certified GI product under the GI ACT ,1999.

3. Dispute over tangail saree

a) India and Bangladesh

Tangail saree is a handwoven garment popularly known for its unusually fine and smooth texture. In January 2024, GI registry of India awarded GI status to the tangail saree. This led to protests in Bangladesh as protesters opposed this decision and claimed that tangail saree is a product which originated from the tangail district in Bangladesh and is unique to their time honoured skill. They claimed that the Tangail weaving is Bangladesh's one of the oldest cottage dating back to 19th century and they used to export saree cross borders.

The protesters still await for the Bangladeshi government to take steps against such GI tag awarded under the name Tangail saree by the GI registry of India.

VII. CONCLUSION

Since the introduction of the Sui generis act, the Geographical indications of goods (registration and protection) act, 1999, India has seen massive boost in the economy sector. The act made registration process easier and provides better protection to the products registered under the act. This helped locals to boost their lives by showcasing their skills to cross border markets. GI protection has helped workers, artisans, craftsmen, tribes, farmers to boost their economy. Product which were once known locally are now being recognised in the national as well as international markets. All seems well until we look at the drawbacks and failure of the GI in India. Firstly, there has been almost two decades since the introduction of the GI act, but till date no significant amendments have been made. Secondly, the registration is a very cumbersome process. It should have been made a little easy because as till now only 46% percent of the application reaches the registration process, rest are rejected due to certain irregularities making registration a challenge in its own. Thirdly, poor GI protection. After the GI tag has been issued to a certain product, the market floods with copies and replicas of the original GI, making it a challenge for both the producer and the consumer. What I suggest is that GI registry should come up with a dedicated team which will be responsible for tracking down non authorized GI users thus eliminating copies from the market. Fourth is the lack of knowledge about GI. Many traders and locals still don't know about what GI is or how it can help them economically and socially..

So the GI's journey in India hasn't been a smooth one, it has seen many successes like Darjeeling tea, Varanasi saree but has also faced many failures. Owing to the fact that it is still in its initial stages, I see huge potential in India as it is a developing nation for which GI becomes an important part for it promoting both social as well as economic prosperity.

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