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Geographical Indications in Kerala: An Examination of their Efficiency

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ABSTRACT

This essay aims to analyse the concept of Geographical Indications (in general) and further narrows down to the topic of Geographical Indications in the State of Kerala and the efficiency of the same. Therefore, in order to enhance the structural flow of the essay, it is divided into two parts, namely, General Introduction to Geographical Indications and Geographical Indications in Kerala. The essay gives a brief overview of the topic of Geographical Indications, their definition and components, the various types, and International and Municipal legal framework protecting the same. The second part of the essay covers the specific concept of Geographical Indications in Kerala and touches upon the various registered Geographical Indications. Along with the author's analysis of the efficiency of these Geographical Indications, a previously published empirical case study is also employed to infer conclusions from the same.

I. GENERAL INTRODUCTION TO GEOGRAPHICAL INDICATIONS

What are Geographical Indications?

As per the World Intellectual Property Organization [WIPO], a Geographical Indication (hereinafter also referred to as a GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.²

In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.³

GIs are a specific category of Intellectual Property Laws that are in place to protect the rights over the manufacture of certain goods to their rightful claimants. In the ancient days, guild marks were used to identify the geographical origin of goods, as well as the identity of the

¹ Author is a student at the National University of Advanced Legal Studies, India.

² *Geographical Indications: What Do They Specify*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, (March 12, 2022, 11:45 AM), https://www.wipo.int/geo_indications/en/.

³ Ibid.

manufacturer. This is seen as the forerunner of what is today developed to be Geographical Indications.

International Treaties and Laws Governing Geographical Indications

The earliest international treaties and agreements governing GIs came into being in the late 1800s. The first international standards for the safeguarding and protection of Geographical Indications were first laid down in the Paris Convention for the Protection of Industrial Property of 1883, which touched upon GIs amongst many other kinds of intellectual properties. Later on, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods came into being in the year 1891 which addressed the topic of GIs. These are two fundamental international agreements that covered this concept.

The Paris Convention states that one of its objectives is the protection of appellations of origin.⁴ Also, both the Paris Convention and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891, used the term 'indication of source'. However, it is to be noted that this term was not defined in either of these documents. In the context of the Madrid Agreement, it can be inferred that an indication of source is to be defined as an indication referring to a country, or a to a place in that country, as being the country or place of origin of a product.

The next notable milestone in the arena of international agreements governing GIs is the Lisbon Agreement of 1958. An important aspect of the same is that the Lisbon Agreement succeeded in establishing an international system for the protection of Appellations of Origin throughout the various signatory nations. Therefore, if a product is registered and has legally recognised appellations of origin under the municipal laws of one nation, who is a party to the Lisbon Agreement, it can protect the same, in countries other than the country of origin as well.

In the contemporary era, the important legal framework governing GIs is The Agreement on Trade-Related Aspects of Intellectual Property Rights which is most popularly denoted as the TRIPS Agreement of 1994. The TRIPS Agreement was the first of its kind as it was the first international document that provided a detailed and broad understanding of GIs, unlike its predecessors. Additionally, compared to the previous Agreements, this document had the largest number of signatory states and thus has more legal validity and global acceptance.

The TRIPS Agreement laid down the standards for the protection of Intellectual Properties internationally and its enforcement. What made it stand apart from the Lisbon Agreement is

⁴ Paris Convention 1883 Art.1.

that the TRIPS Agreement managed to bring under its ambit, both direct and indirect GIs, unlike its predecessor, which limited the scope of appellations of origin to geographical names alone. Furthermore, Articles 22 – 24 of the TRIPS Agreement laid down the minimum standards for the protection of GIs that every signatory and member of the World Trade Organization must offer. This ensured that there exist minimum standards of safety to be offered to producers.

(A) The Indian Scenario:

In India, geographical indications are protected under the ambit of the Geographical Indications of Goods (Registration and Protection) Act 1999. India is a member of the World Trade Organization and a signatory to the TRIPS Agreement of 1994, and thus, following the guidelines laid down by these international conventions, the Indian Parliament passed this enactment for the protection of GIs in India. However, this 1999 enactment only came into force in 2003. The enactment has clearly defined what constitutes goods that can avail GIs under this Act, has further laid down the concept of producers and what exactly comes under the ambit of indication. It established the process of obtaining GIs and clarified the various aspects of the same.

Various Types of Geographical Indications

Traditionally there existed two types of indications marking the geographical origin of a product. These were recognised by the traders and consumers as well as legally valid. They are as follows -

1. Appellations of origin;
2. Indications of the source.

Tracing the evolution of GIs, it can be observed that the first system for the protection of geographical signs was a system aimed at protecting the appellations of origin. The concept of a ‘protected appellation of origin’ may be understood as a “geographical name of a country, region or locality, which serves to designate a product originating therein, the quality and characteristics which are due exclusively or essentially to the geographical environment, including natural and human factors.”⁵

An ‘Indication of Source’ in plain terms is a mere sign that indicates where a product is from – the specific country of origin or geographic area of origin. E.g., on most products, one can find tags/ labels stating “Made in India”, “Made in Bangladesh” etc. This constitutes an

⁵ Bernard O Connor, *Sui Generis Protection of Geographical Indications*, 9 DRAKE, J AGRIC. L 359 (2004).

Indication of Source. These indications of the source may be explicitly stated in writing or maybe implied using globally accepted and known signs – such as a symbol of the Taj Mahal being used to indicate the product's origin as belonging to India or the use of a symbol of the Statue of Liberty or the London Bridge being used to indicate the origin of the product as belonging to the United States of America and the United Kingdom respectively.

Other globally accepted varieties of geographical indications include Certification Marks or Collective marks. A Certification Mark is essentially a mark guaranteeing the quality of the product. It certifies a good to be of the standards that are established and enforced by the producer of the good or the governmental standards or such. It may be any word, symbol or device used by the party other than the owner of the mark to certify some aspect of third parties' goods and services. In India, an "Agmark" is a certification mark used for agricultural products and an "ISI" mark on electrical appliances is a standard depicting the safety of the products.

A "Collective Trade Mark" or a "Collective Service Mark" is a mark adopted by a 'collective' for the use of its members alone. A collective includes associations, unions, cooperatives or any organised group. These collective marks help distinguish its goods from those of its peers. An example for the same would be the mark "Interflora" which is used globally by floral delivery services.

II. GEOGRAPHICAL INDICATIONS IN KERALA: AN ANALYSIS

Geographic Indications in Kerala: A Brief Overview

Kerala is a state rich in culture and heritage and that reflects in its traditional forms of art. Not just art, there are many traditionally important paraphernalia that is tied to the history of the lands. These goods have been manufactured for centuries by families and communities and they pass this knowledge from one generation to another. Mostly, such knowledge is guarded by the members of the community and these goods produced are unique to those places alone. For such products manufactured, a geographical indication tag is ideal to protect and publicise its authenticity and uniqueness. It acts as its unique selling point in the markets. GIs in Kerala are not just for such artistic goods manufactured, but also cover many agricultural products that have certain distinct features and criteria, that its peers manufactured/ produced commercially lack.

Nearly 31 products with Geographical Indications are registered in the state of Kerala. These cover various handicrafts products like Alleppey Coir, Aranmula Kannaadi, Paiyyanur Pavithramothiram and coconut shell and brass handiworks and various agricultural crops like varieties of rice such as Gandhakasala, Jeerakashaala, Navara, Matta and Pokkali and other

produce like Vazhakkulam Pineapple and Chengalikodan Nendran Bananas.

Thus, it can be observed that a wide variety of products come under the ambit of GIs in Kerala. All these products have their uniqueness and extremely specific and particular process of production i.e., it is not the geographic location alone that matters, the process of production is equally important, if not more. Handicrafts like Aranmula Kannadi have very special manufacturing methods that are viciously guarded within the family over generations.

Geographical Indications help such products get international acclaim for their distinctness and specific features. This indirectly results in more sales and accompanying fame and economic development. Tourism surrounding such localised products is a common phenomenon in developed nations like the Whiskey Trails of Scotland where the tourists are given a tour of how authentic Scotch Whiskey is made. Likewise, Kerala has immense potential to unlock in this arena. Thus, it is to be understood that geographical indications are not to authenticate goods alone, but can lead to much more development and impact if utilised right.

Geographical Indications in Kerala – An Examination of their Efficiency

The previous paragraph gave a crisp overview of the potential development that may take place owing to the efficient use of Geographical Indications. However, this is in direct proportion to the efficiency of the Geographical Indications.

Now, to discuss the efficiency of these GI tags, one must start from the basics and chalk out what is meant by the concept of efficiency in this context. Efficiency could denote different factors to different stakeholders. In the context of Geographical Indications, efficiency could broadly connote two aspects – One is the efficiency of the GI in protecting the product from fraudulent duplication and its efficiency in general protection offered to the good. Another is Efficiency from an economic perspective, i.e., whether the GI tag is efficient in bringing profits to the manufacturers and raising their standard of living as well as adding to the general economic development. Both these understandings of efficiency have very different implications and inferences and thus, must be analysed separately.

(A) GIs efficiency in protection of Intellectual Property Rights:

In this context, the efficiency of a geographical indication tag is measured by its ability to protect the intellectual property rights of the manufacturer. Furthermore, in this aspect, these GI tags have been fairly successful in their ability to protect the legitimate holders of rights.

The robust legal framework set up in the Geographical Indications of Goods (Registration and Protection) Act 1999 has proven to be adequate in tackling such misappropriation. However,

there are allegations that raise the validity of such claims.

Many a time, online platforms of e-commerce are filled with duplicates of these products with Geographical Indications. Such incidents demotivate the manufacturers who take great efforts to produce products of impeccable quality, only to be cheated by some faceless adversary stealing the reputation and goodwill of the products. This is a grave crisis faced by manufacturers, especially of GI tagged handicrafts. This severely hampers the efficiency of the GI in protecting the interests of producers.

In a specific incident, with regard to the varieties of rice grown, there have been instances of popular commercial brands misappropriating the titles of these products with GI tags and wrongfully claiming their products to be similar to those with GI tags. However, the complaints raised on such complaints did not warrant legal action under the enactment or for violation of intellectual property rights under any capacity. This dismal reality shows how even with the existence of a robust mechanism to prevent misappropriation, money and muscle power can still manage to stifle the system.

Thus, such incidents, though not rampant within the industry, hamper the wellbeing of the producers and plague both the consumers and the producers alike. Hence, it is important that a proactive approach is adopted by the manufacturers, consumers and the authorities alike, in order to offer better protection to the producers of goods. Only through such coordinated action can there be a maximum benefit to the producers of goods.

(B) GIs efficiency in profit-making:

In the economic or commercial sense of transactions, efficiency is plainly the ability to generate profits with the least effort/ investment from the side of the producer. In this context, one is to analyse whether the registration and obtaining of a geographical indication have bettered the manufacturer's economic position in any manner.

In this aspect, the findings are rather dismal. The profitmaking aspect of these business models is not very viable for multitudes of reasons. Firstly, these production processes involved cannot be updated to suit modern technology or greater efficiency in any manner. These processes are a traditional aspect of these goods and they constitute the fundamental components of these goods. Hence, any question of changing them to better-suited means is out of the question. Most of these processes are extremely labour intensive and thus, their quantity produced with rather limited in comparison with the amount of work put in for the same.

Secondly, competitive pricing is not possible in the sales of products with Geographical Indications. They have to be sold at a minimum price floor in order to cover the costs which

are fairly higher considering their labour intensive and specific process of manufacturing. In cases of products that are unique and have artistic value, such as handicrafts, their aesthetic value and uniqueness put it at a higher pedestal as a luxury good and it is easier to sell them at higher prices and generate profits. However, when it comes to agricultural and subsistence products like the varieties of rice, cardamom, banana and pineapple that have geographical indication tags, it is difficult to attract many customers to purchase the same owing to the variety of competitors products available to the consumers at lesser prices. Even though this regular agricultural produce and GI agricultural produce cannot be compared as such, to the common consumer, they are substitutable goods and there lies the problem.

Thus, unless there is the extensive promotion of products with geographical indications displaying their prowess over regular goods, the profitability of these goods is questionable.

(C) Case Study:

These inferences mentioned in the earlier paragraphs were drawn and empirically proven in a case study conducted by four researchers of the Kerala Agricultural University namely, Ms. Radhika A.M., Dr. K. Jesy Thomas, Dr. Anil Kuruvila and Mr. Rajesh K. Raju. They published their results in their paper titled “Assessing the Impact of Geographical Indications on Well-Being of Rice Farmers in Kerala”⁶

In this study, the rice farmers of Kerala cultivate varieties of rice namely Navara, Jeerakasala, Gandhakasala, Palakkadan Matta, Pokkali and Kaipad which have Geographical Indications protecting and restricting their production to these specific groups of farmers. The moot question addressed in this was whether the GI has any impact on the income and welfare of producer households. It was measured using the method of treatment effect analysis. For the purpose of this essay, the findings of the essay shall be highlighted in the following paragraphs without paying emphasis to the empirical technicalities of the study.

The findings of the study showed that these varieties of rice produced have varying yields and lead to different quantities of sales. The study highlighted which variety of rice produced gave the producer maximum net income and so on, but in general, the trend of profit-making was minimal. This demonstrated that the producers do not gain sizeable benefit from obtaining a GI from the registry for their products.

(D) Case Study – Suggestions Provided:

⁶ Radhika A M, Dr. K Jesy Thomas, Dr. Anil Kuruvila & Rajesh K Raju, *Assessing the Impact of Geographical Indications on Well-Being of Rice Farmers in Kerala*, 9(2) INTERNATIONAL JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 1 – 11 (2018).

The study put forth various suggestions aiming to raise the profits, welfare and economic standing of the producers. Firstly, it suggested that the group-farming method of cultivation as an option to bring more area under production. This suggestion aimed to maximise the profit of producers without compromising on the quality of production and maintaining at as per specifications laid down in the GI applications. Also, the study stated that there is ample scope for enhancing the income of farmers through value addition by diversifying the products. Moreover, it suggested coordinated action to take advantage of the GI status of the products by increased efforts in strategic marketing of these goods as premium branded organic produce for which higher prices can be charged.

The lack of facilities for value addition was identified as a problem in the case of GI rice. It is further suggested that processing units and storage units/facilities be established near production sites to improve access. Lastly, an effective institutional arrangement for the control, production and marketing of GI rice must be established and furthered in order to ensure maximum profitability in production and sale of the same and thereby raise efficiency.

III. CONCLUSION

From the various ideas raised in this essay, the inferences drawn and the empirical case studies cited, it can be surely stated that the efficiency of Geographical Indications for products in the state of Kerala is at a rather precarious situation where the protection of intellectual property rights is ensured to some extent. However, economic efficiency is thoroughly lacking in this regard and unless the legislation and authorities take proactive steps to rectify the same, in coordination with the consumers, manufacturers and all other stakeholders, these GI products may cease to exist due to the inability to subsist and make a livelihood with the same. Even though there is a historical value and cultural ethos connected to these GI processes and goods, hunger and survival. is the primal and universal guiding force for mankind. And if one is unable to subsist by engaging in these activities, they'd move away seeking greener pastures and these forms of art, and heritage activities would soon be a thing of the past.
