

GEOGRAPHICAL INDICATIONS IN INDIA

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ABSTRACT

The spread of pandemic Covid-2019 has sensitized all to connect to the roots of traditional knowledge especially in health sector and to preserve and protect all types of intellectual property in this digital era. The protection of intellectual property through laws will help to reap benefits in terms of economic growth, employment and income generation. Geographical Indication (GI) protection is granted to a group of manufacturers, who belong to a particular location, where the good was first originated. GIs identify the goods based on their place of origin and many factors like climate, topography, human work help to determine the nature of the GIs. The study aims to understand and analyze the role of geographical indications and its awareness among the people for achievement of social upliftment for rural development in India. GI preserves the traditional skills and knowledge and helps the next generations to learn and protect it. It leads to human development. GI is an effective tool for generation of rural employment and export incomes. The legal frame work needs to focus more on quality control standards for brand building in the international markets.

Key Words: *Geographical Indications, IPRs, economic growth, GI Act.*

INTRODUCTION

These are the times of growth of knowledge economy and protection of traditional knowledge. Market economies always face the problems of imitations, piracy and misuse of knowledge for the sake of more and more profits by the imitators. Intellectual property rights protection becomes necessary. India has developed a strong IPR system through IPR laws and has introduced many schemes like 'Make in India', 'Atmanirbhar Bharat'. It has become more imperative to protect the Intellectual property as well as our traditional knowledge and skills of various geographical regions. The spread of pandemic Covid-2019 has sensitized all to connect to the roots of traditional knowledge especially in health sector and to preserve and protect all types of intellectual property in this digital era. The protection of intellectual property through laws will help to reap benefits in terms of economic growth, employment and income generation. In this way, it will become easier to stop the copying and misuse of IPR.

UNDERSTANDING GEOGRAPHICAL INDICATION (GI)

Geographical Indication is different from other IPRs like Patent, Trademarks and designs. Geographical Indication Protection is granted to a group of manufacturers, who belong to a particular location, where the good was first originated. There are many determinants of GI products such as place of origin, climate, topography, human work of a particular geographical location). As per Section 2(1)(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999, "a geographical indication refers to an indication capable of identifying goods, including natural goods, agricultural goods, or manufactured goods, as manufactured or originating in a country's territory, or a locality or region within that territory, where a specific quality, reputation, or any other attribute of such good is particularly a characteristic to its geographical origin. In the case of manufactured goods, one of the activities corresponding to the processing, production, or preparation of goods, should take place in the territory, region, or locality". Indian GI Act came into force with effect from 15 September 2003.

Geographical indications (GIs) are one of the significant intellectual property rights. India has got a larger number of GI tagged products now. India has potential gains and advantageous situation due to the rich cultural heritage and traditional skills in various regions like Kashmir, Punjab, Kerala, Haryana.

Therefore, it is pertinent to understand the role and benefits of GI and to sensitize the people.

It has to be understood that distribution of the gains accruing from the GI status of a product must trickle down to actual producers and artisans. This requires an effective institutional mechanism and legal framework.

OBJECTIVES

1. To understand the legal framework and role of GI in the Indian context. 2. To find out the challenges regarding the GI in India.

The present paper aims to understand the role and importance of geographical indications in India and its awareness among the people for achievement of social upliftment for rural development.

The paper is divided into following parts

Section 1 deals with the legal framework of GI in India.

Section 2 deals with the role of GI in Indian context.

Section 3 deals with challenges in the way of GIs in India.

RESEARCH METHODOLOGY

This is a descriptive research paper. Concepts of GI, legal aspects and various issues related with GI have been analyzed. This is a qualitative research based on secondary source of information like GI Act and IPR provisions in India.

SECTION I

A geographical indication (GI) is an indication, whether in the form of a name or sign, used on goods that have a specific geographical origin and possesses qualities or a reputation that are due to the place of origin. Geographical indications are valuable rights, which if not adequately protected, can be misused by dishonest commercial operators to the detriment of both the consumers and the legitimate users. It is essential to understand the concept of GI in its true spirit. All the producers of a product with a GI tag enjoy exclusive commercial rights to their geographical indications. Yet, if someone else violates their rights, it is possible to initiate an infringement action. To avert such a situation, registration of geographical indication is highly recommended. The certificate of registration is the prima facie evidence of its validity and no further proof of the same is required. Geographical Indications of Goods are defined as that aspect of industrial property, which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. GI tag shows an assurance of quality and distinctiveness. GIs are covered under Articles 22 to 24 of Trade-Related Intellectual Property Rights Agreement. Geographical Indications help the genuine producers to avail optimum cost for their premium goods even in the competitive market. It prevents false practices of generating and selling low-quality products. It ensures the customers regarding the best quality of products.

Therefore, GIs belongs to a specific bio-cultural region as a collective mark and its collectiveness makes it unique and different from copyrights, trademarks and patents. GI is applicable to the original producers of the products like food stuffs, handicrafts, manufactured items or other agri-products. It can be summed up that following are the main ways to protect geographical indication:

- sui generis systems (i.e. special regimes of protection);
- using collective or certification marks; and
- methods focusing on business practices, including administrative product approval schemes.



LEGAL PROVISIONS FOR GI

Let's have a look on legal provisions on GI. GI tag is the abbreviation of Geographical Indications tags in India. It came into force with effect from 15th September 2003 To prevent unauthorized persons from misusing geographical indications this Act was enacted which would protect consumers from deception and would add to the economic prosperity of the producers and would also promoted goods bearing Indian geographical indications in the export market.

The Geographical Indications of Goods (Registration and Protection) Bill, 1999 was introduced in the Parliament and main provisions of the Act are as under:

1. Provision for the establishment of a Geographical indications Registry;
2. Provisions for the maintenance of a Register of Geographical Indications in two parts - Part A and Part B and use of computers, etc., for maintenance of such registered geographical indications, Part B will contain particulars of registered authorized users;

3. Registration of geographical indications of goods in specified classes;
4. Prohibition of registration of certain geographical indications;
5. provisions for framing of rules by C for filling of application, its contents and matters relating to substantive examination of geographical indication applications;
6. Compulsory advertisement of all accepted geographical indication applications and for inviting objections;
7. Registration of authorized users of registered geographical indications and providing infringement action either by a registered proprietor or an authorized user;
8. Provisions for the renewal, rectification and restoration of geographical indications and authorized user;
9. Provisions for higher level of protection for notified goods;
10. Prohibition of assignment, etc. of a geographical indication as it is a public property;
11. Prohibition of registration of geographical indication as a trade mark;
12. appeal against Registrar's decisions would lie to the Intellectual Property Appellate Board established under the Trade Marks legislation;
13. Provision relating to offences and penalties;
14. Provision detailing the effects of registration and the rights conferred by registration;
15. Provisions for reciprocity, powers of the Registrar, maintenance of index, protection of homonymous geographical indications, etc.
16. Conditions for Registration: The Act provides for the appointment of a Registrar of Geographical Indications and other subordinate officers for smooth administration. The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999 shall be the Registrar of Geographical Indications, who will be assisted by necessary additional officers and staff in the work related to administration.
17. Geographical indication of goods can be registered in respect of any or all the goods comprised in a prescribed class of goods and in respect of a definite territory of a country or a region or locality. It is also provided that the classification shall, far as possible, conform to the International classification of goods. It further provides that where any dispute arises regarding classification of goods or the determination of the definite area, it shall be determined by the Registrar whose decision in the matter shall be final.
18. The registration of a geographical indication and the validity of registration of an authorized user for a period of ten years. Both the registration can be renewed from time to time.
19. The Act also deals with infringement of registered geographical indications by a person who, not being an authorized user thereof, (i) uses such an indication on the goods or suggests that such goods originate in some other geographical area other than the true place of origin of the goods which misleads the public, or (ii) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication, or (iii) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represent to the public that the goods originate in the region, territory or locality in respect of which such registered geographical indication relates. It also provides that the Central Government may by notification in the Official Gazette provide for additional protection for certain goods or classes of goods which are notified. It further provides that once a geographical indication is lawfully acquired further dealing in such goods shall not constitute an infringement unless the goods are impaired after they have been put in the market.
20. The geographical indication once registered shall prima facie be evidence of the validity of the registration and the certificate of registration shall be admissible in all courts and before the Appellate Board without further proof or production of the original, it also provides that nothing in the said section shall be deemed to affect the right of action in of an unregistered geographical indication.
21. This Act prohibits any assignment, transmission, licensing, pledge, mortgage or any such other agreement of geographical indication. However, on the death of an unauthorized user his successor in title can be brought on record.

In short, GI Act is a strong tool for the benefits of holders of GI tags.

REGISTRATION PROCEDURE OF GIS IN INDIA

Section 11(2) of the GI Act specifies the “documentation requirements for applying for a GI in India. Section 32(1) of the GI Rules replicates these provisions and, in addition, stipulates a few more documentation requirements that include, among other things, the following: a statement as to how the GI serves to designate the goods as originating from the concerned geographical territory in respect of specific quality, reputation or other characteristics that are due exclusively or essentially to the geographical area...”.

The need is to make people aware of all the legal provisions for GI and the procedure of applying for GI tags. This will help to stop the misuse of GI and benefit the actual producers.

SECTION II

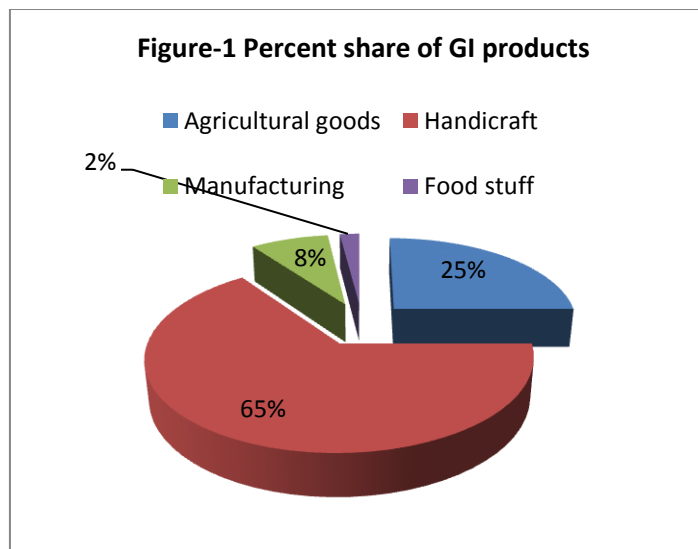
GI can play the role of economic empowerment and human development because GI safeguards the unauthorized use of the product and extends collective monopoly right to the producer of a region. It empowers the registered producers. It promotes economic prosperity. GI preserves the traditional skills and knowledge and helps the next generations to learn and protect it. It leads to human development. IPR regime including GI protection provides a framework for the benefit of traditional knowledge and skills of a particular region. This is instrumental in recognition of skills and their protection, preservation and spread of ancient and traditional knowledge and skills, promotion of welfare and generation of employment. GI tags can lead to boost the external trade as well. The protection of geographical indications promotes the economic prosperity of a particular region through gains to the manufacturers and producers. GI adds the element of commercialization to the traditional products. Proper marketing strategies may lead to spillover effects of GI tagged products. This will boost the rate of economic growth in that region and other regions as well. This promotes investments and attracts more investments due to higher rates of returns on products with GI tags. It's like brand building of products. The registered holder of the GI tag has all the legal rights to prevent anyone not belonging to the GI region from using their GI tags. The owners can also initiate legal proceedings against the unauthorized user to save their reputation from being damaged. It prevents the unauthorized use. The prime purpose of registering a geographical indication is to seek protection for specific products produced in a particular geographical region, which further encourages and motivates the marketers to expand their business at a global level. Geographical indications generates more demand for GI tagged goods abroad and leads to promotion of exports and foreign exchange earnings. GI plays an important role in commercialization of traditional skills and knowledge and products. This will help to reap the profits and preservation and growth of our traditional knowledge and skills. These are not owned by an individual rather by a particular region. It encourages people in rural areas to raise their earnings.

Table 1 and Figure 1 show the comparative share of GI products in the main categories of products like Agri- goods, handicrafts, and Food stuff. GI gives a unique identification and global reputation to particular regions and the products. This attracts investors, consumers, and tourists from within and outside the country. In India, the Dept. of Industrial policy and promotion is the apex body and works under Ministry of Commerce and Industry for GI.

Table 1 Comparative Share of GI products

Item	Percent share
Agricultural goods	25
Handicraft	65
Manufacturing	8
Food stuff	2
Total	100

Source: GI Registry of India



SECTION III

SCENARIO OF GI IN INDIA

There are a lot of benefits that display the importance of geographical indication. Now, before going through those merits, let's get familiar with some other facts relating to GI. The focus of the states and the community needs to shift from mere certification for the sake of region and instead divert all resources towards active promotion of the product and its respective industry. GI in Indian economy plays the role of an engine of development for the rural sector. GI tagging extends the protection to local/regional production especially in the small villages and tribal areas. GI has helped to generate more employment opportunities to rural and tribal people. GI ensures the quality of the products like food items, manufactured items, textiles, or other agricultural products and handicrafts. GI is different from other IPR forms like patent and Trademarks. GI is less popular. The initiatives of Government of India like 'make in India' can get boost with the help of GI tags. Gucci Mushroom from Jammu and Kashmir is in the news as GI Tag is sought for it. It belongs to the agriculture sector; while there are a few others from the handicraft sector for which GI tags are sought for. Those are – Basohli Pashmina & Painting, Tweed fabric, Loi blankets from Kishtwar and Chikri craft.

Glimpses of GI tags in India

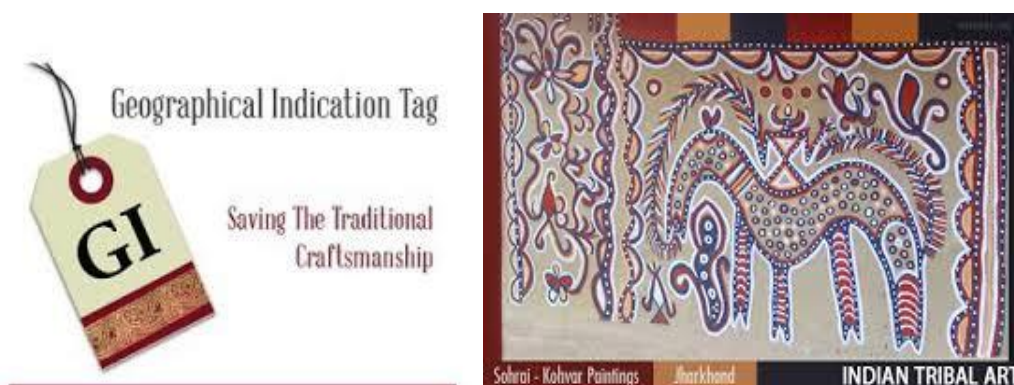


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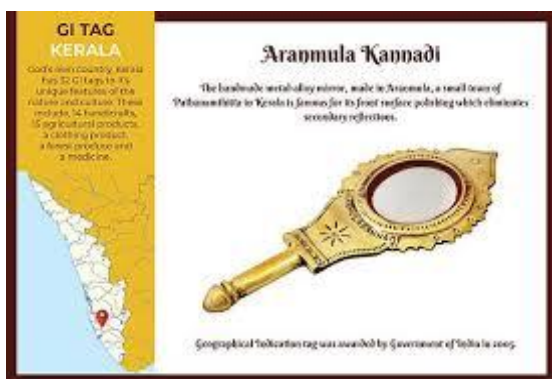


Image source: www.postcardsville.com

Image source: www.indianexpress.com

Darjeeling Tea was the first Indian product to get a GI tag. Government has allotted GI Tags to Kashmir Saffron and Manipuri Black Rice recently. GI tags to 4 new products from 3 different states in August 2019.

1. PalaniPanchamirtham in Palani Town, Tamil Nadu
2. Tawlhlohpuan from Mizoram
3. MizoPuanchei from Mizoram
4. Tirur Betel leaf from Kerala

List of GI Tags in India

State	Number	Important GI tag items
Andhra Pradesh	19	Leather Puppetry, Guntur Chillies, BandarLaddu
Assam	10	MugaSilk, Tezpur Litchi
Arunachal Pradesh	02	Orange, Mishmi textiles
Bihar	13	Madhubani Paintings, Bhagalpur silk, shahiLitchi, Sujini embroidery logo
Chhattisgarh	02	Champa silk sarees, Jeeraphool, Bastar Iron craft
Goa	15	Fenni, Kholachilki
Gujarat	02	Girkesar mango, Patanpatola, Kutch embroidery, Rajkot patola
Haryana	09	Basmati rice, Phulkari
Himachal Pradesh	09	Kullu Shawls, Kangra Tea
Jammu Kashmir	09	Kashmir walnuts wood carvings, Kani shawls, Pashmina
Jharkhand	01	Sohrai-khivar paintings
Karnataka	48	Mysore Agarbattis, MPak, Bangalore rose onion, udapisarees, Coorg green cardamom
Kerala	32	Brass coconut shell craft embroidered, central Travancore Jaggery, Pokkali Rice, kaipad Rice, Tirur betel leaf
Madhya Pradesh	12	Chanderi fabric and sarees, Mahshwarsarees
Maharashtra	34	Solapurichaddar, Nagpur orange, Nashik valley Wine, nashik grapes, Wasli Paintings, Sangli Raisins, Jalgaon banana
Manipur	05	Kachai Lemon, ChakHao
Meghalaya	02	Khasi Mandarin, MemongNarang
Mizoram	06	Paundum, Hmaram, MizoPuanchei
Nagaland	03	Naga Mircha, Naga Tree tomato
Odisha	18	GopalpurTussar fabric, Gaujamkewada, Hanaspurisarees, Odisharasagolla
Punjab	02	Pulkari
Rajasthan	15	Phulkari, Kota Doria, Kathputllis of rajasthan, Pokaran pottery
TamilNadu	39	Salem Fabric, Kancheepuram Silk, Malabar pepper, Dindigul locks, Tanjavur Pith works

Telngana		PochampallyIkat, Nirmal paintings, Warrangakdurries,TeliaRumal
Tripura	01	Tripura queen pine apples
Uttar Pradesh	32	Banaras Brocades and Sares, Agra durrie, kannoj perfumes, Sharanpur wood craft, Agra petha, basmati, Gorakpurterracotta,Varanasi glass beads
Uttrakhand	01	Basmati
West Bengal	21	Maldafazli mango, Mihidana,Bengalpattachitra, Sitabhog

Source: wahgi.ncog.gov.in



Under the latest policies of government of India, Vocal for Local, AtmaNirbhar Bharat, Tribal Cooperation Marketing Development Federation (TRIFED) has identified 75 tribal products of tribal origin that be given GI tags under GI Act. 75 products have been selected from 20 states. 37products are from North East states, 7 from Jharkhand and 6 from MP.

CHALLENGES AHEAD

An effective implementation and sensitization of GI among people are the future challenges in India. Strong legal framework which could stop the copying of GI tags of India by domestic and international competitors is highly required. There are many instances of imitation of GI tags like Darjeeling tea, Banarasisarees being copied by global and indigenous traders.

- **Quality issues:** GI Act lays lesser emphasis on the quality monitoring issues. Only Rules 32(6)g and Form GI-1 are the only provisions under GI Act to keep a check on quality of the products like food stuffs, handicrafts etc. It's a great challenge to provide tough legal provisions to ensure the hallmark of GI tagged products. To exemplify, lets study the case of Muga Silk which is unique variety of golden-colored, natural silk fabric of Assam. It was sanctioned GI tag ignoring the quality control standards in July 2006. But now the state government started the mechanism of inspection involving the issues of geographical origin and other related issues.
- **Imitation of the products:** Poor-quality imitations are also being produced within India, particularly in the Surat region of the Indian state of Gujarat. Semi pashmina/Silk-pashmina is the close substitutes of original pashmina/Kashmiri shawls.
- **Enforcement of GIs:** Effective enforcement of GI Act is itself a big challenge. The reason is multiple outlets for the sale of such products. The supervision and screening of such outlets is a tough task in the domestic and foreign markets.
- **Image-Creation across the globe:** Commercialization through brand building and image creation in the minds of consumers is also a challenge. For this, promotional marketing strategies are needed which focus on the psychology of the consumers within the country and outside the country.

GI is an effective source of rural development in India. Lets us understand this with the case instance of handloom weaving which has been the source of livelihood. Handlooms are a typical case of traditional and ancestral skill and knowledge but it suffered with the advent of power looms. In India handloom sector enjoys its own distinctiveness across various states/regions in India. Now GI tags can revive their existence and make handloom sector an engine of rural employment and development.

Another interesting case is from TTD. TirumalaTirupatiDevsthanams (TTD) got GI tag for TirupatiLaddu in September 2009 to prevent the local hawkers to make these and sell in the local markets. It was in great controversy because it was against the section 9(d) of GI Act. More over GI tags are for the economic prosperity of a particular geographical region. Critics opined that TTD is a single entity and does not represent the entire region and the sanctioning authority has flouted the law of GI. There are cases of misuse of the brand name or GI tags. It was alleged that Japanese, French and Russian companies are misusing the names of Darjeeling and Darjeeling Logo and GI tag.

FINDINGS

GI is an effective tool for generation of rural employment and export incomes. The legal frame work needs to focus more on quality control standards for brand building in the international markets. GI is not much popular in India. Therefore, there is need is to spread awareness among people.

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