

Protection of Geographical Indications in India: An Emerging Form of Intellectual Property

Abstract

"Far better to live your own life imperfectly than to live another's perfectly" – Bhagavad Gita.

In India every region has some goods with name and fame. Developing countries like India may grow their export by products bearing Geographical Indication tag. Developing countries are not well known for invention but known for their culture and tradition and natural resources. Geographical Indication is an important category of Intellectual property. The importance on Geographical Indication in India grown from 2003 when Darziling Tea was first registered in Chennai Registry. More than 340 goods have been registered in India as geographical indication. Many goods in India bears reputation and quality from centuries. These goods may be a source of economic growth. This article covers the development of concept of geographical indication in India. This article also examines the existing law on geographical indication in India.

Keywords: Geographical Indications, TRIPS, India, IPR.

Introduction

Geographical Indication is an important category of Intellectual property. It may be a name, symbol and image viz a town, region and country. The use of a Geographical Indication may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin. Geographical Indications is primarily associated with wines and spirits (e.g., "Scotch whiskey", "Champagne"). But now they can apply to wide varieties of other goods such as "Darjeeling Tea", "Pashmina", or "Tirupati Laddu", scotch watch etc.,¹

Protection of Geographical Indication is most essential for the commercial advantage to the indicated region. It is also important to the country where the product is located. Protection of geographical indication is useful to create employment in rural India. It provides Protection to the region's agricultural, artisanal and handicraft heritage. Geographical indication also protects consumers from deceptive geographical misdescriptions of goods.²

The adoption of the Agreement on Trade-Related Aspects on Intellectual Property Rights³ (TRIPs) in 1994 marked as an important victory because it established general minimum standards for Geographical Indication protection for all of its signatories. TRIPs required all signatories to establish minimal protections for Geographical Indication through their national laws. In addition to this "minimal" protection, TRIPs also called for member countries to provide extra protection for Geographical Indication that identify wines and spirits. Last, but not least, member countries also had to agree to TRIPs' "built-in agenda" to take part in future negotiations that would expand this enhanced protection for wines and spirits to other products. To accommodate "non-Geographical Indication oriented countries," TRIPs allowed for certain exceptions, particularly with respect to words that were considered generic on their soil.⁴

Aim of Study

Intellectual property is more important today as it was earlier. Countries like India need to focus its biodiversity and goods need Geographical Indication tag. Geographical Indication is an emerging intellectual actual property. Countries like India need to protect its good bearing reputation from centuries and its biodiversities. This study also aim

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to highlight the issues important to know everyone in India concerning with the Geographical Indication.

Origin and History of Geographical Indications

The first law on Geographical Indications was passed in France in 18th century. But the main contribution was given by the bilateral agreements. The origin may trace back to the Paris convention 1883. After the Paris there are a number of bilateral conventions. Among those international agreements are the followings:

The Paris Conventions for the Protections of Industrial Property (1883)

The Paris convention, the first international treaty for the protection of industrial property, was signed on 20th March 1883. Article 1 (2) provides that the treaty applies to "indications of source or appellation of origin". The Madrid Agreement for the Repression of False or Deceptive Indications of Sources of Goods was signed in 1891. The agreement not only prevents the use of "false" indications of source, but also prohibits the indications of source that are "deceptive," i.e. literally true but nevertheless misleading.⁵

The range of products for which stricter protection of geographical indication and the exception for generic names and conflict between geographical indications and trademarks registered in the past are the most contentious areas in the geographical indication. Paris convention prohibits false indication. All goods bearing a false or deceptive indication of source by country or place of origin must be seized.⁶

TRIPS Agreement (1994) Section 3 of the TRIPS Agreement

Which is concerned with Geographical Indications covers six topics: Definition and scope of a geographical indication; Minimum standards and common protection provided for geographical indications corresponding to all kinds of products; the interrelationship between trademarks and indications of origin; Additional protection for geographical indications for wines and spirits; Negotiation and review of section III on geographical indications; and (vi) Exceptions to the protection of geographical indications.

Article 22 defines geographical indications 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 geographical origin.*⁷

Article 22, 23 and 24 are relating to the concern protection of Geographical Indications. TRIPS do not establish a uniform system of Geographical Indication Protection. Rather, it establishes minimum standards for legal protection to which each signatory must adhere as part of its own internal legislation. TRIPS provides two level of protection for Geographical Indications, a higher level of protection for Wines and Spirits in Article 23, and a lower level for all other products in Article 22.⁸

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Law on Geographical Indications in India

Geographical Indication is a new concept in India. India being a member of TRIPS, enacted the protection of Geographical Indication Act, 1999 which came into force on 14-09-2003. Since TRIPS, India and other countries are realizing the economic implications of protecting Geographical Indications, particularly for agriculture and handicraft products. Therefore, numbers of products are awaiting legal protection in India and foreign countries. Due to their geographical location found in India, India has a huge variety of goods having their quality for registration as Geographical Indications i.e. Darjeeling Tea, Pochampalli Ikat, Mysore Silk, Kullu Shawl, Kashmiri Pashmina, Bikanery Bhujia, Firojabad Glass, Nagpur Orange and Punjabi Jutti.⁹

According to the source¹⁰, around 250 goods have been registered as Geographical Indication in India. The report revealed that, approximately ten thousands of goods in India needs protection. The protection to this vast variety can only be possible through the registration of these goods. Through registration of goods as Geographical Indications, we may provide protection to the producers of registered goods in a better manner from unauthorized use of goods.¹¹

The two common remedies are available to the producers of registered goods viz civil remedy by way of filing civil suit and criminal remedy by filing criminal complaint. Accompanied with the above remedies for registered goods, there is one more remedies available to unregistered goods i.e. an action for passing-off against infringement. Thus, according to the above remedy available in India, registration is not condition precedent in all cases. Registration affirms civil and criminal remedies to the producers. Registration of goods as Geographical Indications is necessary for the purpose of validity and proof of the goods. It affirms the quality and geographical location of goods and signifies that the equality is attributed in the geographical location. Registration in itself a proof and no further proof is required for the goods.¹²

Unlike other intellectual property, registration of Geographical Indication is perennial but renewal of registration after every ten years is mandatory for continuance. In India, the remedies for the protection of rights of producers in India are given under the Geographical Indication of Goods Act, 1999. According to the Geographical Indication Act the unauthorized users shall be liable for infringement for a term of not less than six months and the punishment may extent up to three years. The Act also provides provisions for fine, the fine is in addition to the punishment which shall not be less than rupees 50000 but which can extent up to rupees 200000.¹³

In *Khodey Distilleries Limited vs. The Scotch whisky Association*,¹⁴ it was held by the then justice R JayasimhaBabu that the use of the word 'scot' in relation to a whisky, which is not Scotch whisky is likely to lead the public to think that such whisky is Scotch whisky. The adoption of a name which indicates the geographical region even when the

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goods have no connection with the place is itself dishonest.¹⁵

Geographical Indication and Trade Mark

Geographical indication and trade mark are the two different parts of intellectual property, are so connected to each other that there is sometimes confusion in the mind of the consumers regarding the value and meaning of both. But both are different from each other. The Trade Mark and Geographical Indication have a fundamental conflict regarding their protection. Conflict between the two must be decided on the bases of priority.¹⁶

We can define and distinguish them in the following manner: Geographical Indication identifies the specific Geographical Origin of a product, quality, reputation and other characteristics. It usually consists of the name of the place of the origin of the product. For example, food products sometimes have qualities that derives from their place of production and local

environmental factor. The Geographical Indication prevents unauthorized parties from using a protected Geographical Indications for product not from that region or from misleading the public as to the true origin of the product. Like Darjeeling Tea, Sholapur chaddar, BanarasiSari etc. Trademark provide exclusive rights to use distinctive signs, such as symbols, colors, letters, shapes or name to identify the producers of a product and protects its associated reputation. In order to be eligible for protection a mark must be distinctive of the proprietor's goods or service. The distinctive sign include arbitrary or fanciful designations, name, existing and invented words, slogans, devices, numbers and there combinations, letters, pictures and symbols, labels etc. For example, Apple, IBM, Mc Donald etc.¹⁷

The two species of intellectual property may be distinguished as in the following manners:

Ground	Geographical Indication	Trademark
Holder	Producers	Company
Legal function	Geographical Indications are products distinctive signs: they identify a product as having originated in a specific place. It perform a quality function.	Trademark distinguish a product as proceeding from a specific company. It perform a distinctive function.
Composition	Geographical Indications are, usually, composed by a geographical name (region, locality or, very exceptionally, a country).	Trademark may consists of any signs capable of being represented geographically, particular words, including personal name, designs, letters, shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.
Judicial nature- communal property	Geographical indications are not the property of one single person, association or public institutions. It is collection of person who are owner of geographical indication.	Trademark is the exclusive property of the owner.

As is indicated by the discussion above, a geographical indication is a generic description which is applicable to by all traders in a particular geographic location to goods which emanate from that location. A trademark is a sign which distinguishes the products of a specific trader from those of its competitors. Thus it is not likely to be descriptive and it cannot be generic. The right to protect a geographical indication from wrongful appropriation is enjoyed by all traders from the particular geographical location, whereas a trademark is protected from wrongful appropriation at the suit of the registered proprietor of that mark. Generally, geographic indications are monitored and protected by producer associations from the relevant region. Unlike trademarks, geographical indications are not freely transferrable from one owner to another, as a user must have the appropriate association with the geographical region and must comply with the production practices of that region.¹⁸

Impact and scope of Geographical Indications

Among all the different types of intellectual property rights, Geographical Indication may be more amenable to the particular context of developing

countries. Geographical Indications may especially facilitate protection of the collective rights of the rural and indigenous communities in their indigenous knowledge, ensuring that the entire community which has preserved the knowledge and has passed it on with incremental refinement over generations, stand to benefit from the knowledge and that this is not locked up as the private property of one individual. Other advantages of Geographical Indications are that the knowledge remains in the public domain, the scope of protection is limited to controlling the class and/or location of people who may use the protected indication and the rights can potentially be held in perpetuity as long as the product-place link is maintained. Also, holders of a Geographical Indication do not have the right to assign the indication, thus, preventing its transfer to non-local producers. Evidence on the socio-economic impacts of Geographical Indications in the Indian context are, however, limited although anecdotal evidence suggests that Geographical Indications have significant implications for producers in developed and developing countries.¹⁹ Interestingly, the collectivenature of Geographical Indications also

brings to the fore significant collective action related problems across various stages of organization and governance. For example, a group of producers may take the initiative in the Geographical Indication registration process, while others not willing to join initially may join later thereby attempting to free-ride on the efforts of the forerunners. In India, there are many Geographical Indications that are registered in the names of some central or state government departments or bodies, yet there is no homogeneity among those initiatives and involvements across states. A number of studies have also found that Geographical Indications could lead to exclusion of many from enjoying the benefits.²⁰

Geographical indications are generally traditional products, produced by rural communities over generations that have gained a reputation on the markets for their specific qualities. The recognition and protection on the markets of the names of these products allows the community of producers to invest in maintaining the specific qualities of the product on which the reputation is built. It may also allow them to invest together in promoting the reputation of the product. Observed rural development impacts of geographical indications are: - a structuring of the supply chain around a common product reputation, - increased and stabilized prices for the Geographical Indication product, - added value distributed through all the levels of the supply chain, - preservation of the natural resources on which the product is based, - preservation of traditions and traditional know-how, - linkages to tourism. None of these impacts are guaranteed and they depend on numerous factors, including the process of developing the geographical indications, the rules for using the Geographical Indication (or Code of Practice), the inclusiveness and quality of decision making of the Geographical Indication producers association and quality of the marketing efforts undertaken.²¹

The economics of geographical indications in developing countries is more complicated and multifaceted. They view the GI system as being one of an international market access dimension. Two arguments should be added here: (i) there are middle-income developing countries like Brazil, China or India with huge domestic markets. Geographical indications may be an instrument here to successfully gain market shares domestically; (ii) a recent study in the Journal of Rural Studies (Tregear et al (2007)) showed that cooperation of producers under a protected GI system is key to the system's success.²²

Suggestions and Conclusion

Geographical Indication have clear and positive characteristics that can make the goods of a particular geographical origin a valuable asset. Geographical Indication is beneficial to the consumers by providing quality assurance and specific character. Geographical Indication protects valuable property names, maintaining standard, price premium and fair competition. The Geographical Indication (Protection and Registration) Act, 1999 confers legal protection to Geographical Indication in India. This brings more demand and profit to the producers. It provides legal protection to the Indian Geographical Indications in

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other countries as well, which in turn boost export. It promotes economic prosperity of producers of goods in the Geographical territories. World leaders especially European Union and America are still in conflict for the common register of Geographical Indication. Once a negation come in the favor of common register, it will be more effective to protect the product of India and other Asian countries.

Recently, the Geographical Indication Registry, Intellectual Property Buildings, G.S.T. Road, Guindy, Chennai, announces to award rupees one lakh to the person contributing in the registration of goods and making awareness regarding the law of Geographical Indications²³. This effort of government is appreciable but this should be starting and the Government need to keep on going towards the promotions of Geographical Indications. It is time to organize seminars throughout India and make awareness about the significance of the Geographical Indications. As a war is going between the European Union and United State of America regarding the Common register for the Geographical Indications, the developing countries need to take part in the war of words and try to convince the world for a common register. "अयं बन्धुर्येति गणनालघुचेतसाम्। उदारचरितानां तु वसुधैव कुटुम्बकम्।" The statement is not just about peace and harmony among the societies in the world, but also about a truth that somehow the whole world has to live together like a family.

Endnotes

1. Rangnekar Dr. Dwijen, "Geographical Indications: A Review of Proposal at the TRIPS Council: Extending Article 23 to products other than Wine and Spirit", ICTSD Issue Paper No 4, 2003 at p11.
2. Ibid.
3. Agreement on Trade-Related Aspects of Intellectual Property Right, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125, 1197 (1994) [hereinafter TRIPS Agreement], available at https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.
4. Calboli Irene, "Expanding the Protection of Geographical Indications of Origin under TRIPS: Old Debate and New Opportunity?" Marquette International Property Law Review 181(2006), at 2.
5. Revesz John, "Trade Related Aspect of Intellectual Property right", 1999, Productivity Commission Staff Research Paper, AGPS, Canberra, at p 102.
6. Ibid.
7. Blakeney Micheael, "Geographical Indication and TRIPS" University of Western Australia-Faculty of Law Research Paper No. 2012-09, at 2.
8. Prutzman L. Donald, "Geographical Indications", International Law Practicum, Vol. 18, No. 1 2005, at 31.
9. Nair MD, "TRIPS, WTO and IPR: Geographical Indication Protection in India", Journal of

E: ISSN NO.: 2455-0817

- Intellectual Property Right Vol. 16, 2011, at p 429-430.*
10. Geographical indication registry of India, http://ipindia.nic.in/girindia/treasures_protected/registered_GI_30March2015.pdf.
 11. *Ibid.*
 12. Das Kasturi, "Protection of Indias Geographical Indications: An Overview of the Indian Legislation and the TRIPS Scenario", 2006, at p 3-5, available on https://www.researchgate.net/publication/265107121_Protection_of_India's_'Geographical_Indications'_An_Overview_of_the_Indian_Legislation_and_the_TRIPS_Scenario, visited on 10/05/2019.
 13. *Ibid.*
 14. AIR 1999 Mad 274.
 15. *Ibid.*
 16. Singh Amit, "Interface and Synergies between IPR and Consumer Protection Law in India: An Analysis", *Journal of IPR Vol. 20* , 2015, at p 208.

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17. Rangnagar Dr. Dwijen, "The Socio-Economics of Geographical Indications", *A Review of Empirical Evidence from Europe*, 2003, at p 3-6.
18. *Supra Note 4*, at 3.
19. Jena R. Pradyot, "Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector", *development political review volume 28*, 2010, at 7.
20. *The Protection of Geographical Indications in India: Issue and Challenges*. www.teriin.org/div/briefing_paper_GI.pdf
21. Bramley Cerkia, Bienabe Estelle and Kirsten Johann, "The Economics of Geographical Indication: Towards a Conceptual Framework for Geographical Indication Research in Dveloping Countries", at p 109-120.
22. *Ibid* at p. 148.
23. *National Intellectual property Award 2015 in Geographical Indications*, available at www.ipindia.nic.in/iponew/IP_Awards_Brochure_02March2015.pdf.