

GEOGRAPHICAL INDICATIONS IN INDIA: MAJOR ISSUES AND CHALLENGES

**A Dissertation submitted to the National University Of Advanced Legal
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L.L.M Degree in International Trade Law**



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DECLARATION

I declare that this Dissertation titled “**GEOGRAPHICAL INDICATIONS IN INDIA: MAJOR ISSUES AND CHALLENGES**” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfillment of the requirement for the award of Degree of Master of Laws in International Trade Law, under the guidance and supervision of Dr. Asif E, Assistant Professor, NUALS and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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ASHWATHI T M

PREFACE

A geographical indication (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. Geographical indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products. Geographical Indications are altogether rising as a significant intellectual property right. Geographical Indications are today considered the same number of scholarly resources corresponding to an assortment of merchandise. The idea of geographical indication has its inception in nineteenth-century in Europe and has significantly advanced from that point forward. The current universal system is set down in Article 22 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Conventional strategies, practices and skill to deliver these products related to land signs. As India a signatory to the TRIPS agreement, it is the duty to protect GI in India. As a result, India enacted sui-generis legislation called Geographical Indications of Goods (Registration and Protection) Act, 1999. The main objectives of this act are to protect the interest of producers of such goods. Another object is to prevent unauthorized use of GI and to protect consumers from deception and also to promote the goods having GI in the export market.

The main objective of the study is to comprehend the different issues and challenges faced by the producers of goods having GI in India. The first part of the dissertation contains details regarding the concepts of GI. Also defines various terms relating to GI. The second part of this study analysis the evolution of legal protection of GI at the international level. In addition to that, this part analyses the TRIPS Agreement and the provisions concerning GI. Also, it examines the detail provision for GI. The third part of this study emphasis on the law relating to GI in India. This study also covered the provisions of Geographical Indication of Goods (Registration and Protection) Act in detail. The concluding part of the dissertation attempts to identify the various issues and challenges faced by the producers of GI. The last part put forward some suggestions in order to overcome the issues.

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- *Scotch Whisky Association v Pravara Sahakar Karkhana*, AIR 1992 Bom 294, 1992 (2) BomCR 219

ABBREVIATIONS

AIR	All India Reporter
AO	Appellation of Origin or <i>Appellation d'Origine</i>
Art.	Article
Del	Delhi
EC	European Communities
EEC	European Economic Community
EU	European Union
GATT	General Agreement on Tariff and Trade
GI	Geographical Indications
IPR	Intellectual Property Rights
IS	Indication of Source
ITO	International Trade Organization
ICTSD	International Centre for Sustainable Development
TRIPS	Trade-Related Intellectual Property Rights
UN	United Nations
USA	United States of America
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

CHAPTER 1 INTRODUCTION

*"I do not feel obliged to believe that the same God who has endowed us with sense, reason, and intellect has intended us to forgo their use."*¹

- Galileo Galilee

Today intellectual property occupies a prominent position in the economic and social life of society. The licensed innovation incorporates the products or manifestations of the psyche. The intellectual property laws target shielding the interests of makers by conceding them certain time-constrained rights to control the utilization made of those item benefits. The significance of the intellectual property was first perceived in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both settlements are controlled by the World Intellectual Property Organization (WIPO). Intellectual Property Rights can be comprehensively isolated into two classifications as industrial property rights and copyright, contingent on the instance of comprehension and sort of utilization. Industrial Property Rights allude to the testing of directly over issues that will be helpful for enterprises and trade. Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications. Thus, the intellectual property framework helps find some harmony between the interests of innovators and the public enthusiasm, giving a condition in which imagination, what is more, development can prosper, for the advantage of all. In the present growing worldwide economy, Geographical Indications are altogether rising as a significant intellectual property right. Geographical Indications are today considered the same number of scholarly resources corresponding to an assortment of merchandise. Each general public builds up a specific information base over a significant stretch of time. Advancement of such information base owes its source to the geological condition and human connections and turns into a significant piece of their economy and custom.

A geographical indication goes about as an instrument that assists makers with separating their items from contending items in the market and empowers makers to assemble a notoriety and generosity around their items that will get a premium price. The idea of geographical indication

¹Amikar Parwar, Importance of Geographical Indication in the Growing IPR World, 1, 2009.

has its inception in nineteenth-century in Europe and has significantly advanced from that point forward. The current universal system is set down in Article 22 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement which orders part nations to accommodate the assurance everything being equal, where the commitment is for individuals to give the 'legitimate methods for invested individuals' to make sure about the security of their GIs. Geographical indication shows that specific products begin from a nation, area or territory and has some extraordinary attributes, characteristics or notoriety, which is owing to its place of root. The association between the products and spot turns out to be well known to the point that any reference to the spot reminds the merchandise being created there and the other way around. For instance, the reference to the District of Champagne, France infers the wine 'Champagne' which is being created there.

India is a place where there is a treasure, blessed with rich regular assets of farming items and different merchandise of high monetary worth. Rustic people in different districts of our nation have one of a kind aptitude and ability to create high-quality items like crafted works, adornments, materials other related items and they are engaged with the above expertise for a few ages. Frequently associated with customs, practices and culture, geographical indications are firmly intertwined into provincial lives which utilize conventional strategies, practices and skill to deliver these products related to land signs. As India a signatory to the TRIPS agreement, it is the duty to protect GI in India. As a result, India enacted sui-generis legislation called Geographical Indications of Goods (Registration and Protection) Act, 1999. The main objectives of this act are to protect the interest of producers of such goods. Another object is to prevent unauthorized use of GI and to protect consumers from deception and also to promote the goods having GI in the export market.

In order to identify and understand the issues and challenges related to the objectives of the GI mentioned, I have undertaken this study.

1.1 Significance of the Study

The significance of the study is to comprehend the different issues and challenges faced by the producers of goods having GI in India. This study assists in understanding whether the objectives of the GI Act is accomplished or not. Further, the examination empowers stakeholders in Geographical Indications to get, what is more, uphold legal protection.

1.2 Scope of the Study

This research deals with the issues and challenges of Geographical Indication in India. The scope of the study is to identify various issues faced by the producers or manufacturers of GI and to suggest measures to solve those issues.

1.3 Objectives

The current examination is conducted to accomplish the accompanying goals-

- The research aims at breaking down the different issues and difficulties of geographical indications concerning the makers and producers.
- The research looks to analyze the impact of GI on numerous angles like social, economic and cultural factors.
- The examination additionally uncovers the status of the items when being perceived as a GI.

1.4 Research Questions

- I. What are the issues and challenges faced by the producers of the products having a GI tag?
- II. Does the GI tag help to identify the real products?
- III. Does the producer/manufacturer of the product get any benefit from the GI tag
- IV. Whether the consumers are aware of the GI products?

1.5 Hypothesis

The proposed hypothesis is to explain the geographical indications in India and its impact. First, postulate that the GI fails to identify the homonymous product having a GI tag. Also, it fails to protect the interest of producers. Thus, the GI Act fails to achieve the goals referenced in the act.

1.6 Methodology

The research employs an empirical study to understand the real issues and challenges faced by the producers or manufacturers. The analyst has alluded the primary source of information, for example, unique content from the International Agreements and Conventions, similar to TRIPS Agreement, WTO archives, GIGA 1999 Act and so forth and the secondary sources of information for leading the concentrate for instance books, journals, papers and articles.

1.7 Review of Literature

Geographical Indications is an outstanding class of intellectual property rights having the fundamental characteristics of aggregate possession, connecting an item with its place of starting point and makers of products. Dev Gangjee, in his book, is mainly about the cause of GI insurance and the procedure by which they have developed as a particular classification of the topic inside the universal Intellectual Property (IP). In this book, he explained the evolution of GI and also about various International Agreements. The book gives an understanding of the protection given earlier and after TRIPs. Dr R. Rangneka went above and beyond and has broken down the different concerns like the distinction in extent of protection, cost concerns partner with actualizing GI augmentation. Finishing up his examination, the creator featured the requirement for additional investigation corresponding to the development of GI.

The work by Vandana Singh in *The law of Geographical Indication: Rising above the Horizon* gives an unmistakable thought regarding GI and about the laws identifying with GI in different nations. This book manages the GI Act in India. The work is done by Latha R. Nair, and Rajendra Kumar in *Geographical Indications: A Search for Identity* contains a story of the

historical backdrop of the law on GI followed through global shows and case law, an examination of the arrangements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) identifying with the assurance of geographical signs, a conversation on the ongoing and continuous discussion on the expansion of Article 23 sort insurance to all merchandise and an endeavor to investigate the extent of geological signs in the financial improvement of creating and least created nations. In work done by V.K. Ahuja in Protection of Geographical Indications: National and International Perspective deal with how GI is protected on an international level and national level. Further, in work done by Kasturi Das, Prospects and Challenges of Geographical Indications in India mainly talk about the GIGA Act and the issues relating to the act.

1.8 Scheme of the Study

The present study dealing with the issues and challenges of Geographical Indication in India is divided into six chapters.

1.8.1 Chapter-1: Introduction

This chapter deals with the introduction, scope of the study, objectives of the study and also about the methodology used for the study.

1.8.2 Chapter-2: Geographical indications- the concept

Chapter two gives a diagram of the idea of GI. It defines the terms like geographical indications, appellations of origin and indication of the source. Likewise, it explains the distinction between trademarks and GI.

1.8.3 Chapter-3: Evolution of Legal Protection of Geographical Indications

Chapter three an endeavor is made to trace the development of lawful protection of GI. It discusses the various international agreements drafted for the protection of GI. Additionally, there is a detail clarification about the TRIPS.

1.8.4 Chapter-4: Legal Protection of Geographical Indications in India

In India, the legitimate framework for GI protection has, as of late, been created. The Geographical Indication of Goods (Registration and Protection) Act was sanctioned in 1999 and has come into power in September 2003. This chapter discusses the process for registration of a GI.

1.8.5 Chapter-5: Issues and Challenges of Geographical Indications in India

Chapter five explained about the various issues and challenges of GI in India. This chapter I have included the findings of the empirical study conducted to understand the issues and challenges in GI.

1.8.6 Chapter-6: Conclusion and Suggestions

The final chapter provides for the summary, conclusion and recommendations. It emphasizes on better protection to protect the interest of producers.

1.8.7 Bibliography

The bibliography contains an array of books, journals, articles and information from print media. The webliography contains all the internet sites that have been accessed in the course of the research.

CHAPTER 2

GEOGRAPHICAL INDICATIONS: THE CONCEPT

2.1 Introduction

In this era of globalization, boundaries are no more boundaries. International players have found their way to pierce into the nook and cranny of the globe. Meanwhile, globalization has also adversely affected rural products, in turn affecting the livelihood of communities. There is a wide threat to rural products, and some of them are getting perished due to a lack of proper knowledge and financial resources. The local products are now facing the threat of losing their own identity in front of their global rivals, who usually carry a globally recognized brand name with them. Here comes the need of a global recognition of the local goods. Geographical Indications is one of the solutions to it. A geographical indication is a sign, which indicates the origin of a product. The origin is due to the various geographical -environmental factors like human factor, natural factor, or maybe a combination of both, which attributes some quality, reputation, and specific characteristics to the products.¹ Geographical indications are considered as "traditional brand" because they are connected to the history and customs of a community. These products are neither made according to the needs of the market nor on the initiative of the business. Apart from these, they are naturally found in a place where a community is developing it there throughout the years. Therefore, the geographical indication is an emerging form of intellectual property rights.

2.2 Meaning and Definition of Geographical Indication

The importance of the geographical indication is emerging, especially in developing countries, with an intention to protect the authenticity of rural products. A geographical indication is a signature that verifies the authenticity and also the place of origin of that product having unique features. As per TRIPS agreement the definition of GI '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

¹Faradila Yulistari Sitepu, The potential of geographical indications and Its legal protection, 52, E3S Web of Conferences, 6, 2, (2018).

origin² i.e., a product originating at a particular place having some reputation or characteristics or being manufactured/produced by a particular community are only eligible to get the GI tag. Thus, GI is a tool to promote the goods of a particular area. Some of the famous GIs in the world are Real California Cheese, Scotch Whisky, Basmati for rice, Pilsen and Budweis beers, Tuscany for olive oil, Florida Oranges, New Zealand Lamb, Darjeeling Tea, Swiss watches, Indian Carpets, Sherry, Chianti, Cognac.³ GI provides a clear distinction among similar products and helps to identify the genuine products. For example, the legacy of manufacturing Aranmula kannadi goes to a particular family in Aranmula. But, nowadays, the same Aranmula kannadi is manufactured by different people in different places. GI helps to identify the real product.

As GI differs from region to region and products to products, there is no single. As every nation has got its national laws for the protection of GI, the terminology and the rules depend on a nation to nation. GI has been used to define agricultural or any other products being originated from specific regions or grown /manufactured by a community. Some of the Conventional definitions of GI are defined below.

1. Definition of Geographical indication by WIPO: - According to WIPO, GI is a signature that indicates the authenticity of the products originated from a specific region or manufactured by a particular community. The WIPO defines GI as, "...a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."⁴

2. European Commission Regulation, on the Protection of Geographical Indications, Designations of Origin and Certificates of Specific character for Agricultural Products and Foodstuffs:- GI is defined as, "...being the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or foodstuff:

- originating in that region, specific place or country, and
- which possesses a specific quality, reputation or other characteristics attributable to that geographical origin ... the geographical link must occur in at least one of the stages of

²Dr.Dwijen Rangnekar, Geographical Indications A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits, (ICTSD), Issue Paper No. 4 1,4, (2003)

³ World Intellectual Property Organization(WIPO), Geographical Indications An Introduction, 6, 8, (2017)

⁴World Intellectual Property Organization (WIPO), Geographical Indications, What is a geographical indication? (April. 2, 2020, 10.00 AM), https://www.wipo.int/geo_indications/en/

production and /or processing and/or preparation of which takes place in the defined geographical area."⁵

While analyzing further, we can see that the above definition is mainly focused on agricultural products and foodstuffs. A GI can be provided to products originating in a specific region or country having a specific quality or characteristics of that region.

3. Definition under the Geographical Indication of Goods (Registration and Protection) Act

1999 of India: "geographical indication," in relation to goods, means 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 characteristics 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.

Explanation: For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be "⁶

The definition provided under Section 2(e) identifies the goods as agricultural goods, natural goods, and manufactured goods that are originated or manufactured in the territory of a country or in any region in particular. The main attributes like quality, reputation, and characteristics of such goods are related to geographical origin in case of agricultural goods, and in case of manufactured goods attributes like production, processing, or preparation of the goods in a particular territory, region or locality will be considered. From the above points, we can consider that section 2(e) is the combination of the definition of TRIPS and WIPO.

⁵COUNCIL REGULATION (EEC) No 2081/92, On the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Official Journal of the European Communities, 1,2 (1992)

⁶ THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, ACT NO. 48 OF 1999, 1- 4(1999)

From all these definitions, it is clear that there is no single definition for GI. Different countries have different definitions of GI. The base for all these definitions is the international conventions.

2.3 Elements of GI

1. Goods, originating in a particular territory, region, or locality: - Origin of goods is one of the vital elements in determining GI. But to identify the origin, proper delimitation of the region is necessary considering the specific nature of the product. Delimitation means dividing a particular area into appropriate administrative zones.⁷ It will help to identify that the concerned geographical area is situated in a specific zone or region. For example, Aranmula Kannadi. Aranmula is a region in the Pathanamthitta district. The Kannadi (Mirror) is made in the region called Aranmula. Hence it is called Aranmula Kannadi, increasing the importance of the area called Aranmula.

2. Quality: - Quality is one of the main attractions of goods having a GI tag. The quality of goods is mainly due to two things (1) natural quality and (2) quality attributable to the method of manufacturing.⁸ Natural quality mainly due to the physical and chemical properties of raw materials, temperature, and climate of that particular region, soil, landscape, etc. In the case of agricultural products, quality depends on the soil, harvesting methods, seeding, and packaging of the finished products.⁹ For example, the prominent Palakkadan matta is popular because of its unique taste, which is cultivated in the district of Palakkad Kerala. This rice is cultivated in the dense black cotton soil. The soil contains clay and silt, which gives a natural flavor to the rice.¹⁰ Quality attributable to the method of manufacturing includes the quality of raw materials and the method of manufacturing. The actual presentation of the product is also due to the quality.

⁷ Qualification: setting rules for GI products, The GI name and the territory,(April.2, 2020,5 PM),<http://www.fao.org/3/i1760e/i1760e02.pdf>

⁸ Qualification: setting rules for GI products, Description of the product, (April2, 2020, 6.15 PM),<http://www.fao.org/3/i1760e/i1760e02.pdf>

⁹Id

¹⁰ Palakkadan Matta Rice, Agriculture (WTO CELL) Department, (April. 2, 2020, 7.00 PM) <https://sites.cdit.org/wto/index.php/palakkadan-matta>

3. Reputation: - Reputation of the goods is related to the historical origin of the goods. Every good having GI tag has some history. It will help to distinguish it from other forms of product.¹¹ While registering for GI tag, the applicants must show the proof of origin, i.e., the history related to the product.

4. Terroir: - There is another element other than quality and reputation but which can be linked between the product and its geographical origin, which is called terroir. Terroir is connected with the human environment and natural instincts, which can sometimes be spiritual aspects. Thus terroir sometimes lacks scientific technology and analysis. Therefore, some feel that terroir cannot form the basis for geographical indications.¹²

2.4 Geographical indications- Related Concepts

As mentioned in the definition, there is no single definition to GI as compared to trademarks, patents, etc. A geographical indication helps us to identify the goods of a particular origin. Hence it can be considered as a signature to identify the geographical origin of a particular product. But there is an exception to this point. There also can be products which do not have attribute associated with the geographical origin; instead, it may consist of symbols indicating the origin of goods naming the place of their origin. They are known as indirect geographical indications.¹³ For example, "*Navara Rice*", where Navara is a form of rice that has medicinal value produced in the southern state of India, Kerala. Indirect geographical indications, though are protected against misuse, do not form a category of intellectual property that can be protected by WTO members. As per the Paris Convention of the Protection of Industrial Property of 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, and the Lisbon Agreement of the protection of appellations of origin and their International Registration of 1958, there are two concepts associated with geographical indications. Those are indications of source and appellation of origin.

Indications of source and appellation of origin

¹¹ Laurence Bérard Philippe Marchenay, From Localized Products to Geographical Indications Awareness and Action, 1, 22

¹² Id, 18

¹³ GEOGRAPHICAL INDICATIONS,MODULE IV,(April 2, 2020, 10.00 PM)
https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules4_e.pdf

The two terms which were linked to *Geographical Indication* before the enactment of TRIPS agreement were "*Indications of Source*" and "*Appellation of Origin*". There is no proper explanation for *indications of a source* either in the Paris Convention or in the Madrid Agreement. However, as per the clarification provided in the Madrid Agreement, it is the indications, signifying the importance of a country or place of the origin of the product. ¹⁴

Unlike geographical indications, indications of the source do not consider quality, characteristics, and reputation, which are the main attributes of geographical indications.

On the other hand, the appellation of origin strictly adheres to the country, region, or locality. The quality and characteristics which include natural and human factors of a geographical origin are taken into consideration for products. The term appellation of origin has been used in the Paris Convention, but a proper definition is provided in the Lisbon Agreement. Article 2 of the Lisbon Agreement defines appellations of origin as, "*... the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.*"¹⁵

From the above definition, we can make out that the appellation of origin consists of the name of the products, place of origin. The name also indicates that the quality and characteristics of the product are inherited from its geographical origin, which includes natural and human factors, e.g., *Darjeeling Tea*. Hence, we can conclude that there should be a qualitative link between the product and also its place of origin for both appellations of origin and geographical indication.

The basic difference between two terms, Geographical indications, and appellation of origin, is that in the case of the appellation of origin, the place of origin plays a very important role. This means that the production and processing of the raw materials of the product should happen at the mentioned place of origin. Unlike, the appellation of origin for geographical indication, it is not necessary that the production and processing should happen at the defined geographical area.

¹⁴Emilie Vandecandelaere, Filippo Arfin, Giovanni Belletti, Andrea Marescotti, LINKING PEOPLE, PLACES AND PRODUCTS A guide for promoting quality linked to geographical origin and sustainable geographical indications, 35,193 (2009)

¹⁵Hakan ÖNAL, The Topic Not Included in Geography Curriculum in Turkey: Geographical Indications, 7 RIGEO,193,206,(2017)

In law, the appellation of origin used in accordance with the protection for geographical indication in the so-called sui generis system of protection.

2.5 Geographical Indications for Agricultural and Non-Agricultural Products

Nowadays, consumers are giving more importance to the quality of agricultural and foodstuffs. Geographical indication can be used as a tool to measure the quality of products. Due to this, the majority of GI in the world is provided to agricultural products, spirits, wine, and foodstuffs. The main reason behind giving GI to agrarian products is due to the geographical factors like climate, soil, temperature, etc. Similarly, non-agricultural products should also be made eligible to get the protection of GI, provided it meets the necessary criteria i.e., quality of the product. The quality of the product is mainly due to human factors like manufacturing skills and traditions, especially used for manufacturing handicrafts, textiles, etc.

2.6 Geographical Indication as an Intellectual Property Rights

Intellectual property rights are rights that are offered to persons who create novel ideas and knowledge. Intellectual property rights include Patents, trademarks, copyright, trade secrets, and geographical indications. Patent, trademark, trade secret, etc., all are linked to new ideas and discoveries with respect to a particular person or organization. On the other hand, the geographical indication is an intellectual property that is often linked to old knowledge and processes. Thus, Geographical Indication is an exception in intellectual property rights. Geographical indications generally involve processing methods that have been inherited from generations. The technique used in the product might be very old.

Why geographical indication is a part of intellectual property rights? The answer to the question is that the geographical indication is provided to only those who have authentic knowledge about the product and also due to certain natural factors in the case of agricultural products, for, e.g., Sohrai Khovar painting and Ratnagiri Alphonso mangoes, respectively. A geographical indication is a tool that can be used to protect for preserving traditional practices of the community as well as natural resources to an extent.¹⁶ The majority of GI is granted to agricultural products, so in this way, it will help to protect the sustainable agricultural practices.

¹⁶Vandana Singh, The Law of Geographical Indication Rising above the horizon, 9 (2017)

¹⁷Also, GI helps to prevent unauthorized use of products by other parties. GI can also help in gaining some financial benefit as it gives the stamp of authenticity to the products, and people generally tend to buy authentic products.

Thus, GI not only protects the products manufactured or processed but also protects the knowledge and technical know-how of the community. It is clear that from the provisions of the TRIPS agreement, GI is an Intellectual property.

2.7 Difference between Geographical Indications and Trademarks

Geographical indications and trademarks are different forms of intellectual property rights. Geographical indications and trademarks are signs used to distinguish goods and services. Both forms of intellectual property help the consumers to identify the products. This is the common element between these two rights. Because of this similarity, both these rights are often used interchangeably.

One of the major advantages of GI is that the product with the GI tag never compromises on the quality. This expectation also increases the purchasing of the product. GI is thus very much similar to the functioning of the trademark. The major difference is that trademark helps us to identify the goods of a certain organization. There is no geographical region associated with the trademark.¹⁸ But, when it comes to GI, the place of origin plays a very important role in identifying the product's quality. This makes GI differ from other intellectual property rights.

GI is fixed and cannot be sold separately from the granted region. For example, GI has been provided to Ratnagiri Alphonso mango, where Ratnagiri is a region in Maharashtra where these mangoes are grown. But if some farmers from Ratnagiri migrate to another place and start cultivating Alphonso mango, then the same cannot be sold with the former GI tag.

A trademark is a creative sign used by the owner or the person authorized to so. The same trademark can be sold or leased to another person by the same establishment, owning it. For example, the McDonalds golden arch is an example for a trademark, and the owner and franchise can use it. Whereas, GI cannot be licensed to any other person. Human creativity is needed for making trademarks.

¹⁷ Mas Rahmah, The Protection of Agricultural Products under Geographical Indication: An Alternative tool for Agricultural Development in Indonesia, 22.J.Intellec. Prop. Rights. 90, 91(2017)

¹⁸Alberto Francisco Ribeiro de Almeida, key differences between trademarks and geographical indications, 1, 3 2008.

2.7.1 Conflict among GI and Trademark

At present, it's only the Article 22 of the TRIPS agreement that require legal means to protect GI. But unfortunately, there are no specifications for the legal means listed anywhere hence the conflict approach due to the lack of procedures or legal means.

- The major conflict arises in the definition of GI and trademark itself. GI is a signature provided to products with a specific geographical source and has a reputation due to that origin. On the other hand, the trademark is an arbitrary sign used to identify the goods or services of a particular establishment.
- GI is a collective effort by a particular community, which could also be a tribe. In contrast, a trademark is an effort put forward by an establishment or at an organizational level.
- There is a difference of opinion among countries regarding the principle of protecting GI. The EU started the idea of exclusivity and products which can be sold at a higher price under the sui generis system. Many African and Asian members of the WTO support the concept of protecting GI put forward by the EU. In contrast, some Latin American countries and economic giants like the US and Australia opposed the EU's principle. The US considers GI as an integral part of the trademark. Here the conflict arises because the US and Australia are immigrant countries, whereas the EU and countries from Africa and Asia are emigrant ones.
- As there are no proper legal aspects for GI provided in TRIPS, the protection of GI is carried down in different ways in different countries. The US protects GI under Trademark law, EU and the countries like India uses sui generis system for the protection. While some other countries Bilateral Agreement. A country like Australia uses both bilateral agreement and sui generis for the protection of GI. All these points lead to the conflicts among countries in protection GI.
- Another major conflict is that when a trademark is registered as a GI, the products which have a trademark are made available to the producers of that geographic region, which damages the soul idea of the trademark.
- Conflict also arises when some people try to register GI as a trademark.

An international level of GI registration and the legal system is very much essential for the smooth and efficient functioning of GI. GI and trademark laws should not be combined as they are of different intellectual property rights.

2.8 Geographical Indication and Rural Development

There is no doubt regarding the quality of products that have a GI tag. GI assures the quality of the product. Due to this assurance, the popularity of GI products is increasing in the market. Also, there is an increase in the market price of the products. In the modern era, consumers are mainly looking for the quality of the products they buy. They are willing to pay if the product has quality. From a consumers point of view, GI guarantees, that certain product is made according to traditional methodologies and maintains the qualities as per the standard, for example, Darjeeling tea is a tea grown in the Darjeeling district of West Bengal is preferred over other tea because of the name of the place of origin and quality and characteristics possessed. This, in turn, increases the chance of bringing local products to the international market.

The economic value of GI can be assessed from the trade of products which have a GI tag. The EU Commission sponsored consumer study says that 40% of people are willing to pay a higher premium price to the original products with a proof of origin. The wines and spirits are the most valuable products GI products from an economic point of per se. As a region of the product place an important role in GI. It can contribute to the overall development of rural areas. It can able to generate and increase the overall price of the products. It leads to an employment creation preventing rural population migrating to urban areas in search of jobs. GI can also be interlinked with tourism. It not only increases the value of the region but can also raise the standard of living of the rural community. If channelized properly, GI can contribute to the creation of a proper brand. Thus GI facilitates the creation of multifunctional rural development platforms. The example given below is how Pochampally silks improved the life of a community in the rural region of Telangana state in India.

Pochampally Ikat is a saree made in Bhoodan Pochampally in Telangana state, India. It received a GI tag in 2004. Since then, the economic value of these sarees is on a high. The pre GI periods and post GI periods suggest that there has been a 12% increase in the year 2009. The overall sales turnover has also seen a plunge of 5%. As a result, employment has also gone to 10% high. Big brands like Air India, Reliance trends, Pantaloon, etc., have also started procuring

Pochampally sarees. Hence, GI can boost a country's economy by developing the rural community.

2.9 Protection of Geographical indications

GI tends to provide the consumers with proper authentic information about the origin and the quality of products. There are many quality products worldwide, and if the reputation and quality are not protected, it will have a bad impact on consumer expectations. Hence, the main objective of the GI should be to protect the reputation and quality of the product. As there are no common legal theories and principles for the protection of GI, every country has made its principles. But sometimes, due to the functional differences, these principles produce different results. These diverse results sometimes cause hindrances for common protection for GI, and the implementation of GI has occurred in an uncoordinated manner.

Therefore it is necessary to have common approaches for the protection of GI. Some of the existing approaches for the protection of GI are:-

- Unfair competition/passing off
- Protected appellation of origin and registered GI
- Collective and certification trademark
- Administrative schemes for protection
- Sui generis protection of GI

These concepts may not sometimes be effective for different categories and may change from situations to situations of their member states.

2.9.1 Unfair competition and Passing off

Protection against unfair competition has developed differently in different countries. Still, the common objective is to provide those in trade with an effective solution against their competitors' unlawful and dishonest business practices. Commercial practices that are likely to mislead the public concerning an enterprise, particularly the geographical origin of the product offered by such enterprises, lead to unfair competition. The rules concerning the protection

against unfair competition are reflected in international law through the inclusion of Art 10 bis into the Paris Convention. In this Article, unfair competition is defined as "***any act of competition contrary to honest practices in industrial or commercial matters.***"¹⁹ That means no industry or enterprise should be given any extra benefits by the state, which has not been provided any other industry of the same level. To prevent unfair competition and also an unauthorized use of GI, the aggrieved person must show that the dangers that result from such a case. This can only be achieved if there is a clear legal theory for geographical indications.

2.9.2 Passing off

The English tort of "***passing off***" mentions the protection against the wrongful appropriation of GI. Passing off action is a legal solution for cases in which the goods or services of one person are represented as being those of somebody else²⁰. That means passing off can be defined as an act of falsely representing one's product as that of another in an attempt to cheat potential buyers by claiming the product belongs to that person. National laws for the protection against unfair competition, passing off, and unregistered GI provide traders against competitors who perform commercial acts against honest business practices.

One of the important characteristics of the protection of GI under the law against unfair competition is that the courts make important determinations like productions, standards of production, and the circle of producers who use particular geographical indications. The protection accorded to GI following a lawsuit based on passing off or unfair competition is only effective between the parties of the proceedings.

2.9.3 The protected appellation of origin

The protected appellation of origin was developed to provide a solution against fraudulent commercial practices involving the origin of agricultural products and, in particular, products of the vine. This is practiced since the 19th century during periods when there was a shortage of supply of products, e.g., shortage of wines during the phylloxera crisis in parts of European

¹⁹EVOLUTION OF LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS, (April.3, 2020,1.00 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/14514/11/10_chapter%203.pdf

²⁰GEOGRAPHICAL INDICATIONS: HISTORICAL BACKGROUND, NATURE OF RIGHTS, EXISTING SYSTEMS FOR PROTECTION AND OBTAINING EFFECTIVE PROTECTION IN OTHER COUNTRIES, WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) 8,30 2001.

vineyards.²¹ The protected appellation of origin can be the geographical name of the country, region or locality or the area where the product is originating from. It also includes the quality or characteristics of the product, which includes natural and human factors. Though the titles for the GI protection used for products with the special quality or characteristics derived from the product's geographical origin.

The unauthorized usage of the protected appellation of origin will result in an offense that might lead to criminal and civil action against the person who made such use. Criminal and civil proceedings are usually looked upon by public law bodies such as fair trading bodies; authorities entrusted with the administration, or protected appellations of origin or consumer protection.

2.9.4 Registered geographical indications

Similar to protected appellations of origin registered GI are titles of protection. But the scope of protection and the applicable procedure for the protection may depend on the national laws of those countries which apply that type of protection.²² The registration of GI might be an administrative decision, e.g., the comptroller general or the executive head of the agency is responsible for the registration of GI.

Hence the common feature of the appellation of origin and registered geographical indications is that their legal protection is based on an act of public law like administrative procedures. The important parameters such as the demarcation of the area of production and product quality standards are defined in the administrative procedures which are enforced by law enforcement agencies either under criminal or civil law.

2.9.5 Collective and certification trademark

As geographical terms cannot serve as individual trademarks because of the general principle that individual trademark cannot be descriptive, in some countries, geographical indications are protected as certification marks or collective marks.

(a) Certification marks

²¹ Id, 9

²² Id

These are marks that could be a word, symbol, or device used on goods or services that certify the place of origin, material, and mode of manufacture, quality, or other characteristics. These marks will guarantee that the goods or services on which they are used have specific qualities. The certifier gives the certification marks for compliance with specific standards. As a basic rule, every producer who complies with standards of production, as defined by the owner of the certification marks, has the right to use the marks. But the owner of the certification mark should ensure that the goods or services on which the certification marks are used maintain a standard quality. There is a principle of "anti-use by owner rule, which says that the owner of the certification marks does not have the right to use the mark²³. The protection GI in the form of certification marks is implemented under general trademark law, and in case of infringement, the action is initiated by the owner.

(b) Collective marks

The collective marks are a trademark used by an organization or a group to identify the group's products or services or to signify a member in the group. A collective mark is also known as association mark, is owned by an association whose members wish to certain quality or specification in the products or services they want to sell or provide, respectively. But a collective mark is limited only to the collective members of the association i.e., no one member can own the mark, but members as a whole can own it. Similar to the certification mark the protection of the collective mark is also implemented under general trademark law.

It is difficult to distinguish between collective marks and certification marks. The collective members of a body own collective marks, for example, members of a trade association. Collective and certification marks are used to indicate the specific qualities of the product, especially the geographical origin. If a GI is protected as a collective or certification mark, that GI can also be enforceable under the rules of trademark law.

2.9.6 Administrative schemes for protection

The marketing of goods with GI are subject to administrative approval, which will allow the administrative procedures for controlling the usage of GI applied to those goods. The best example is wines and spirits, as the sale is regulated in many countries. The administrative approval procedures include certain preliminary checks like whether the product for which

²³ Supra n 21

marketing authorization is sought has legally complied, which also include permitted usage of GI on the label of the product. If the requirement is not met, approval is not granted, so GI cannot be used for marketing purposes. Administrative schemes of label control guarantee fair trade and consumer protection. The fair trade and consumer protection may be followed by different acts like unfair competition, fair trading, or marketing of certain products with certain standards. The administrative mechanism also aims to prevent misleading usage of GI on products. Criminal sanctions are applied in case of if misleading continues.

From the topics as mentioned above, it is evident that the main objective is the protection of consumers against the misleading usage of GI and protecting the owners of the collective goodwill attached to GI which may result in giving a piece of false or misleading information about the product or services that will affect the goodwill. It is also clear that there needs to be legal theories and categories for the protection of GI. The GI can be used legitimately for products or services that can be demarked under a specific geographic area. Still, the competence for making that demarcation may lie with public, semi-public, or tribunals.

2.9.7 Sui generis protection of GI

Sui generis techniques for the protection of intellectual property may give legitimate assurance to signs and qualities related with an item, for example, a logo or a particular shape, by remembering them for the related item details.²⁴This method for assurance to GI is by way of a sui generis enactment for GI all in all of the particular item under the GI being referred. The first model for this framework is the French Appellations d'Origine Controllee for wines, which was along these lines adopted by others. India enacted a sui generis model for protecting GI. Countries like Turkey, Singapore, and Malaysia also enacted a sui generic method for protecting GI.²⁵

2.10 Conclusion

GI is a rising intellectual property. GI is the main protected intellectual property right which awards to a community. Consequently, it is primarily for the protection of the interest of a community concerning a specific item. GI is allowed to those items beginning from specific

²⁴LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS (April.3, 2020,1.00 PM)
http://www.fao.org/fileadmin/user_upload/foodquality/fichefiles/en/c6.1.pdf

²⁵ Carols M. Correa, Sui generis protection for farmers' varieties, 155 183

items having some characteristics. GI plays out an assortment of financial and different capacities, which may rely upon how systems use GIs and customers see them. The capacities underlie the nature and extent of GI insurance. GI security and different policies might be defended just if GIs truly satisfies their capacities.

CHAPTER 3

EVOLUTION OF LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS

3.1 Introduction

A concept is incomplete without knowing the four questions that start with "why, when, where, for what". Similarly geographical indication is also incomplete without answers to these questions. This chapter provides answers to the questions on the geographical indication, the history behind the developments of geographical indications, functioning, and protection of geographical indications, the present international system that governs their use and misuse. This chapter draws the evolution of geographical indications, i.e., its long journey from the Paris Convention on Intellectual Property in the year 1883 till the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights in the year 1994. Knowing the evolution of GI will make us have a clear vision even on the legal theory and protection of Geographical indication. One of the major issues concerning legal protection for the geographical indication is the conflicts among the geographical region itself. Hence like all other elements of IPR, GI also has passed through many reforms. Despite many reforms, there are no generally accepted procedures for GI. The general principles of the TRIPS agreement, which applies to all other intellectual property rights, are also applicable to geographical indications, mainly the national treatment, and the Most Favored Nation clause.²⁷

National Treatment

Article 3 of the TRIPS Agreement gives rules on national treatment obliging individuals to accord to the nationals of different members treatment no less great than that it accords to its own nationals concerning the assurance of protected innovation. A similar arrangement specifies that the national treatment rule of the TRIPS Agreement is dependent upon the exemptions given in the Paris Convention (Art 3 of the TRIPS Agreement. Furthermore, the arrangement alludes to exemptions permitted under the Berne and Rome Conventions).

Most-favored nation treatment

²⁷Sanika Malik, TRIPS AND GIS: ECONOMIC SIGNIFICANCE AND RATIONALE FOR PROTECTION, SUPREMO AMICUS 6 387, 388.

Article 4 of the TRIPS Agreement provides that "With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members [...]."

3.2 Historical Evolution of Geographical Indication

Right from the medieval period, when there was no proper legal protection for trade, products based out of geographical regions were famous. People from Europe and other parts of the world wanted to acquire those products because of its regional characteristics, such as spices from India and tea from China.²⁸ Initially, GI was protected by the respective regional rulers and the laws prescribed by them. Some rules with respect to GI can be traced back to the 14th and 15th centuries in European countries like England and France. Later in the 20 century, proper formation of rules of GI was framed. France was the only country in the 20th century to enact a comprehensive system for the protection of GI. A major part of this system influence in the drafting of both national and international treaties. Before the 20th century, only three multilateral agreements were addressed for the protection of geographical signs by the World Intellectual Property Organizations (WIPO). The two different parameters which WIPO set for identifying the GI were "*the Indication of Source*" and "*Appellation of Origin*."²⁹

3.2.1 Paris Convention for the Protection of Industrial Property 1883³⁰

As mentioned earlier, until the mid of the 19th century, there were no common rules with respect to industrial property rights. It was very difficult to obtain protection for the intellectual property due to the diversity of laws in different countries, i.e., Europe had its own rules, and the US had its own rules set concerning industrial property rights. The Paris Convention of 1883 was the first diplomatic conference which was held for the protection of industrial property rights. It was signed by 11 states and came into effect on 7th July 1884. Later Great Britain, Tunisia, and Ecuador had also signed the convention, which added up the member states to 14. Later, during the 20th century, particularly after World War II, many states ratified this convention. It was

²⁸ Dr. Varun Shukla, Historical development of geographical indication law under international arena, 2 International Journal of Law, 1, 1 2016.

²⁹ Dev Gangjee, Relocating the Law of Geographical Indications, 21 (2012)

³⁰ World Intellectual Property Organization (WIPO) Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979), WIPO Lex (April 4, 2020, 11.00 PM).

revised later in Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), and Stockholm (1967).³¹

Objectives of the Paris Convention³²

- The primary objective of the Paris Convention was to provide a basic right known as the right to national treatment for each member state. The national treatment guarantees that each contracting state must grant the same protection to the national of other contracting states as it grants to its nationals, i.e., each member states should be treated equally.
- Another objective of the Paris Convention is to provide a basic right, also known as the right of priority. The right of priority under Art 4 states that, if an applicant applies for registration of industrial property in any one of the member state of the Paris Convention, then the same applicant has to apply for registration for the industrial property in all of the member states of the convention within a specified period which is usually six months to one year. The convention also provides rights of priority to patents, marks and industrial designs.
- The third objective under Art *4bis* of the convention defines common rules in the field of substantive laws. These common rules guarantee the rights and duties of natural persons and legal entities. The rules also permit the member states to enact legislation following those rules, which means the common rules also allow member states to enact new rules.

3.2.1.1 Paris Convention and Geographical Indications

The Paris Convention, for the first time, raised the issue of international protection of intellectual property and industrial property through the appellation of origin and the indication of the source.³³ Though the Paris Convention was the first multilateral agreement that was formed for the protection of industrial property and intellectual property rights, it indirectly refers to GI through appellation of origin and distinguishes an indication of the source from the trademark.³⁴

³¹ Id

³²Summary of the Paris Convention for Protection of Industrial Property (1883), World Intellectual Property Organization(WIPO), (April.4, 2020, 11.00 AM), https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

³³ Id

³⁴Jane BULLBROOK, Geographical Indications within GATT, J. World Intell. Prop. 501, 503 (2004)

Art 1(2) of the Paris Convention includes an indication of the source and appellation of origin of industrial property.³⁵ The national treatment also protects GI by the law of protecting domestic GI. There was also minimal protection, which was for prohibiting the usage of a false indication of the source. Art 1(3) of the convention includes the protection of agricultural products like wines, tobacco leaf, fruits, cattle, beers, grains, etc.³⁶ this states that there were also clause related to agricultural properties, and the convention was not limited to industrial property. The provision of Art 10 of the Paris Convention is applied in any direct or indirect usage of a false indication of the source of the products or any identity like a manufacturer or Producer of the product.³⁷ Art 9 of the Paris Convention includes goods unlawfully bearing false indications regarding the identity of the source or identity of the producer shall be seized on importation to those countries where such identification is entitled legal protection. The identification can be marks or trade names. The seizure shall be affected in the country where the false indication occurs or the country into which the products with false indications were imported. Any competed authority or interested party or even a public prosecutor can request for a seizure. The seizure shall be replaced by prohibition of the import of products with a false indication if the rule of the country does not permit seizure on import. If a country's rule doesn't allow seizure or prohibition, it should have certain actions and remedies available within the country until the rules are modified accordingly.³⁸

Terms like false indications and direct and indirect use have been mentioned in Art 10 of the Paris Convention. The term false indication of source means that no name of geographical origin shall be provided other than the actual name of the product's geographical (region) origin. The term direct use means ideas or clarifications expressed by words. That means the indication of source and appellation of origin will be expressed in the form of text or words. On the other hand, indirect use is the usage without words suggesting the indication of source or appellation of origin. For example, a miniature model of Tajmahal understood that the origin of Tajmahal is in India.

³⁵ Paris Convention for the Protection of Industrial Property, of March 20,1883, (April 4, 12.15 PM) https://www.wipo.int/edocs/lexdocs/treaties/en/paris/trt_paris_001en.pdf

³⁶ Id

³⁷ Id

³⁸ Id

Art 10*bis* of the Paris Convention is based upon the concept of unfair competition.³⁹ The general provision of Art 10*bis* (2) refers to the case of misleading with respect to the geographical origin as an act of unfair competition. The basic principle of protection against unfair competition set in Art 10*bis* of the Paris Convention is incorporated in the TRIPS agreement under Art 2 and also in the protection of geographical indication under Art 22(2) (b). According to Art 10*bis*, unfair competition is an act of competition against honest practices in industrial or commercial matters. Art 10*bis* (3) (iii) prohibits indications of goods that may mislead the public as to nature and characteristics.

3.2.2 The Madrid Agreement (Agreement for the Repression of False or Deceptive Indications of Source of Goods 1891)⁴⁰

The Madrid Agreement for the Repression of False or Deceptive Indication of Source of Goods got enacted in 1891. In the diplomatic Paris Conference, it did not provide any provision for the prevention of the use of false indication. The signatory nations put forward the need for a more all-inclusive form of regulation for the misuse of intellectual property. Due to this requirement, the International Bureau of Spanish Administration's proposal for the Madrid Agreement was submitted at the Madrid Revision Conference of the Paris Convention⁴¹. Later it was revised at Washington (1911), The Hague (1925), London (1934), and Lisbon (1958).⁴² The Madrid Agreement is also formed to have broader protection for the indication of source, although the term indication of source is not defined in this agreement. Thirty countries ratified the Madrid Agreement except for the United States.

According to the Madrid Agreement, goods bearing the false or misleading indication of the source of which the source or origin of the product is indicated as a country or place of origin to which this agreement applies, shall be seized, if imported to said countries.⁴³ The agreement also sets rules on how the seizures should occur and who will be the competent authority to handle

³⁹Supra n8, 10

⁴⁰ World Intellectual Property Organization (WIPO), The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods, WIPO Lex, (April 4, 2020, 3.00 PM),<https://wipolex.wipo.int/en/text/286776>

⁴¹J. Thomas McCarthy and Veronica ColbyDeviff, Protection of Geographic Denominations: Domestic and International, Vol. 69 TMR, 199, 206 (1979)

⁴² Summary of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891), World Intellectual Property Organization(WIPO), (April.4, 2020, 4.00 PM), https://www.wipo.int/treaties/en/ip/madrid/summary_madrid_source.html

⁴³ Supra n15

and approve the same. The main difference between *false* and *deceptive* is that deceptive refers to the actual name from where the product originates, for example, consider Darjeeling Tea. The Madrid Agreement extends protection to these deceptive indications of source along with the false indications. The Madrid Agreement does not add any further protection to the Paris Convention and also does not protect generic appellations.⁴⁴ But it provides special provisions to the country's legal system that what indications of the source are included in the agreement and their generic character.

The Madrid Agreement also protects geographical indications as collective marks, certification marks, or guarantee marks. The main objection to the Madrid Agreement was mainly because of the generic treatment of appellation.⁴⁵ Therefore according to the Madrid Agreement, each member state may decide whether appellations have become generic, but the generic appellations cannot be used for the products of wine. It does not provide for the usage of false or deceptive indications accompanied by qualifiers such as 'kind,' 'type,' 'style,' etc. Though the Madrid Agreement is still in force, it is not a part of the TRIPS Agreement.

3.2.3 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration⁴⁶

The Lisbon Agreement for the Protection of Appellations of the Origin was concluded in 1958. The Lisbon Agreement tries to set forth new enforceable protection to geographical indications. The Lisbon Agreement is enacted not within the purview of the Paris Convention and the Madrid Agreement. The main intention behind the enactment of the Lisbon Agreement is to give protection to the '*appellation of origin.*' The urgency for such an agreement was propounded by the International Bureau and the Portuguese government⁴⁷

As a part of the objective of this arrangement, it defines the appellation of origin under Art 2(1). It defines appellation of origin as 'to mean the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality, and characteristics of which are exclusively or essentially due to the geographical environment,

⁴⁴Commission of the European Communities, Geographical indications and TRIPS: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members, 1, 3(2007)

⁴⁵ Supra n 15,

⁴⁶World Intellectual Property Organization (WIPO), Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958,WIPO Lex (April 4, 2020 6.00 PM)<https://wipolex.wipo.int/en/text/285838>

⁴⁷ Supra n14, 207

including natural and human factors.'⁴⁸The definition contains that there should a geographical name of the country, region, or locality in which the product is originating, and the characteristics of that product are attributable because of geographical environment like natural and human factors—for example, Feta cheese.⁴⁹

Article 3 of the Lisbon Agreement specifies the content of protection. The member state should ensure the protection of any kind of usurpation, which means wrongful usage or imitation, including the use of terms like "kind," "type," "make," "imitation," or the like.⁵⁰ If a product is tagged with the GI, it can be termed as *generic* in any other country as long as it is protected in its country of origin.

One of the main problems of the Lisbon Agreement is due that international protection is granted only if the GI is protected in its country of origin, which will demean the concept of protection through the law of unfair competition. Another concern raised was regarding not mentioning any exceptions for the terms that have already become generic in some nations. Due to all these reasons, only very few states have become members of the Lisbon Agreement.

3.2.4 Bilateral Treaties

There are a lot of bilateral treaties conducted in the history of trade, intellectual properties, and also with respect to the protection of geographical indications. But only two models were present as the main models, among the treaties. The first model is regarding the reservation of indications for the products of certain regions of which the protection of which geographical area is not determined. The second model was to include a proper definition of the geographical area that needs to be protected under GI.⁵¹ But unfortunately, neither of the two models yielded any results because the parties failed to provide a proper scope of protection with respect to the models. Many bilateral treaties were concluded on geographical indications, while other treaties are dealing with specific sections containing geographical indications.

⁴⁸Supra n19, 1

⁴⁹ Defining a Name's Origin: The Case of Feta, World Intellectual Property Organization (WIPO), April 4 2020, 8.00 PM) <https://www.wipo.int/ipadvantage/en/details.jsp?id=5578>

⁵⁰ Supra n19, 2

⁵¹Albrecht Conrad, THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN THE TRIPS AGREEMENT, 86 TMR 11, 27(1996)

3.3 Problems of international protections

A lot of attempts were made at the international level for the protection of geographical indications. These international conventions, like the Paris Convention, The Madrid Agreement, and the Lisbon Agreement, try to indirectly protect the geographical indications. In the Paris Convention, there was no particular provision for geographical indications as such. In the case of the Madrid Agreement, it formed to give wider protection to the indication of source, but it does not provide any kind definition to the indication of the source. Like the Paris Convention, under the Madrid Agreement, there is no provision for geographical indications. The Madrid Agreement protects geographical indications as collective marks, certification marks, or guarantee marks. Under the Lisbon Agreement also, there was no special provision for geographical indications. But they inserted a provision for the appellation of origin and protected GI under the appellation of origin. On the other hand, the bilateral treaty explains two different models, as mentioned above, did not prove to be effective. Another major issue faced by all these international agreements was that they were not able to properly enforce the protection. Due to all these negative effects, another level of protection, particularly of geographical indications, was required. This marked the beginning of the TRIPS provision.

3.4 Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement

One of the most important and significant milestones in the development of the protection of Intellectual Property Rights, especially with respect to geographical indications was the TRIPS Agreement. The TRIPS agreement can be considered as a revised and updated version of all the international agreements, especially the Paris Convention. The expectations which were not met in all the other international conventions and agreements were met in the TRIPS Agreement. The TRIPS Agreement also made provisions for enforcement of a right, which was a major concern in the former international agreements.

The TRIPS agreement can also be termed as the first multilateral agreement which deals with the geographical indications.⁵² It is said to be a multilateral agreement because the method for implementation, GI protection, was left to the member countries and their legal system.

⁵² Vandana Singh, The Law of Geographical Indications, Rising above the horizon 99(2017)

3.4.1 GATT and TRIPS

GATT's genesis can be traced back to the monetary movements established at Bretton Woods, the USA, in 1944. Bretton Woods conference was responsible for the establishment of specific financial institutions like the World Bank. The Bretton Woods conference dealt mainly with the monetary policies and was working very closely with a new world body, which was getting established in parallel. This new world body later evolved into the United Nations. The UN Council for Economic and Social Affairs formed a committee comprised of 18 countries to draft a charter named the International Trade Organization (ITO) charter.⁵³ The primary purpose of this charter was mainly to promote the expansion of trade, production, import/export, and consumption of goods. The first draft was based on the United States proposal, which included the ITO's organizational and administrative aspects. The second conference held in New York submitted the second version of the draft charter to the participating countries. The results of the decisions on the second draft and also on the trade and tariff negotiations, which was discussed during the conference, were combined in the final act, which included the GATT framework. Thus, GATT was finally approved, and a GATT treaty was signed on 30th October 1947, at Geneva, Europe. The members of 25 countries signed it under the protocol of provisional applications of GATT, which began on 1st January 1948.⁵⁴

Later, a resolution passed by the United Nations Conference on Trade and employment, which was held at Havana for three months, saw the formation of an interim committee of the ITO. The charter which was adopted by the United Nations Conference later came to be known as *Havana Charter* also provided the membership and the functions of the ITO Committee.⁵⁵ Unfortunately, the Havana Charter never came into force as the UN Secretary-General did not ratify it. The ratification did not happen due to one of the reasons the charter got nullified because the United States department of state issued a policy statement indicating that the Havana Charter would not be resubmitted to Congress. This open rejection of the ITO by the US was confused, especially by not according to other members' expectations.⁵⁶

⁵³ Id

⁵⁴ Id

⁵⁵FINAL ACT OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT, United Nations document E/Conf. 2/78, Article 1, (1948)

⁵⁶Stanley Crosskicks,International trade: the rise & fall of the Havana Charter, April 4, 2020 11.00 PM) <https://crossick.blogactiv.eu/2009/06/04/international-trade-the-rise-fall-of-the-havana-charter/>

The US fears that it loses its economic sovereignty if it becomes members of any international trade bodies. This was very evident in the case of WTO as well. The WTO, however, tries to assure that the Congress could review the US's WTO membership if the WTO dispute settlement system were unfavorable to the US. It was only then the US accepts the proposal to join WTO. The Havana Charter's failure paved the way for formulating the structure of the GATT and its Secretariat. The WTO, which entered into force in the year 1995, also applied the GATT on a provisional basis as a contract among the governments of different countries. Thus it was mainly applied to governments and not to citizens. It was also not a self-executing structure except in rare cases where national law supported the GATT's self execution. The interim Committee of ITO was the employer of the GATT Secretariat staff. This was because the GATT was a contract and could not be acted as a bonafide employer, and the GATT signatories were called "*contracting parties*" and "*not members.*"

3.4.2 The GATT and the Geographical indications

The concept of GI, as provided in Article IX (6), states that the GATT was framed in terms of the cooperation of contracting parties to prevent the misrepresentation of the true, origin of a product. Another duty of the cooperation was to protect the distinctive regional or geographic name by the law in the country of the contracting party requesting cooperation. The cooperation also notifies the applicable names of the product in case of conflicts among the contracting parties.

3.4.3 The legislative history of the TRIPS

To reduce distortions and impediments to international trade Uruguay Round a multilateral trade, negotiations were held at Punta del Este, a city in southeastern Uruguay, in the year 1986. This conference later came to know as Uruguay Round, which included questions on trade on products on intellectual products. The conference only discussed the trade in counterfeit goods as an example and nothing beyond that. Some countries protested against the Uruguay Round, claiming that the World Intellectual Property Organization (WIPO) was the right place for the discussion on questions of intellectual property, and expansion of Uruguay Round was unnecessary. There were various measures adopted in the conference regarding the misrepresentation of the true origin of the product that was also carried out, but this was already

undertaken under Article IX(6)⁵⁷. Thus Uruguay Round seems only to achieve the work already undertaken in the GATT. Article IX of the GATT mainly deals with the problem of its members using marks on their products, which increases the competition among products of similar type and also makes the product more expensive.⁵⁸ Several states regarded these protective provisions of GI a key issue for European Communities (EC) as an effort by the industrially developed countries to increase their economic strength by creating hindrances to international trade. The EC made certain regulations and set out specific definitions for their products and made other countries not to use the name of that product for commercial purposes.

(a) EC Proposal

In the latter half of 1990, the EC presented a draft agreement, including the provisions of GI. Subsequently, the draft was offered by the countries, especially the United States, on the law of trademarks and an approach towards the protection of GI. In part 2(c), Article 19 to 21 of the EC proposal was related to GI, which also included the appellations of origin. For the first time in this proposal, there appeared an element "*additional protection for wines and spirits.*"⁵⁹ This agreement prevented the usage of GI identifying wines or spirits not originating in the place indicated by the GI. The EC also proposed that this type of protection was applied to GI relating to all products and not limiting to wines and spirits. It also put forward the idea of establishing a multilateral system of notification of GI for wines and spirits, which was incorporated in Article 23(4) of the TRIPS agreement.

(b) The Swiss Proposal

The Swiss government in July 1989 contained a detailed provision regarding the definition and usage of geographical indications. According to the Swiss proposal, the definition of GI states that it is any designation, expression, or sign, which indicates that a product as originating from a specific country or region. It shall be protected against the usage, which is likely to mislead the public as to the true origin of the products. The misleading of a product refers to any registration of a trademark that contains any indication suggesting a country, region, or locality

⁵⁷Text of Article IX, WTO ANALYTICAL INDEX GATT 1994 – Article IX,(April 6, 2020, 12.00PM)https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art9_jur.pdf

⁵⁸ Id

⁵⁹Burkhart Goebel, GEOGRAPHICAL INDICATIONS AND TRADEMARKS -THE ROAD FROM DOHA, 93 TMR,964, 986

with respect to the products not having the mentioned origin. The measures to prevent the GI into a designation of generic character were also present in the Swiss proposal.

(c) The US Proposal

The United States were unsure of extending the scope of protection of the GI. Hence it was not having any discussions in the area of GI. Article 18 of the US proposal states that contracting parties shall protect GI by providing their registration as certification or collective marks of their regional origin.⁶⁰ Article 19 of the US proposal stated that the usage of non-generic appellations of origin for a while should not be used if it misleads the public as to the true geographic origin of the wine.

Apart from these proposals, many other countries made proposals with respect to GI's protection. The countries like Argentina, Brazil, Peru, China, Chile, Cuba, Colombia, India, Egypt, Tanzania and Uruguay of May 1990, made proposals to unfair competition principles concerning the matters of protecting GI. Chapter III, Article 9 of the Proposal, read: "parties undertake to protect geographical indications which include appellation of origin against improper use of any product which may probably mislead the public regarding the exact origin of the product. Under this Proposal, the geographical indication is defined as a designation, expression, or sign which shows that a particular product is originated from a particular country, region, or locality.

(d) The Annell Draft

The Annell Draft, in the year 1990, contains a comprehensive study regarding the protection of geographical indications. The Annell Draft defines geographical indications under section 3(1) as geographical indications are any designation, expression, or sign which [aims at indicating] [directly or indirectly indicates] that a particular product [or service] originates from a country, region, or locality." This draft says that GI can be a designation, expression, or sign directly or indirectly aimed at a particular product originating from a country, region, or locality.

Section 3 (1) (1.2) of the Annell draft provides a definition of the appellation of origin as products that originates from a territory of a PARTY, (community or a tribe) region or locality in that territory where the products quality reputation or other characteristics of the product is attributable to its geographical origin including the factors like natural and human. The definition

⁶⁰ Supra n 24, 30

given for the appellation of origin is relatively similar to the definition given for the appellation of origin in the Lisbon Agreement.

This Draft also set forth a section for the protection of geographical indications, which is an advanced version of protection against unfair trade practices under the Paris Convention and Madrid Agreement. Section 3(2)(2b.1) says that such protection is against any usage of products in trade either directly or indirectly, not originating from the place indicated or call up the geographical indication in question. Also, it gives protection against any kind of usurpation, which means wrongful usage or imitation, including the use of terms like "kind," "type," "make," "imitation," or the like. It protects against the use designation or presentation of products, which suggests a link between products and geographical areas other than the exact place of origin.

(e) The Brussels Draft

The definition given for the geographical indications under Section 3, Article 24, refers to goods originating from the territory of a party, a region, or locality where the product has some qualities and characteristics because of its geographical origin. The Brussels Draft also inserted the provision for the protection of GI under section 3. Article 24 says that the parties can make domestic laws to prevent: (a) the usage of any direct or indirect usage of any means in the designation or presentation of a product that indicates that the product is originated in a geographical area other than its true place of origin which will mislead the public as to the geographical origin of that product (b) any usage which will lead to the act of unfair competition specified within the Article 10*bis* of the Paris Convention. Article 25 of this draft provides for the additional protection for geographical indications for wines and homonymous geographical indications. Article 26 and 27 talks about the exceptions and notification of GI.

(f) The Unified Proposal or the "Composite Text"

The Chairman of the Negotiating Group on 23rd July 1990 made a report based on State negotiations. Section 3 of the Chairman's proposal deals with the protection of geographical indication. As per this section, GI is to be protected from any wrongful usage; imitation of the true origin of the product or the appellation or designation is used in translation and usage of expressions such as kind, type, style, etc. An establishment for an international register for

protected geographical indications that can facilitate the protection of GI and appellation of origin is also included in the proposal.

While comparing Brussels Draft with the Composite Text, the Brussels text is the more elaborated one. This Composite text inserted the concept of "additional protection" only concerning wines and not to spirits for the first time. Mr. Arthur Dunkel, the Director General of the GATT, tried to reconcile the matters pending in the negotiations and proposed a new text. This document was known as Dunkel Text.

(g) The Dunkel Draft text of December 1991

After many negotiations, the Draft Final Act dated 20th December 1991 was circulated by Mr. Arthur Dunkel, the Director-General of GATT, at that time. This Draft of TRIPS agreement is known as the Dunkel Draft. Section 3, Articles 22 to 24 deals with geographical indications.⁶¹ This Draft was approved as the current text of the TRIPS Agreement at the Marrakesh Ministerial Meeting. The only Dunkel Draft and the TRIPS agreement is that the Dunkel Draft gives protection only to geographical indications identifying wines, whereas, under the TRIPS agreement, it extended to spirits also.

3.4.4 Substantive Standards: Article 22-24 of the TRIPS Agreement

(i) Definition of Geographical Indications -Article 22(1)

While taking into the provisions of international agreements, there is no definition of the word 'geographical indications.' Neither the Paris Convention nor the Madrid Agreement uses the term geographical indications. The Lisbon Agreement uses the term appellation of origin, which is somewhat similar to GI. The main reason for the Lisbon agreement's failure is because it is limited to the appellation of origin only. The TRIPs Agreement encompasses the definition of geographical indications under Article 22(1). As per this article, geographical indications are indications of goods that originate from the territory of the Member, or a region, or locality of

⁶¹Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Dunkel Draft), excerpts pertaining to TRIPS, APPENDIX 3, (April 6, 3.00 PM) https://www.wto.org/english/res_e/booksp_e/trips_agree_e/appendix_3_e.pdf

that territory where the reputation, quality, and other characteristics are the essential attributable of those goods.⁶²

Article 22(1) is derived from Article 2 of the Lisbon Agreement. Article 2 of the Lisbon agreement states that "appellation of origin" is the geographical name of the country, locality, or region where the products originate. The quality and characteristics of the product are exclusive to the geographical environment, including natural and human factors.

Article 19 of the EC Draft of 1990 and the last part of the Lisbon definition included natural and human factors. But the Dunkel Draft omitted this definition, and the point regarding natural and human factor was not presented in part.⁶³ For example, there are certain products of which only the raw materials used to manufacture that product plays a very important role to determine its standard, features, and its protectability, but not the actual process of making or that has been handed down over generations. Hence the scope of goods was only limited to agricultural products, and the manufactures were not protected even if the product was manufactured in a region with its cultural heritage. Another contrasting feature concerning the general concept of the TRIPS definition is that only goods are included. But the Director General of the WIPO had later included the services in the amendment of the article 10bis (3) 1997 and formed "goods and services".⁶⁴

(ii) Substantive Standard: Article 22(2)

One of the basic concepts of the TRIPS was the accomplishment of substantive standards through its member states. Article 22(2) contains this basic concept. The members are free to choose the legal system of their own choice. The basic concepts can be referred to as unfair competition, which is also reflected in the EC proposal. These minimum protection standards were limited to the nongeneric appellation of origin for wine by the US. This was particularly if the use of such a name of wine would mislead the public as to the true origin of the wine.

(iii) Consumer Protection under the TRIPS Agreement: Articles 22(2) (a) and 22(4)

⁶²Dwijen Rangnekar, Geographical Indications A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits, 4 ICTSD,1, 21 (2003)

⁶³Supra 24, 33

⁶⁴ Id

Article 22(2) (a) is derived from Article 20(1) of the EC Draft. Its main intention was to protect the GI against any act that would give a false impression about the product's true place of origin. The indications are likely to be the designation or presentation, which might suggest a link between any other geographical areas other than the true origin. To allege a violation, there must be two requirements as per Article 22(2) (a):⁶⁵

(I) A designation or presentation of the product must suggest its place of origin.

(II) This representation of a product that suggests the place of origin but is false or misleading.

The identification of geographical description seems to be easy. But two concerns are related to generic terms, and the other is the identification of a geographical designation with the type of product rather than with the geographical area no longer suggests that the place of origin of a product is a particular region. This particular problem mentioned is treated as one of the exceptions in Article 24(6). Another problem is the usage of indirect indications of origin and use of symbols instead of a geographical name. These indirect presentations on the product can become as indicative of users as the product's name. It is unclear about the inclusion of such indications in the wordings of Article 22(2). Article 22(4) safeguards the GI from misleading the public about the origin of the goods.⁶⁶

(iv) The Incorporation of Article 10bis of the Paris Convention: Article 22(2) (b)⁶⁷

The EC Draft mainly prevented unfair competition. The Article 10bis also follows the same line of the EC Draft on unfair competition. The scope of Article 10bis is extended to the members of GATT/TRIPS. It contains a requirement of protection of GI through unfair competition. Article 10bis (3) especially applies to the place of origin of the product. Article 22(2) (b) of the TRIPS agreement protects the interest of producers and merchants. Article 22(2) (a) is a representation which misleads the consumers who buy the products.

(v) Relation to trademarks

Article 22(3) extends the protection of the GI to the trademarks domain.⁶⁸ Geographical names and marks have common aspects with trade names or marks. Hence, the relationship between

⁶⁵GEOGRAPHICAL INDICATIONS, MODULE IV, (April 10,2020), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules4_e.pdf

⁶⁶ Supra 38, 3

⁶⁷ Supra 35, 14

trademarks and GI stands very important for the national or international arena of regulations. Most of the countries took efforts at the national level and made it impossible to register as a trademark for a product that merely consists of the geographical name. But this problem has not been solved by any of the international agreements. The TRIPS implementing substantive standards of protection for the first time included the resolution of this issue, i.e., registration of GI as trademarks in general under Article 22(3) and of wines in particular 23(2). In the event of a conflict with GI and trademarks, the trademark registration authority must examine the records of trademarks based on Article 22(3).

(vi) Homonymous Indications Article 22(4)

Sometimes there arise cases where the territory, region, or locality of the country is the same to known territory, region or locality of another country. Article 22(4) applies directly to handle such cases. Hence this Article prevents the use of similar origin names.⁶⁹ For example, if a region registers for GI for a particular product and if it's already a GI existing for the requested product from another region with the same region name. This will lead to conflict and will intern mislead the public. Thus, this Article prevents such cases. The provisions in this article are related to the concept of *deceptive indications* contained in Article 1 (1) of the Madrid Agreement 1891 and Article XX (d) of GATT.

(vii) Protection for Wines and Spirits: Article 23 and 24(6)

This provision is one of the most discussed provisions of the whole TRIPS. Article 23 imposes protection for GI for wines and spirits. Article 23 must be read along with Article 24, with an exception in Article 24(6), which pertains to the problems of wines and spirits.

Article 23(1) provides a higher level of protection for wines and spirits even where the true origin of wines and spirits is indicated or accompanied by expressions such as "kind," "type," "style," "imitation" or the like.⁷⁰ Under Article 23(1), any registered names, if used by any other product, would be prohibited even without any public confusion. Article 23(1) is limited in its scope to wines and spirits. The most common wines are the wines made from grapes.

⁶⁸ Supra 38, 9

⁶⁹ Supra 38, 9

⁷⁰ Supra 38, 10

It does not cover other distilled alcoholic beverages that use the term wine, for example, rice wine and wines made from certain fruits. The term spirits may be, however, limited to beverages with higher alcoholic content. Certain intermediate alcoholic beverages between wines and spirits, for example, certain liquors, are excluded.⁷¹ With respect to the scope of coverage of these terms, it was not clear, leaving behind unclear intentions by the drafters of Article 23(1).

But practically in 23(1), the interested parties have a fair chance to prove that there are conflicts and the public is not misled or there is an act of unfair competition. Article 23(1) also permits the usage of GI with the conjunction of an additional indication where the true place of origin is mentioned and by expressions such as "kind," "type," "style," "imitation," or the like. Article 23(1) and 22(1) differs mainly on the protection of wines and spirits. Article 22(1) describes the protection of GI of other than wines and spirits. As Article 22(1), it is important to note that the definition of the TRIPs does not differentiate products and provides balance protection on all GI products. In the absence of Article 23, it will lead to a lot of limitations of the original GI product in different regions in different countries which will damage the reputations of the original GI and deprived the genuine right holders the benefit of the investment, they put into the development of the original product. Consumers also end up buying fake products with less quality and characteristics compared to the original GI products. It is often considered that Article 23 does a discriminatory treatment and is substantively unjustified. The geographical origin grants to a product the qualities whether due to natural or human factors and that a similar product without the same geographical origin will not have. Hence from a geographical origin point of view, every product irrespective of type, kind has the same quality and features of that geographical origin. It is also noticed that the trade value of products other than wines and spirits is even higher.

The philosophy behind the extension of protection by TRIPs

1. All GI irrespective of the type and kind of product would receive the same protection ensured at the TRIPs agreement.
2. At present, there are no economic reasons why certain types of products should have more protection for GI.

⁷¹ Supra 25, 128

3. Original producers or the manufacturers of the product identified by GI may be provided with guaranteed protection against the legal use of GI of such categories of product. It also guarantees that legitimate users of GI would not have to undergo procedures to demonstrate that the public is misled. This will smoothen the judicial process, and all producers will have a clear view of situations in which usage of GI on the same category products is followed by proper law or not.
4. The consumers can also identify the products under extended protection of GI, which will enhance the consumer's choice.
5. Usage of GI indicating the true origin with an expression such as "kind," "type," "style," "imitation," or the like would help prevent more GI from becoming generic, which will eventually lose the economic value.
6. The extension would open a new market for trade. It would help in the development of local rural communities and encourage them to adopt the best agricultural and industrial policy that would improve the quality of the product. Hence, the GI would bring economic benefits to producers worldwide.
7. The TRIPs agreement provides flexibility such as exceptions and transitional periods and ensures that trade is not disrupted.

(viii) Article 23(2)

This article is very similar to article 22(3) but is applied specifically to wines and spirits. Except misleading of the public as to the true place of origin does not have to be shown. Under Article 23(2), the member may not refuse or invalidate a trademark if it misled the public about the true place of origin. The incorrect or inaccurate use of GI is enough to invalidate under Article 23(2). It implements an effective standard of protection to prevent names from becoming generic terms.

(ix) Article 23(3)

Article 23(3) deals with similar indications of wines and spirits, which do not mislead or is deceptive under Article 22(4), and both indications will be protected. The WTO members can determine the practical conditions which could differentiate wines and spirits from both indications and ensure that consumers are not misled, and the producers are not affected. Each

member under Article 23(3) can determine applicable conditions and can agree with other members to a common solution without any obligation. There are no provisions in the Paris Convention which would strictly correspond to those provisions.⁷²

(x) Article 23(4)

This article is limited to when it requires a negotiation be undertaken in the TRIPs Council to establish an international notification for wines only (not spirits). This agreement will have fewer participants as compared to other agreements as all the members of WTO- TRIPs are not wine-producing countries.⁷³

(xi) Exceptions-Article 24(4)-24(9)

This is the final provision of GI protection. It put forwards the limitations and exceptions to the general standard set in Article 22 and 23 that the TRIPS members can invoke during the implementation of GI protection into their laws. Exceptions can be broadly divided into three categories.

1. A continued and similar use of GI for wines and spirits.
2. Prior good faith trademark rights and
3. Generic designations

Article 24(1) and 24(2) deals with the obligations of WTO members on continuing negotiations. 24(3) obligate a member not to diminish the existing protection for GI on the date of entry into force of the WTO agreement. Article 24(1) requires that members enter into negotiations aimed at increasing the protection of GI under Article 23. This can be considered as a base for future negotiations of extending the protection of article 23 to products other than wines and spirits. Article 24(2) adds to the scope of Article 23(4) and 23(1) by providing the TRIPs council to keep under review the application of provisions of "this section." Here this section means all three articles from 22 to 24 the council role is to ensure that all these sections are executed correctly, and interested WTO members negotiate in good faith. It also encourages healthy discussions on

⁷²World Intellectual Property Organization, IMPLICATIONS OF THE TRIPS AGREEMENT ON TREATIES ADMINISTERED BY WIPO, WIPO PUBLICATION No 464 (E)7,41

⁷³ Id

views and facilitates a successful outcome to the discussion, which can be further submitted to the council for discussions.

Article 24(3) ensures a higher level of protection existing as on 1st January 1995 cannot be reduced. This provision prevents the members from taking advantage of section 3, causing harm to parties claiming rights in GI. According to Article 24(3), there is a standard for measuring the protection of GI, and any legislation by member state should follow the prescribed standard. Article 24(4), basically checks the parallel usage of geographical names for wines and spirits. This is an exception from the scope of Article 23. Thus if a product has been using a name for the last ten years preceding the ministerial meeting of the Uruguay Round or in good faith, the user can continue to do so. The clause also extends Article 23(3), which requires the members to protect the same name indications as long as they are not misleading. Similar to Article 24(4), which protects prior rights in respect of GI, which is related to wines and spirits, Article 24(5) deals with prior rights in respect of trademarks related to GI. Under this article, a WTO member is not compelled to bring a GI conflicting with a trademark.

Provided that an application for registration of the mark was filed by the WTO member either before the TRIPs, the agreement became applicable or before the indications for which mark was applied for was protected in its country of origin. Article 24 (5) does not make it clear that which would prevail over what. In a situation where a trademark is present and later, a GI is found for the same product gives rise to a conflict. In this case, the article would prevail over what or whether both will exist. This article applies to all GI and not limited to wines and spirits. Article 24(5)(b) is a valid trademark consisting of GI only if it is applied in good faith before GI is protected in its country of origin.

Article 24(6), provides a general exception for protecting usage of common names for goods and services claimed as GI. The second part of this article is applied only to products of wine from a different variety of wine originated from only grapes existing in WTO members. Article 24(7) is known as a procedural counterpart of Article 24(5). This article allows a member to request within five years after the GI has known in the member where the request is made. The main purpose of imposing a time on measures taken by Article 22 or 23 restricts the registration of a trademark containing GI. This five-year time limit helps to take measures to prevent the registration of trademarks, which contains GI. Article 24(8) allows a person to use his name or the name of his predecessor while conducting business. He cannot use the name which misleads

the public. Article 24(9) is noteworthy because it contains an exception for the national treatment concept.

3.5 The current status of Geographical Indications in WTO

The main reason for introducing the TRIPs agreement was to protect the products having GI from misuse. The level of protection is much higher though in the case of wines and spirits, and is neither dependent on whether the public is misled nor checks whether unfair competition is required. The notification and registration of GI for wines that were eligible for protection only for those WTO members participating in the agreement and negotiations can be done among those members. However, no timeframe was set up by the TRIPs for the completion of negotiations, and the participation was voluntary and not enforced. The WTO members called for a global approach for negotiations instead of dealing with each item separately. Asia, Europe, and Africa were the countries seeking the extension of the scope of GI. Asian countries like Thailand and India have complained about the misappropriation of high value goods like Jasmine and Basmati rice; for them, the protection of GI can be used to promote the export of valuable products. Hence they wanted that the protection should not be limited to wines and spirits.

3.6 Conclusion

Initially, every country had its legal system to handle GI, making it difficult for the trade of certain products. With the beginning of WTO and with the emergence of the global trade market, it was inevitable, but to have a common set of rules for GI. This was, to an extent, achieved in the TRIPs agreement 1995. The TRIPs agreement enhance the scope of protection of GI under Article 22 and 23, which includes protection against the misleading of public and protection against unfair competition. The TRIPs also specify enforcement procedures, remedies, and dispute resolution among its members. Thus, the agreement on the TRIPs became an international legal agreement between all the members of the WTO.

CHAPTER 4

LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDIA

4.1 Introduction

In the previous chapter, we have seen the evolution of geographical indications right from the Paris Convention to the World Trade Organization (WTO) TRIPs Agreement. We have also seen how various rules and regulations were created with respect to GI. Initially, every country had its legal system to handle GI, making it difficult for the trade of certain products. With the beginning of WTO and with the emergence of the global trade market, it was inevitable, but to have a common set of rules for GI. This was, to an extent, achieved in the TRIPs agreement 1995. The TRIPs agreement enhance the scope of protection of GI under Article 22 and 23, which includes protection against the misleading of public and protection against unfair competition. The TRIPs also specify enforcement procedures, remedies, and dispute resolution among its members. Thus, the agreement on the TRIPs became an international legal agreement between all the members of the WTO. India became a member of GATT on July 8th, 1948, and subsequently also became a member of WTO in 1995. Thus India is also bound to include the TRIPs provisions while making laws. To comply with the TRIPs provisions, India enacted the Geographical Indication of Goods (Registration and Protection) Act, 1999, to protect geographical indications in India. Given the enormous commercial implications of GIs, the legal protection of this IPR evidently plays a significant role in commercial relations both at the national as well as at the international level. Without such protection, GIs run the risk of being wrongfully used by unscrupulous businessmen and companies. Because they can misappropriate the benefits emanating from the goodwill and reputation associated with such GIs, by way of misleading the consumers. Such unfair business practices not only result in huge loss of revenue for the genuine right-holders of the GIs concerned but can also hamper the goodwill and reputation associated with those indications over the longer run.¹

¹ Das, Kasturi (2004), 'Geographical Indications in Jeopardy', 'India Together', April, available at: <http://www.indiatogether.org/2004/apr/eco-tradeGIs.htm>.

4.2 Legislation on Geographical Indication in India

In the ongoing past, Geographical Indications (GIs) have risen as a huge protected innovation rights issue in the Indian setting. Since September 15th 2003, when the Indian GI Act came into power, around a hundred Indian items have been enlisted as GIs. Be that as it may, there are a few difficulties standing up to the partners in India with regards to the acknowledgement of the potential advantages imbued in GIs. Aside from the compelling implementation of the rights in the applicable markets (local and fare), the achievement of a GI is unforeseen, in an enormous measure, upon suitable showcasing and advancement of the item—assignments that are asset concentrated as well as trying to execute for some partners from a creating nation like India. It is even more dubious about guaranteeing that a decent amount of the advantages gathering from the GI status of an item arrives at the genuine maker downstream in the graceful chain, except if a proper institutional instrument is set up towards that end. In India, the legal system for GI protection has very recently been developed. The Geographical Indications of Goods (Registration and Protection) Act was enacted in 1999 and has come into force in September 2003 (hereafter called GI Act).

4.2.1 History and Legislative Intent of the GI Act 1999

Before the GI act, which was enacted in the ear 1999, there were no formal procedures or any legal law in India to protect the producers of those products which were either or manufactured within the geographic regions of India. Since then, the judiciary and the government have been active in preventing persons who take unlawful advantage of GI products. Hence, through the enactment of the GI act, maximum protection is guaranteed to the producers to protect their products and curb fake products. This, in turn, helps to improve the socio-economic status of people from rural areas.

In *Mohan Meakin Breweries Ltd. v. The Scotch Whiskey Association*² in the year 1980 was related to a brand name 'Highland Chief used in relation to the product described as "Malted Whisky" along with a device of the head and shoulders of a Scottish gentleman wearing feather bonnet and plaid and a tartan edging gives the impression that the product in relation to which it is used comes from Scotland and is thus likely to deceive or confuse the unwary purchaser in India. The Delhi High Court refused to register the applicant's mark on Whisky. Similarly, in

²17 (1980) DLT 466

another case of *Scotch Whisky Association v Pravara Sahakar Karkhana*³ in the year 1991, the Hon'ble Justice.Mr.D.R Dhanuka, the Scotch Whisky Association succeeded in restraining the defendants who were selling their Whisky under the description "blended with scotch" along with the word "drum beater with the device of Scottish drummer wearing a kilt or tartan.

The two major incidents that triggered the need for a strict rule for the protection of GI are:

Basmati Controversy

On September 2nd, 1997, the United States Patent and Trademark Office granted a patent to Ricetec inc. a US MNC based in Alvin, Texas, for new "*lines and grains*" in the name of "*Basmati*" rice. The reason providing the trademark is because of the claim made by Ricetec Inc that the new variety of rice developed by them possessed better characteristics than original Basmati rice, which can be grown in specific areas in North America. For several years they have been using the trademark names "*Texmati*," "*Kasmati*," and "*Jusmati*," which they claimed to be a version of Basmati rice. From India's perspective, this was not at all acceptable because,

- (i) The grant of the patent was invalid
- (ii) Marketing of rice with the name basmati was against India's interest as it was considered as a GI in India.

Basmati is a long-grained aromatic rice variety vastly grown in sub-Himalayan areas by using traditional methods and practices for centuries. Hence no other country should be allowed to use this indication. Indian Basmati rice is being exported to many countries, and the highest demand for this rice was from Europe. Due to this high demand in Europe, there was a very minimal duty on Basmati rice. But after the Ricetec Inc. started its own Basmati variety, the competition increased among different varieties of Basmati rice, and India feared to lose a huge market. Ricetec inc. claimed that the patent was granted to new 'Basmati' (lines and grains) and considered it as an improvement over the previous variety. They also argued that Basmati was a generic name for all types of aromatic rice, not a variety of rice from Indian origin. They claimed that Basmati was used in a generic way for decades for different varieties of rice, such as 'American Basmati,' 'Uruguayan Basmati' and 'Thai Basmati.' According to them, Basmati is not the name of any geographical area, but India claims that the name, reputation, and quality of the

³AIR 1992 Bom 294, 1992 (2) BomCR 219

rice are truly dependant on its area of origin, i.e., India subcontinent. Therefore it needs to be protected under the TRIPs agreement. Ricetec inc. still argued and stated that their products are stated as 'American type Basmati rice,' which is prohibited under the TRIPs agreement for GI under Article 23 with respect to wines and spirits and not for other products.

India challenged the patent of Ricetec inc. in the year 2000. The US Patent and Trademark Office (USPTO) rejected granted patents only three types of hybrid Basmati grain and rejected seventeen types out of a total of twenty patents claimed by the company. The patent office also stated that patents could be granted to the three different varieties of Basmati because the term Basmati was neither a trademark nor a geographic indicator, unlike Champagne, which was specific to a region. They also stated that Basmati was grown all over the Indian subcontinent and was not limited to India's specific region. The US grocery stores thus saw Texamti and Jasmati hitting their shelves post in the mid- the 1990s. This purely goes against Indian interest, and if the developed countries like the US put pressure on developing nations for allowing patenting of crops in their wish, the developing countries will lose the right to challenge the patents on their crops.

Darjeeling Tea Controversy

Another major issue problem faced in India was an incident related to Darjeeling tea. Darjeeling tea is a special kind of tea found in the Darjeeling district in the northern Indian state West Bengal. The problem was related to companies around the world selling tea with the brand of Darjeeling but, was not grown in Darjeeling. Due to these fake products resembling as Darjeeling tea, the original makers of Darjeeling tea were losing its large market share. Consequently, India realized that to protect its geographical indications globally, India has to set some common rules and regulations. As a result, the geographical indications of Goods (Registration and Protection) Bill 1999 passed by both the houses in India. It came into force on September 15th, 2003, along with Geographical Indications of Goods (Registration and Protection) Rules 2002. There was no legal theory dealing specifically with GI or appellations of origin prior to this. As a result, the GI tag was provided to Darjeeling tea, making it the first product to receive the GI tag in the year 2004.

4.2.2 Salient features of the Act

The Basmati rice and Darjeeling tea controversy are the major incidents that can be quoted with respect to the passing of Geographical Indication of Goods (Registration and Protection) Act

1999. The law provides specific rules for the registration and protection of GI. The act is administered by the Controller General of Patents, Designs, and Trademark. The Controller General is also called as the Registrar of GI. There are three main objectives of GIGA. They are,

- (i) Protection of Geographical indications of goods in the country could, in turn, protect the interest of producers of such goods
- (ii) Misuse of GI by unauthorized persons and also to protect consumers from misleading
- (iii) To bring economic prosperity to the country by promoting the GI in the trade market.

The Indian GIGA Act provides for multilateral registrations of GI, including owners from outside India.

Chapters in the GI Act	Contents
Chapter I Preliminary	Commencement as well as the definitions
Chapter II The Register and Conditions for Registration	Registration of goods
Chapter III Procedure for and Duration of Registration	Procedure including application, withdrawal etc
Chapter IV Effect of Registration	The consequences of GI registration in India
Chapter V Special Provisions Relating to Trade Marks and Prior Users	Covers the arena of GIs v. Trademarks
Chapter VI Rectification and Correction of the Register	Rectifying the applications and errors thereof
Chapter VII Appeals to the Appellate Board	Appeals, bar of jurisdiction etc
Chapter IX Offences, Penalties and Procedure	Punishment for falsely using GIs

4.3 Analyzing the Definitions

4.3.1 Geographical Indications

Section 2(e) of the Act defines 'geographical indications' in relation to goods to mean: "*An indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a county, 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 the case where such goods are manufactured goods one of the activities of either the production or of processing or preparations of the goods concerned takes place in such territory, region or locality, as the case may be.*"⁴

It says that as any agricultural goods, natural goods or manufacture goods which are produced or manufactured or originating in any region or locality of that country where the quality, reputation, and characteristic of the product is attributable to the geographical origin. It also says that any name which is not the actual name of the region or locality of that country is also eligible for protection as a GI. Thus symbols name like *Navara, Alphonso* became eligible for getting GI.

4.3.2 Concept of goods

The Act also categorizes 'goods' to:⁵

- (i) Agricultural goods.
- (ii) Natural goods.
- (iii) Manufacturing goods.
- (iv) Goods of handicraft
- (v) Foodstuff.

According to TRIPs, the quality, reputation, and other characteristics of the good should be attributable to its geographical origin. In the case of manufacturing goods, any one of the activities, i.e., production, processing, or production of goods, must occur in place of its geographical origin. GIGA also mentions natural factors like climate, topography, and even human factors like skills that are not specified in the TRIPs agreement.

⁴The Geographical Indications of Goods (Registration and Protection) Act, ACT NO. 48 OF 1999, Section 2(e)

⁵ Id, Section 2(f)

4.3.3 Meaning of indication

The word indication has also been defined to include: ⁶

- (i) Any name (including abbreviation of a name)
- (ii) Geographical or figurative representations; or
- (iii) Any combination or suggest the geographical origin or goods to which it applies.

India not only adopted the words provided in the TRIPs Agreement but gave a detailed definition and a meaning to the term "Geographical Indications" as well as to the term "Goods" too. Unlike the GI protection of Europe, where it is limited to agricultural products, India also expanded the protection of GI to non-agricultural goods. Non-agricultural products include the protection made to handicrafts, Indian made jewellery, foodstuffs, and textile.

4.4 Functions of GI

As discussed earlier, GI's primary purpose is to protect the goods registered under GI from a socio-economic perspective.

- It will help identify the fake products, getting manufactured/produced and sold in the market, and take legal action against them.
- It will also improve the economic status of the producers of the products with original proof of origin.
- From the consumer's perspective, identifying the authentic product will be easy for them, which will improve the consumers buying decisions.
- Further, GI also helps to protect the culture by preserving the traditional methods of production. It thus provides a natural and regional identity to the products.

These functions mentioned above defines the purpose for which the GI Act was introduced in India. A country like India, which is very diverse in terms of its people and places, many products require special protection and care. GI is the solution to that problem. There are different methods of finding and understanding an indication of a specific region. These functions also help to distinguish between two GIs and make the application for GI simpler and easier. Currently, all the details about GI are readily available on the website. The site provides information about the GI registration process and also contains a GI registry that includes information about the registered GI goods so far in India.

⁶ Supra n4, Section 2(g)

4.5 Judicial response to the Act

A few items are novel since they can be created distinctly in a certain geological area, for instance, Champagne is a normally shimmering wine created in the Champagne locale by a procedure of twofold maturation from the grapes developed in the Champagne region of France just, or Darjeeling tea is a top-notch quality tea delivered in the sloping areas of the region of Darjeeling in the State of West Bengal, India. These items become presumed on the grounds that there is a connection between their quality attributes and the geological properties of the locale where these items are being created. Such items are not just farming products like tea, rice, wine, flavours, natural products and so on, yet in addition envelop handiwork things, and for example, sarees or cloaks or some metal with customary artworks on them; or it could be even foodstuff like Hyderabad Haleem or Prosciutto di Parma. Property rights are frequently looked for such products dependent on the way that they are created in a topographical district which has one of kind geo-climatic qualities and includes conventional aptitudes. The replication of these merchandises is unimaginable somewhere else as these characteristics render an exceptional incentive to the item. There is no defense for the merchandise exuding from another area to utilize the equivalent geological term for them. It will ipso facto be a deception, and subsequently, an uncommon right bodes well than an activity which requires evidence of distortion. A fitting law looking to secure land signs would in this manner attempt to stick the asymmetry of data between the maker and the shoppers along these lines permitting them to contribute to a most extreme for improving the quality and, therefore, the notoriety of the great.

Judiciary is one of the most significant mainstays of India. It goes about as a gatekeeper of the interests of the residents. The legal executive in India is discrete and autonomous of the official to guarantee unbiasedness in the organization of equity. The scope of legal survey perceived in the higher legal executive in India is the greatest and most broad known to any law based set up on the planet. The legal executive isn't bound to the understanding of laws just yet in addition to advancing new standards and precepts in managing new circumstances. The choice of legal executive sets priority, and along these lines, it is significant that the legal executive is familiar with the laws and its suggestions.

The Judicial response to the concept of geographical indications has always been in favor of coming up with a maximum number of GIs and lessening the duplicity of things. India is a land

to a variety of culture, cuisines and lifestyle and thus, in this process, it becomes important to protect the geographical indications of such places in India that stand out against the world at macro-level management. The cases such as that of Basmati rice and Darjeeling tea, as explained in the chapter before have proved the said contentions. The primary case of *Scotch Whisky Association v. Pravara Sahakar Karkhana Ltd.*,⁷ wherein defendants depended on out of line implies by utilizing the words *Blended with Scotch* and enjoyed colourable impersonation and out of line exchanging an endeavor to gather out of line benefits by the appointment of offended party's generosity. The respondent was controlled from publicizing or offering available to be purchased or dispersing in any nation Whisky, which isn't Scotch whisky. It is apparent from the aforementioned choice that the legal executive in India has reliably broadened the umbrella of lawful assurance to GIs even without any enactment in power by then of time. Same happened in the case of *Anton Piller v. Manufacturing Processes*⁸

4.6 GI Process in India

To apply for Geographical Indications, there are four types of application which need to be examined as to which should be proceeded with. They are:

1. Ordinary application: - an application filed to register a GI of India
2. Convention application: - an application filed for GI registration from a convention country, i.e., any country or group of countries which are signatories or party to an international region or bilateral treaty. It should submit the proof of registration of that GI in the home country.
3. Single class application: - an application submitted for the registration of GI less than one class of category.
4. Multi-class application: - an application submitted for the registration of GI under more than one category of goods.

As the registrar is the appellate officer of GI, the registration of GI is made to the registrar by the associations or communities of producers of the concerned goods. The application must contain:

⁷ Supra n 68

⁸(1976) RPC 719.

- (i) A statement indicating the proof of origin of the product, its quality, reputation or other characteristics may be due to the human and natural factors and methods like production, processing takes place with respect to a particular region or territory.
- (ii) The product should be represented as a true Geographical Indication without any supporting samples.
- iii) There should be proper journals or report with a unique feature of the product, and the same must be produced to the concerned people inspecting the product.
- (iv) A geographical representation or a map of the territory of the country must be submitted.
- (v) Where a particular attribute of a product, for example, the color of the product is claimed to be an element of a GI in the application for registration, the application must contain a clear explanation stating the importance of that attribute.

4.7 GI Registration process in India

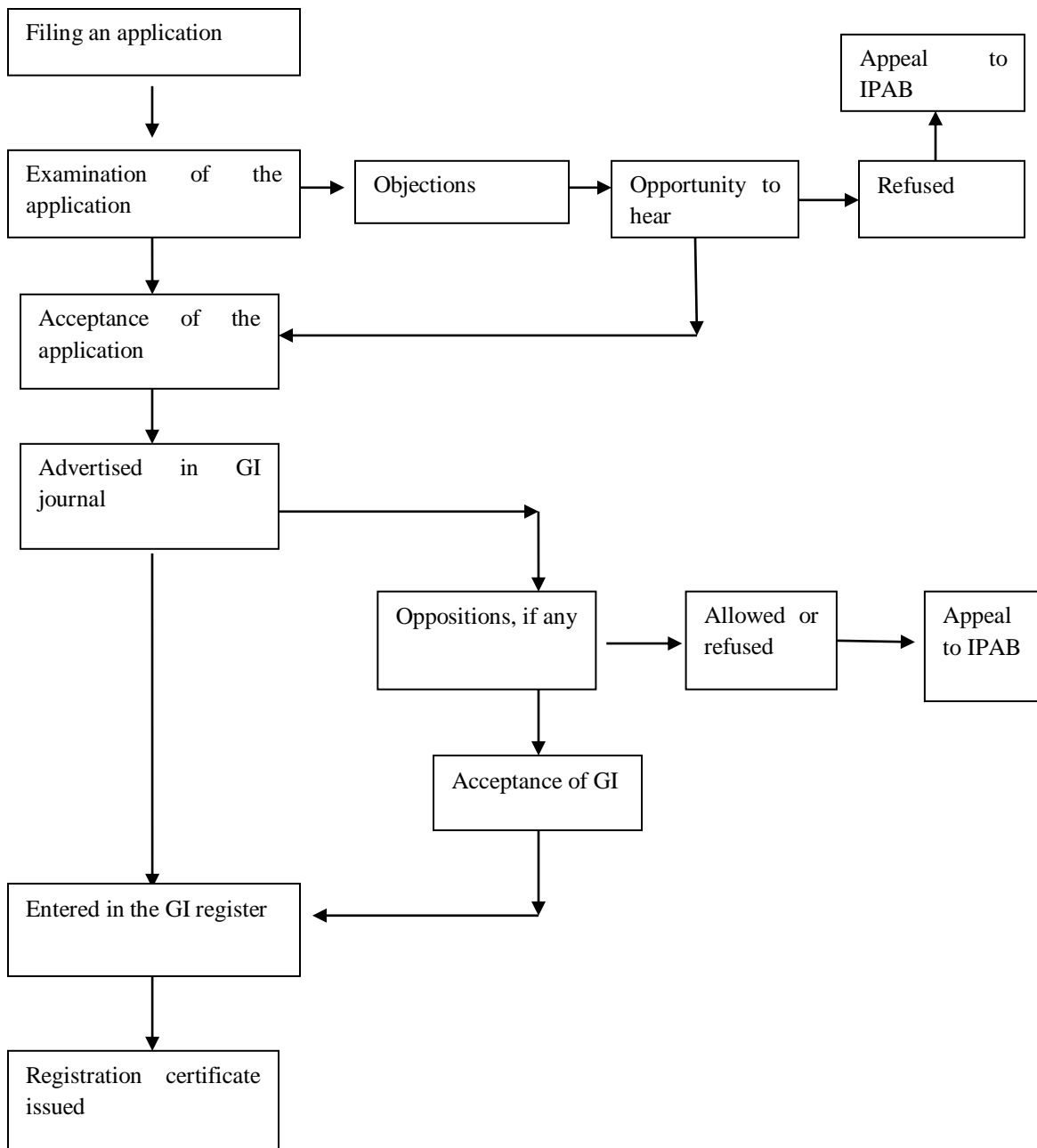
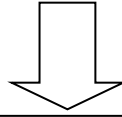


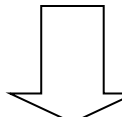
Figure-1: GI registration process in India

4.8 Filing of the Application

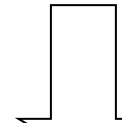
The Application must be made in triplicate



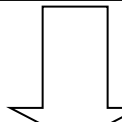
The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.



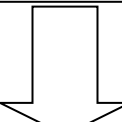
Details of the special characteristics and how those standards are maintained.



Three certified copies of the map of the region to which the GI relates.



Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.



Give details of the entire applicant together with address. If there is a large number of producers a collective reference to all the producers of the goods may be made in the application and the G.I., if registered will be indicated accordingly in the register.

4.9 Infringement of Registered Geographical Indications

Section 22 of the GIGA prescribes law related to the infringement of registered GI. Infringement of a GI means that if a person uses any registered GI in any of the designations or presentation of the goods which indicates the origin of such goods is the geographical area other than its true place of origin, which may mislead the people or the use of GI which can act as unfair competition with respect to the registered GI. There is two explanation provided under section 21(b), which gives a clear understanding of the term act of "unfair competition." Explanation 1 states that an act of unfair competition is an act of competition contrary to the honest practices in the industry or market. Explanation 2 includes three sub-parts which states that,

(I) any act by the competitor of the product which may create confusion in the industry and market with respect to the original GI registered product.

(II) False allegations by the competitor to discredit the original product or the establishment that manufactures the product

(III) Using the attributes related to GI like the characteristics of the product, an indication of the place of origin, quality of the product that may mislead the person. For example, a representation of a product originating in a certain territory or region similar to a registered GI product.

From all of the above points, it is clear that once a product is registered as a GI, it received statutory rights and remedies against its unauthorized use. But a mere presence of the product in the GI registry would not protect it from infringement. As per section 18 of the GIGA, the indication should be renewed within the prescribed time. Those products whose registration is not renewed and their name still exist in GI registry due to any kind of delays would not be considered as a registered GI and no action against infringement can be taken. Hence the infringement of registered GI occurs if any unauthorized user uses the registered GI for any presentation of their products indicating that the goods originated in an area other than the true place of origin of such goods which may mislead the public.

4.10 Enforcement for Geographical Indications

The remedies accessible for the protection of GI may extensively be grouped into two classifications.

- i) Civil*
- ii) Criminal*

(i) Civil remedies

The holders of enlisted GI may start either infringement or passing off procedures against an infringer. The infringer can file a suit having jurisdiction in court not inferior to that of the district court. Following are the civil remedies available for the infringement of GI.

- (a) Injunction
- (b) Penalty
- (c) Delivery of the infringing labels and indications containing products

(a) Injunction: Injunction incorporates temporary and permanent. An order is allowed for the insurance of infringement of related things, records or other proof in regard to the subject of the suit. An order is conceded for confining the respondent from discarding or managing his items which may unfavorably influence offended parties' capacity to recuperate damages, costs or other financial remedies which might be at long last granted to the offended party as compensation. The previously mentioned cure of order is progressively successful and can forestall more prominent mischief to the offended party. Or other peculiar remedies are given to the offended party.

(b) Penalty: The remedy of damages or accounts of profit is accessible to keep infringers from infringement. This is an alternative remedy. Damages or accounts of profit might be precluded Where the litigant fulfilled the court that he was unconscious and there was no sensible reason for that assuming that the offended party's GI was registered when he was occupied with utilizing it; And when he got mindful of the presence and nature of the GI, he quit utilizing it.

In *Scotch Whisky Association v Golden Bottling Limited*⁹ when Scotch whisky had a GI tag and offended parties battled that the respondents encroached on their GI tag by selling its Whisky as 'Red Scot', the court held that the offended party's privileges had been encroached upon. The court allowed changeless order and harms to the offended party and requested that the respondent bear the costs of prosecution.

(c) Delivery of the infringing labels and indications containing products: It is in the court's prudence to arrange the infringer to convey up encroaching labels and signs for destroying by mulling over applicable conditions the court could possibly arrange for such remedy. All the referenced damages are additionally accessible for the activity of passing off. The activities of Passing off are started against the infringement of unregistered GI.

(ii) **Criminal Remedies**

Criminal remedies are more successful than common cures on the grounds that the previous can be arranged off rapidly. The pendency of a common suit doesn't legitimize the stay of a criminal continuing in which a similar inquiry is included. Since criminal procedures straightforwardly strike at the respect and societal position of an infringer, sometimes he wants a settlement out of court to spare his renown. Section VIII of the Act manages offences and punishments for such offences.

The Act contains a punitive arrangement for infringements of different arrangements identifying with GI are given beneath.

- (I) Falsifying and erroneously applying geological signs to goods.
- (ii) Selling merchandise to which bogus geological signs are applied.
- (iii) Falsely speaking to a topographical sign as enrolled.
- (iv) Inappropriately portraying a position of the business as associated with the
- (v) Falsification of sections in the register.

The discipline recommended for the previously mentioned offences fluctuates from six months to three years imprisonment and a fine of not less than rupees fifty thousand yet may stretch out

⁹129 (2006) DLT 423, 2006 (32) PTC 656 Del.

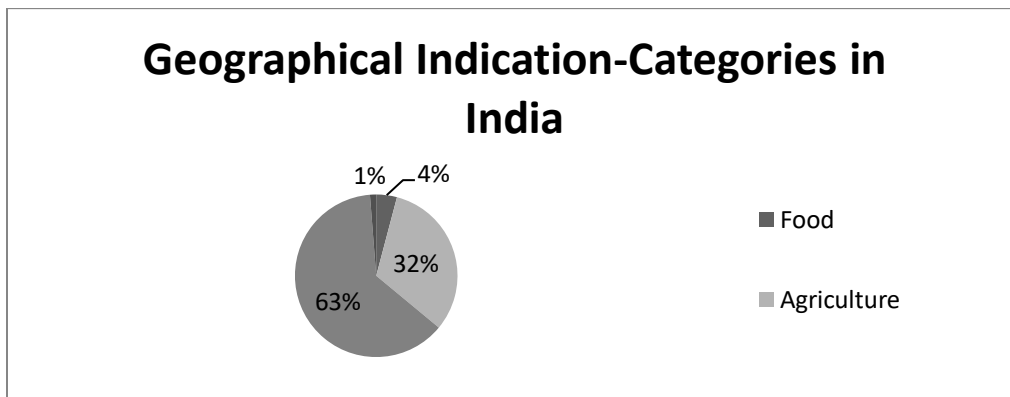
to rupees two lakh. Be that as it may, the court for sufficient and unique reasons may force a lesser discipline.

4.11 Foreign Applicants

Most of applications and enrollments for GIs right now on the Indian GI Register have a place with Indian elements. Be that as it may, as of late various outside candidates have effectively gotten GI insurance in India which is empowering for right proprietors. PISCO was the first remote GI application recorded in quite a while under Section 84 of the Act that permits merchandise of outside source which have developed adequate notoriety in India to look for enrollment. PISCO is indigenous liquor which is set up from 'Pisquera grapes' by applying conventional creation and refining procedures that are explicit to its place and nation of beginning.

4.12 Geographical Indications in India

GI enlistment in India has numerous advantages which incorporate, legitimate insurance in India, forestalls unapproved utilization of an enrolled GI by others. It assists with expanding Indian GI trades, it advances monetary flourishing of makers of products delivered in a land an area what's more, it additionally empowers looking for legitimate security in other part nations of WTO. GI enrollments began in India from April 2004 and wares are enrolled under four classes for example 1. Agriculture, 2. Food, 3. Handicrafts and 4. Manufactured products. The below table shows the data of GI categories in India.



GI Registry Office, Chennai, as on 2019

Darjeeling Tea was the principal item to be granted GI tag in India under Agricultural goods. Until March 2019, absolutely 343 wares have been granted GI labels (list discharged by the enlistment center of land signs, Chennai, <http://www.ipindia.nic.in/registeredgls.htm>), out of which 329 are of Indian starting point and 14 wares are from different nations. GI enrollments from various states and Union domains of India are spoken to in the figure. Karnataka beat the rundown of GI enrollments followed similarly by Maharashtra, Tamil Nadu and Kerala, while Jharkhand, Lakshadweep islands, Chandigarh and Andaman and Nicobar Islands are yet to register any geographical signs. Zone astute GI enrollments demonstrate that southern zone is driving in GI enlistments with 137 out of 329 GIs followed by western zone though focal zone has least GI enrollments. A GI enlistment from southern zone is multiple times that of western zone. GI enrollments from southern states under four classifications, which likewise incorporate GIs which are normal for numerous states. Karnataka has the most noteworthy number of GI enrollments for the two handiworks and horticultural items, trailed by Kerala while Tamil Nadu has the most noteworthy number of GI enrollments for painstaking work. Karnataka is the main state which has GI enrollments under every one of the 4 classifications, while Andhra Pradesh, Telangana and Tamil Nadu have GI enrollments under 3 classifications, Kerala under two classifications while Puducherry has GI enrollment as it were under painstaking work. GIs are, in a way, the lawful insurance for products which have huge criticalness. India is given with rich legacy of culture what's more, customs that are prospering here for recent hundreds of years. In expansion to this it has huge biodiversity and has various agro climatic conditions, which lead to numerous geographic explicit IPR items in farming and other segments. The GI enrollment has high hugeness in the nation like India as it has been demonstrated on account of Basmati rice, where remote fares winning is about ' 38,443 crore. By and by a predetermined number of wares have been enrolled under GI and a lot more items having a place with various states have potential to be enrolled. The mindfulness about potential items with respect to procedure of enlistment furthermore, its social and financial advantage what's more, essentialness among makers what's more, brokers must be expanded to get GI tag.

4.13 Conclusion

India is a nation having a multitudinous number of GI discovered the whole way across the nation. It is, for the most part, a direct result of such enhanced climatic conditions, human aptitudes and customs among different states. GI, if appropriately recognized and secured are fit for adding to a huge segment of income for a developing nation like India.

As India is a signatory to the TRIPS Agreement, it is the commitment to give insurance for those items having a GI tag. To ensure the GI India embraced the GI Act, which came into power, alongside the GI Rules, with impact from 15 September 2003, has been instrumental in the augmentation of GI status to numerous products up until now. The central government has built up the Geographical Indications Registry with all-India purview, at Chennai, where right-holders can enlist their GI. In contrast to TRIPS, the GI Act doesn't confine its unique assurance to wines and spirits alone. The central government has the circumspection to choose which items ought to concur more elevated levels of security. This methodology has intentionally been taken by the drafters of the Indian Act with the point of giving severe assurance as ensured under the TRIPS Agreement to GI of Indian birthplace. In India, enlistment for GI isn't mandatory. In the event that the proprietor of the GI is enlisted under the GI Act if there should be an occurrence of encroachment, the proprietor can file a suit. When a GI is enrolled in India, it turns out to be moderately simpler to look for insurance in different nations too. So a country like India, protecting GI will produce a lot of income.

CHAPTER 5

GEOGRAPHICAL INDICATIONS IN INDIA: A STUDY ON ISSUES AND CHALLENGES

5.1 Introduction

In India, around 68.84% of people live in rural areas. Though agriculture is their primary occupation, they are also indulged in various occupations like handicrafts such as pottery, weaving. They are also engaged in small scale industries. These occupations also add value to the economy of our country. Thus, there are a lot of measures taken by the state and central government, respectively, to enhance the rural community through different methods. The Geographical Indication is one such measure adopted by the Central Government passed under the GI Act 1999 to improve the condition, quality, and standards of the products with certain regional or geographic characteristics.

There are in total 370 registered geographical indications in India distributed among categories like Agricultural, Foodstuffs, Handicrafts, Manufactured and Natural. The below chart provides the percentage share of each category from 2004 to 2020.

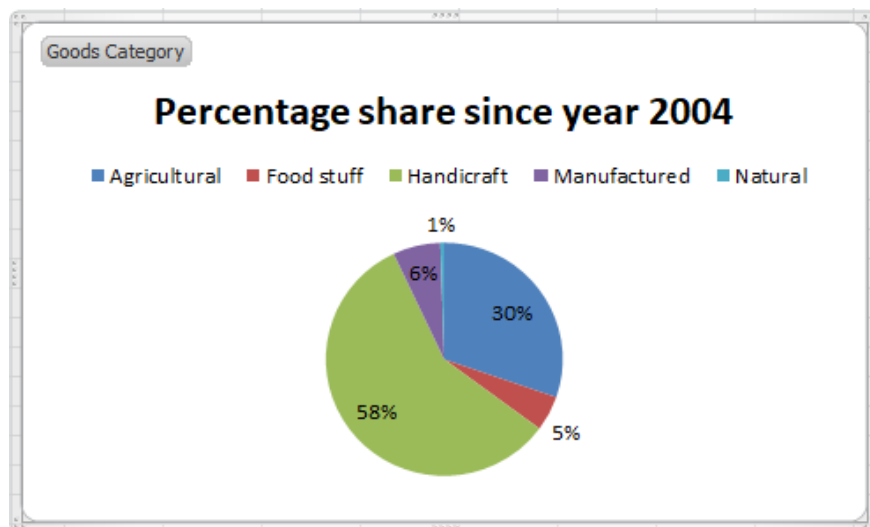


Fig. 1

The chart below shows that the majority of GI is granted to handicrafts and agricultural products. This study mainly focuses on the products of GI products belonging to Kerala. In Kerala, there are 29 registered GI products mainly under two categories Agriculture and Handicraft. The below chart provides the percentage share of each category from 2004 to 2020.

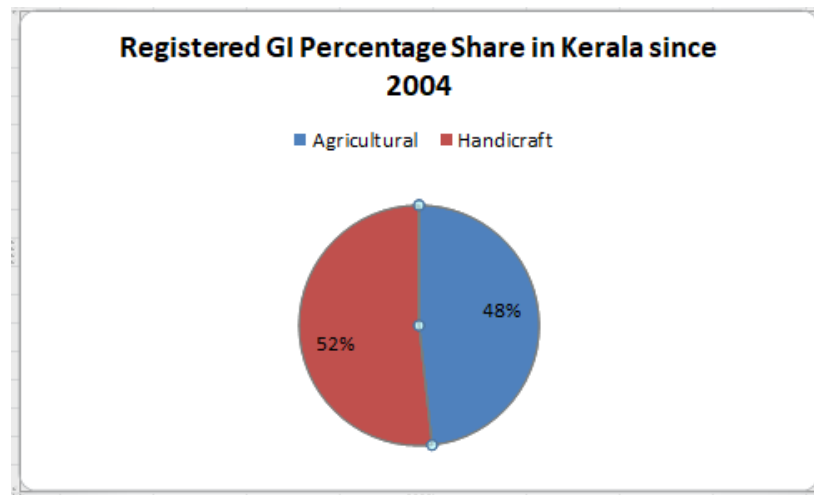


Fig. 2

In Kerala, GI has been granted only to products under the agricultural and handicrafts category.

5.2 Objective of the Study

The research aims at analyzing the various issues and challenges of geographical indications with respect to the producers and manufacturers. The study seeks to examine the effect of GI on multiple aspects like social, economic, and cultural factors. The study also reveals the status of the products before and after being recognized as a GI.

5.3 Research Questions

- What are the issues and challenges faced by the producers of the products having a GI tag?
- Does the GI tag help to identify the real products?
- Does the producer/manufacturer of the product get any benefit from the GI tag?
- Whether the consumers are aware of the GI products?

5.4 Research Methodology

The research employs an empirical study to understand the real issues and challenges faced by the producers or manufacturers.

5.4.1 Participants

From the manufacturers of products having GI tag, around four manufacturers of Kerala, manufacturing and producing Aranmula Kannadi, Palakkadan Matta Rice, Navara Rice, and Vazhakulam Pineapple respectively chose as the sample for getting data.

5.4.2 Materials/Techniques

The materials and techniques used under this quantitative research for obtaining valid results are a structured set of questions hand-delivered to the manufacturers in the form of a questionnaire. The questionnaire consists mainly of open-end questions. The reason for using this technique is that, as the sample size is small, this will help us to get more details, especially to know about the hurdles faced by the manufacturers/producers. It helps to obtain a moderate rate of responses, which is satisfactory for the research.

5.5 Data Collection

The data is collected from the participants by distributing these questionnaires, and accordingly, the data is analyzed to obtain the outcomes.

QUESTIONNAIRE

1. How did you get to know about Geographical Indication?
2. How easy were the procedures for getting the GI?
3. Was it difficult for you to produce the proof of origin that is mandatory for the registration of GI? If yes what were the challenges faced? Are there any other difficulties in the process of applying for GI tag?
4. How much did it cost for you to get GI?
5. Was there any delay to get the GI tag after the date of applying?
6. To what extent do you think it will help you to preserve your tradition and culture?
7. Does it help you to improve business?
8. How do you do the marketing and promotion of your products?
9. Does it increase demand of the product?
10. Can you state any differences in the following aspects before and after getting the GI tag:
 - A. Visibility of the products
 - B. Advertising methods
 - C. Business prospects

5.6 Data Analysis

Geographical indications are given to those products with some unique characteristics and qualities attributable to that region. Once the product receives the GI tag, it gets a different identity in the market. The GI serves as a tool to identify genuine products. By getting a GI tag, the manufacturers will get benefits with respect to socio and economic aspects. But practically are the functions set under the GI Act working properly. Are the producers and manufacturers getting benefited post receiving GI? To deeply understand this problem, I conducted a study on four different products that have obtained the GI tag. I have also visited and met the manufactures of these four products personally to discuss and identify the pros and cons of GI. For collecting information, I handed over the set of questions to which I can get more information on practical knowledge on various issues faced by the manufacturers.

For this research, I undertake a study on,

- 1) Aranmula Kannadi,
- 2) Palakkad Matta,
- 3) Navara Rice and
- 4) Vazhakulam Pineapple.

Geographical Indications: Aranmula Kannadi

Status: Registered

Goods: Handicraft

Aranmula Kannadi is the first product from the Kerala state to get a Geographical Indication tag. Aranmula Kannadi gets GI under the category of handicraft. The Malayalam word ***Kannadi*** means a mirror. The Aranmula Kannadi is a mirror made by a group of gifted craftsmen from the region called Aranmula, in Pathanamthitta District, Kerala. The Aranmula is the only place where these are manufactured. These mirrors have a very long history. The history of Aranmula kannadi can be traced back to 500 years back when the ancestors belonging to Viswakarma bronze smith were brought to Kerala `by Royal Chief from Thirunelveli. They were brought to Kerala in connection with some temple works in Parthasarathy Temple, Aranmula. After completion of work, they settle there. They started to make a crown for the chief using the alloy of copper and tin. At the time of polishing, the crown showed an extraordinary mirror-like reflection. After that, the craftsmen used the same technique to make the mirror. As time

changes, some alterations were made in the designs and 'Aranmula Kannadi' gets its popularity. The reason behind the popularity of the Aranmula Kannadi is that it is pure, handmade, and no machinery is used at the time of production. Due to this peculiarity, it takes a minimum of three days to complete the work of a small mirror. It resembles like a glass mirror, but the surface gives reflected images instead of refraction that happens in the glass. The metals used in the manufacturing of this mirror are tin and copper in a specific combination, for which the proportion is kept as secret. The clay, found in this region, is also playing a major attributable to the manufacturing of the mirror. The technique of using tin and copper and also the use of clay in moulding kept as secret and transferred to generations.

As GI is granted to a community, the manufacturers of the '*kannadi*' formed a society named as Aranmula Viswa Brahmana Metal Mirror Nirman Society. In the year 2003, this society applied to get the GI. Subsequently, they received the GI in the year 2005. In the case of Aranmula Kannadi, they had all the related documents related to the proof of origin, and also, the concerned authorities tested natural conditions like the soil. The entire process of GI is cost-effective. During the interview, I was informed by them that GI helped a lot to preserve their tradition and culture. After receiving the GI, the demand for the product increased at both the national and international levels. Different state Govt. initiatives like showcasing handicrafts under the brand name '*Kairali*' and '*Surabhi*' also now plays a significant role in the promotion of Aaranmula Kannadi both on e-platform like Amazon.com and also by conducting exhibitions. This will eventually boost its business in national markets and also export to international markets.

Below is the graphical representation of Aranmula Kannadi since 2005

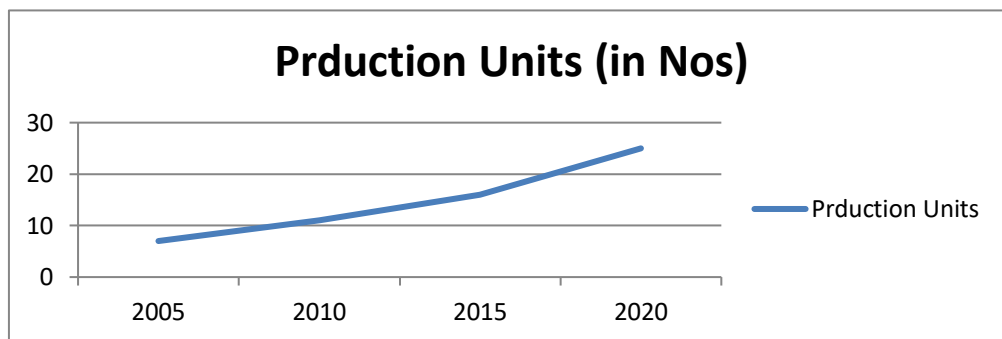


Fig 3

Fig. 3 shows that the increase of production units after getting GI. During the time of registration, there were only seven production units. But now the production units increased up to twenty-two. There is only an increase in production units. This shows the positive impact of GI.

The main issue that I identified during the interview is that many fake mirrors are getting manufactured in the name of Aranmula Kannadi. Hence the basic protection that is guaranteed by GI on protecting the authenticity of the product against similar or fake products is sometimes compromised. Thus, it fails to identify unauthorized use. Another issue raised by the manufacturers is that there is no proper enforcement of the law for infringement mentioned in Geographical Indications of Goods (Registration and Protection) Rules, 2002.

Agriculture is the primary occupation of up to 58% of the population in India. In the financial year 2018-19, the gross value added by agriculture, forestry, and fishing is estimated at Rs.18.55 lakh crore. Hence agriculture can be termed as the backbone of the Indian economy. Like the manufacturing sector, there are many fake products in the form of adulteration present in the agriculture sector. These counterfeit products diminished the quality of the original product. This weakened the producers of the original agricultural products socially and economically. GI is a perfect tool in such a scenario by which consumers can identify authentic and genuine products. From the producer's perspective, GI not only protects their self-grown products but also helps them to promote their product in both the national and international arena. Hence, it will improve their socio-economic standard of living. But there are some issues associated with agricultural products having GI. To identify the issues and challenges associated with agricultural products, I researched three vibrant products,

- (i) Palakkad Matta - An indigenous variety of rice grown in the Palakkad district, Kerala.
- (ii) Navara rice - A type of rice which has medicinal values, grown in Palakkad district, Kerala
- (iii) Vazhakulam Pineapple- A type of pineapple cultivated by the farmers of Vazhakulam is the sweetest pineapple available in India.

Geographical Indications: Vazhakkulam Pineapple

Status: Registered

Goods: Agriculture

Vazhakulam pineapple is one of the other agricultural goods for which the GI tag is granted. This pineapple is grown commercially in the region called Vazhakulam, in Ernakulum district, Kerala. Apart from this, pineapple is grown districts like Kottayam, Pathanamthitta, and low elevation areas of Idukki districts. Vazhakulam pineapple is locally known as "Kannara" under the species of *Ananascomosus*. The unique aroma, flavour, and sweetness are mainly due to the high amount of sugar content and low acidity in the pineapple. The fruit flesh is crisp and golden yellow. This pineapple will grow within 12-13 months after planting. Vazhakulam pineapple is a good source of carotene, vitamins minerals, and energy. Nadukkara Agro-Processing Company Ltd. (NAPCL), The Kerala Agricultural University, The Pineapple Farmers Association jointly applied for the registration of GI. The producers of Vazhakulam pineapple stated that the consumer's demands are gradually increasing. There is also a demand from different parts of the country. Thus they were able to have quality farming using modern techniques. Recently they have started exporting to some of the Gulf countries as well. But the producers are unsure that all the developments happened only due to the GI tag as they do not have any reports specifying that the demand has increased because of GI.

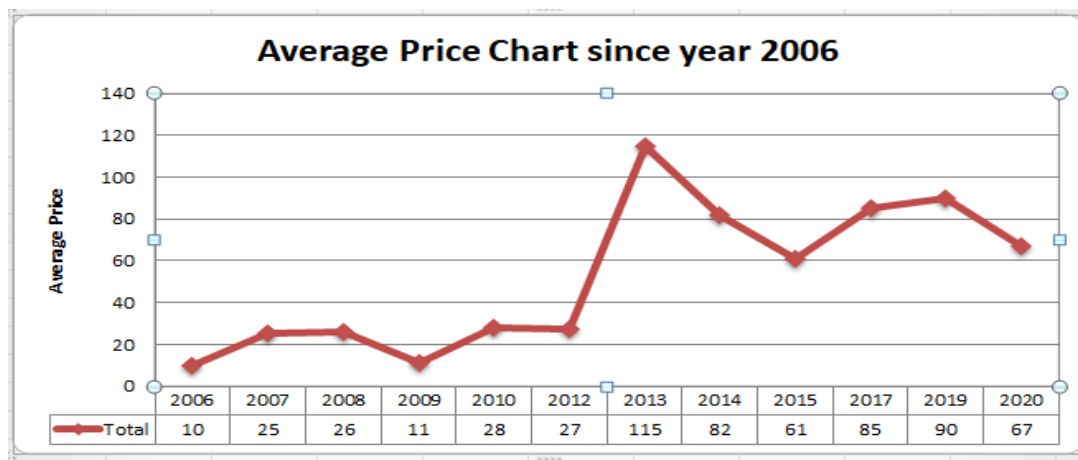


Fig 4

Figure 4 shows the average price chart since the year 2006. GI was granted to Vazhakulam pineapple in the year 2009. Since then there is a hike in the price of Vazhakulam pineapple.

Geographical Indications: Palakkadan Matta Rice

Status: Registered

Goods: Agriculture

The "***Palakkadan Matta Rice***" is the indigenous rice of Palakkad, Kerala. Palakkad matta is also known as "***Kerala Red Rice.***" The rice is bold and red, having high nutrient value. This rice is grown on black or regar soil, which contains lime, which is found in the Palakkad region and comprises 60-80 percent of clay and silt. The soil can hold a high capacity of water, which helps in the cultivation of rice. The soil conditions, the easterly wind blows through Palakkad gap, humid climate, all these features contributed to getting a unique taste for Palakkad matta. The GI is given to the Palakkad Matta Farmers Producer Company Ltd. There are ten varieties covered under this GI, namely, Aryan, Aruvakkari, Chitteni, Chenkazhama, Chettadi, Thavalakanna, Eruppu, Poochamban, Vattan Jyothy, and Kunjukunj.

The history of the said Palakkad Matta rice can be traced to the times of the Cheras and Cholas when Palghat District was part of Tamil Nadu" The rice which has carried away by a farmer from the King's farm in a "Matta" (Areca nut leaf) came to be known as "Palakkadan ***Matta Rice.***"

They filed for GI in 2005, and they received GI in 2007. At the initial stages of the work Confederation of Indian Industry, the Kerala chapter helped to do the paperwork. All over India, Palakkadan matta was the 36th application. They have all the documents to show proof of origin. The entire process of GI is cost-effective, and also there no such delay for getting the GI tag. Also, at the time of the interview, they said that the GI plays a vital role in preserving their culture and tradition. Also, it helped a lot to empower the farmers.

Geographical Indications: Navara Rice

Status: Registered

Goods: Agriculture

The "***Navara Rice***" is the indigenous medicinal rice of Kerala. It is mainly used in Ayurveda for Panchakarma treatment. This rice is also known as "Shashtika Rice." This particular rice needs only sixty days to grow and mature; thus, it is considered a unique and peculiar characteristic of this rice. The usage of Navara can cure respiratory, circulatory, rheumatic, and digestive problems. The medicinal properties of Navara are mentioned in Ayurveda scripts like *Ashtangahridaya* and *Sushruta Samhita*. In these scripts, it is referred to as a "pious grain" used on the auspicious occasion.

The cultivation is highly organic as it requires specially prepared fields. Also, extra care should be given to maintain their purity of grains. The grains are in black and gold color. The GI is given to Navara Rice Farmers Society, Karukamanikalam, near Chittur, Kerala.

They filed for GI in the year 2004. In the year 2007, they got the GI tag. For getting GI tag for Navara whole documentation process and application took three years. During the interview, they said that it was the first farmers association formed for getting the GI for agricultural goods. Navara was the first application from Kerala for the agricultural product. Non-availability of pure seeds, low yield, and high production costs are also contributing to the crisis.

5.6.1 Concerns raised by the producers of agricultural products

The primary concern that was raised by all three producers of agricultural products that have obtained the GI tag was regarding the climate change that was adversely affecting the growth of their products. The excessive rise in the atmospheric temperature has also led to extreme rainfalls and climate change, resulting in reduced production of the yield due to the damages caused. Another concern raised by the producers is that the awareness about the legal aspects of GI or the implementation of the law related to GI is very minimal, or in some cases, it is not even getting addressed as per the GI act. This leads to a spike in manufacturing and marketing of fake products, which misleads the public. They have also mentioned that initially, they did not receive any help from central and state governments with respect to premium pricing and marketing. But now efforts are being taken by the governments and concerned authorities to

increase the sales. The majority of them are not using the new generation market like the e-markets due to concerns related to tax disputes within states. The export of the product is also very minimal as the cost associated with the preservation of the products and also the export cost is too high. There is minimal awareness among people regarding GI products. So they all proposed unanimously that a mass awareness among potential customers should be provided to understand the advantages of GI.

Below are the benefits of GI.

- Identifying fake products
- Guaranteed premium price
- Increase in export earnings
- Promotion of tourism
- Encouragement of employment
- Helps in preserving many traditional skills.
- Consumer awareness about GI

One of the main objectives of my empirical study was to check whether these advantages did help the producers of the product with the GI tag. Below chart is based on the response received from the producers on the benefits mentioned above.

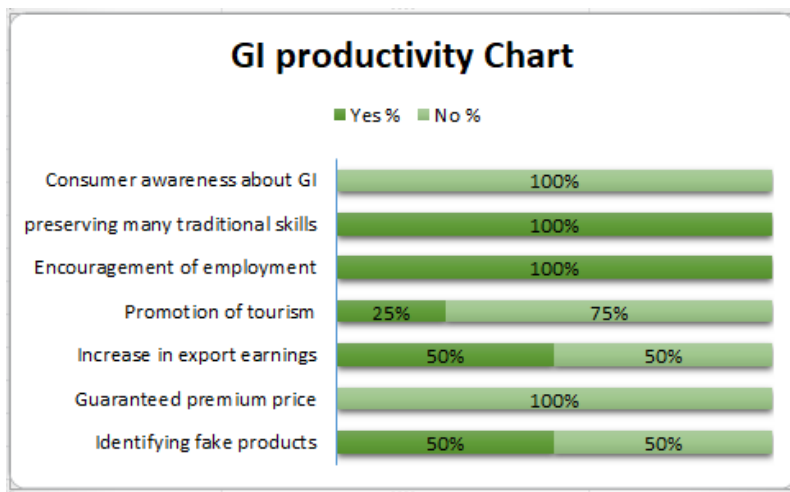


Fig 5

From the above chart, all the manufactures/producers with whom I discussed with, unequivocally mentioned that GI has helped in preserving their custom and tradition and also to an extent helps in the increase in the production, in turn, increasing the employment rate. But the only concern raised by all of them is the lack of awareness among consumers about GI. Another major concern raised by the producers and manufactures was related to the identification of fake products in the market. Up to a certain extent, the agricultural products like Navara, Palakkadan Matta, and Vazhakulam pineapple was successful in identifying and curbing fake products. But, as there are no strict actions taken by the government to curb fake products irrespective of the GI Act, it keeps coming out with different names and brands, which makes the genuine producers unable to control the fake products completely.

Aranmula Kannadi is the worst affected due to fake products. As it is a symbol of Kerala tradition and culture, tourists visiting Kerala tend to buy it as a souvenir and ends up buying the fake product by paying the same price of that of a real Aranmula Kannadi.

In order to understand customer awareness of GI, an online survey was conducted. Below are the results of the survey conducted?

1. States

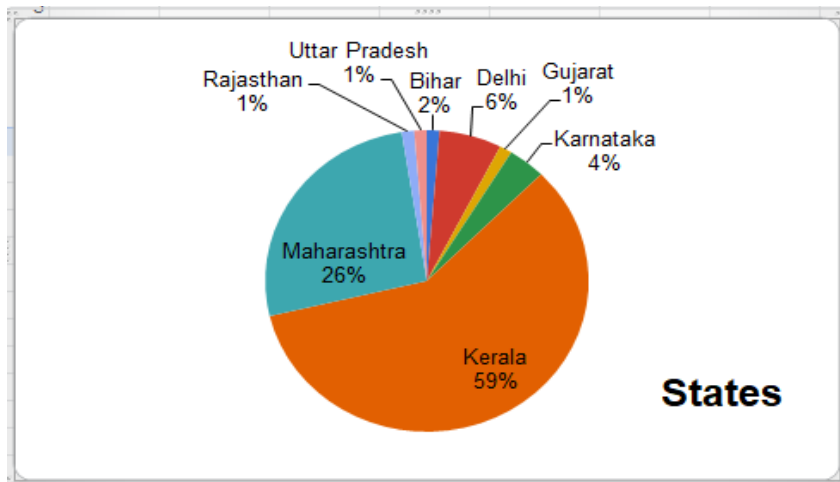


Fig 6

2. Occupation

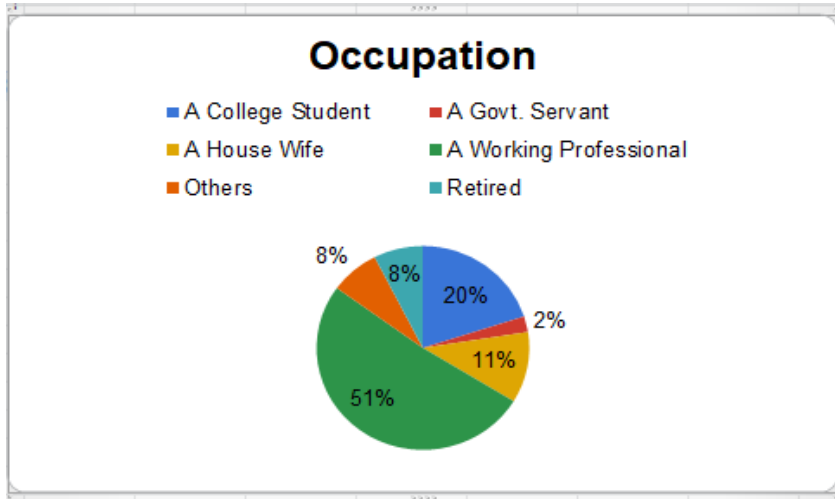


Fig 7

3. Age Group

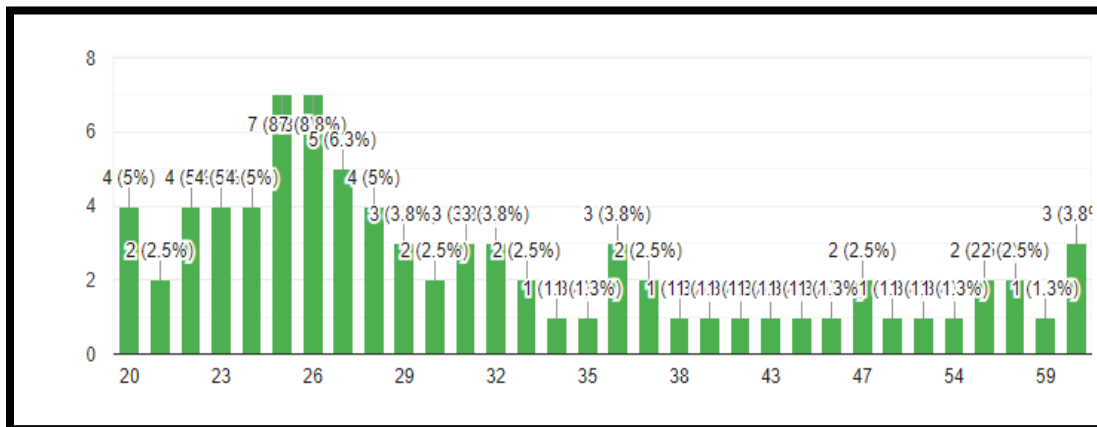


Fig 8

4. Awareness of different IPR

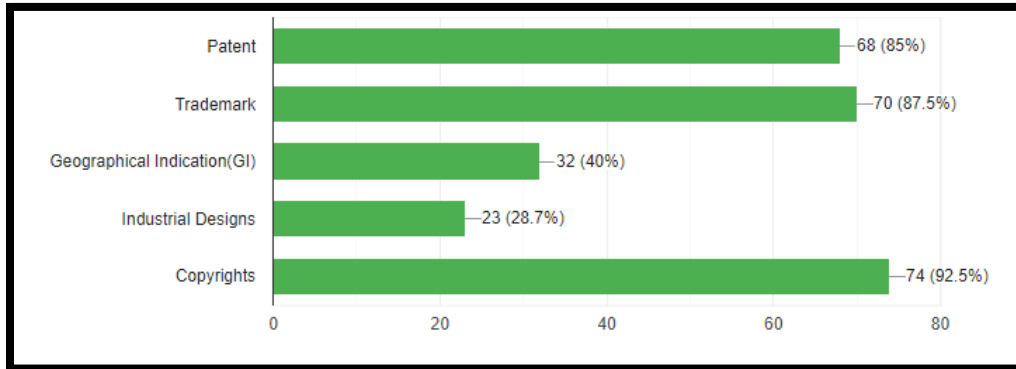


Fig 9

The above chart shows the awareness among different IPR among participants. From this chart, we can analyse that majority of participants are aware of terms like a trademark, patents and copyrights. Only 40% of the participants are aware of the GI.

5. GI considered as a buying factor.

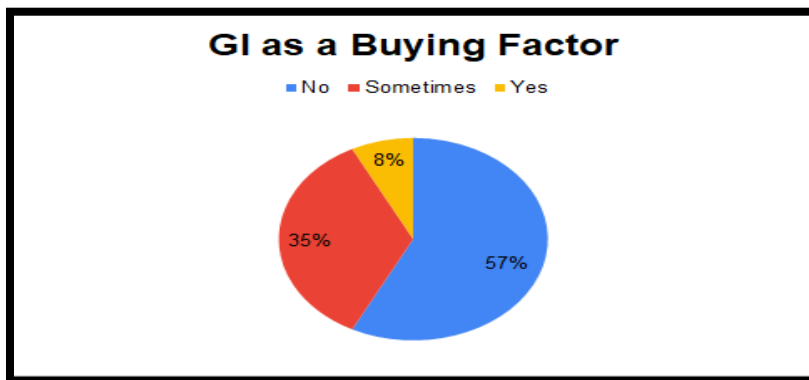


Fig 11

From the above chart, we can see that only 8% considers whether the product is registered under GI before buying them. 35% sometimes found GI as a buying factor. 57% are not considering GI as a buying factor.

From the online survey conducted, we can conclude that there is a lack of awareness among consumers regarding GI. When buying factors of the consumers are considered popularity overcomes GI, i.e., people tend to buy what is popular and sometimes in the course ends up buying a fake product which is popular only because of the popularity in the name of the product.

5.7 Contribution of Empirical Study on Research

I had undertaken this study to identify the issues faced by the producers/manufacturers of the GI products. So this empirical study has helped me in understanding the real problems faced by the producers/manufacturers, their experience of getting pre and post GI. They explained in detail every process concerning the GI. A detailed analysis concerning GI was possible due to this empirical study. The study included both agricultural product and non-agricultural product which gave a clear understanding of problems faced by both the communities. So this empirical study helped me to understand the real issues faced by the producers/manufactures of GI products. Also, they made some suggestions to overcome those issues which have included in this research. It also helped me to understand the genuine efforts taken by the manufactures/producers for producing the products. As many of them uses a traditional approach for production, there is a limitation for mechanization and automation of the process. Hence the output is both time and resource consuming.

5.8 Suggestions

As the GI was introduced to curb the fake products, it should be heavily implemented to:-

- make the consumers aware of it
- The concerned government authority must ensure the laws pertaining to GI must be appropriately enforced against production and manufacturing of duplicate products which are registered under GI.

- One of the major concerns raised by the producers was regarding the premium pricing of the product. The government must set a premium price for all products registered under GI. This will promote and encourage the producers of these products.
- The government must undertake worldwide marketing of these products and promote this product as an exclusive category brand which can be termed as GI brand
- There should be tax benefits for the producers of GI products. Introduction of a special category tax for GI products can be introduced.
- GI products can also be promoted under tourism and can be marketed in airports and tourists places.

5.9 Conclusion

I had mainly conducted this study to identify the real issues and challenges of producers/manufactures of GI products. Hence this empirical study helps me to identify both positive and negative aspects from the producers as well as consumers view on GI in India. The empirical study further helps me to boost my knowledge concerning the implementation and legal aspects of GI. This empirical study also helps me to meet the expectations that I had during the initial phases of the research.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

In the era of Intellectual Property, it is essential to provide adequate protection to GI as it is an emerging IP. Globalization has decreased the distance between the countries and resulting in increase and improved trade relations among the nations. But, this has sometimes adversely affected the business of local products, and people started opting branded products over local products. Here comes the need to vindicate the local products to the global market. Also, these products must be adequately protected. Hence to protect the interest of the local market, GI plays an important role.

There are a variety of products for which the manufacturing and production processes are only known and limited to the community that manufactures. The natural and geographical factors of that region also play a significant role in the development of that product. These products sometimes become an identity of that geographic region. Hence guaranteed protection must be provided for such products against illegal usage of such products. GI helps to protect those products from illegal use. Thus Geographical indication was introduced. A geographical indication is a sign, which indicates the origin of a product. The origin is due to the various geographical -environmental factors like human factor, natural factor, or maybe a combination of both, which attributes some quality, reputation, and specific characteristics to the products. It is primarily for the protection of the interest of a community concerning a specific item.

The history behind the protection of GI starts from the Paris Convention on Intellectual Property in the year 1883. The current universal system is set down in Article 22 of the WTO Agreement Trade-Related Aspects of Intellectual Property Rights (TRIPS) which orders part nations to accommodate the assurance everything being equal, where the commitment is for nations to give the 'legitimate methods for invested individuals' to make sure about the security of their GIs. One of the significant issues concerning legal protection for the geographical indication is the conflicts among the geographical region itself. Hence like all other elements of IPR, GI also has passed through many reforms. Despite many reforms, there are no generally accepted procedures for GI.

Initially, every country had its legal system to handle GI, making it difficult for the trade of certain products. With the beginning of WTO and with the emergence of the global trade market, it was inevitable, but to have a common set of rules for GI. This was, to an extent, achieved in

the TRIPs agreement 1995. The TRIPs agreement enhance the scope of protection of GI under Article 22 and 23, which includes protection against the misleading of public and protection against unfair competition. The TRIPs also specify enforcement procedures, remedies, and dispute resolution among its members. Thus, the agreement on the TRIPs became an international legal agreement between all the members of the WTO. India is also bound to protect GI as it is a member of WTO. Hence, the Geographical Indications of Goods (Registration and Protection) Act was enacted in 1999 and has come into force in September 2003 (hereafter called the GI Act). Before the GI act, which was enacted in the ear 1999, there were no formal procedures or any legal law in India to protect the producers of those products which were either or manufactured within the geographic regions of India. Since then, the judiciary and the government have been active in preventing persons who take unlawful advantage of GI products. The main objectives of this act are to protect the interest of producers of such goods. Another object is to prevent unauthorized use of GI and to protect consumers from deception and also to promote the goods having GI in the export market.

India is a place where there is a treasure, blessed with rich regular assets of farming items and different merchandise of high monetary worth. Rustic people in different districts of our nation have one of a kind aptitude and ability to create high-quality items like crafted works, adornments, materials other related items and they are engaged with the above expertise for a few ages. Frequently associated with customs, practices and culture, geographical indications are firmly intertwined into provincial lives which utilize conventional strategies, practices and skill to deliver these products related to land signs.

This study is mainly focused on the issues and challenges faced by the producers/manufactures of products having GI. The main objective of this study is to understand the various problems faced by the manufactures/producers. · The research analyses the impact of GI on numerous angles like social, economic and cultural factors. The examination additionally uncovers the status of the items when being perceived as a GI. This research helps to find answers for the research questions set during the beginning of the research.

The hypothesis set for this study is that GI fails to identify the homonymous product having a GI tag. Also, it fails to protect the interest of producers. Thus, the GI Act fails to achieve the goals referenced in the act. The empirical study shows that the hypothesis set for the research is true.

The GI Act 1999 is mainly formed to attain the following objectives:-

1. To protect the interest of producers of such goods.
2. To prevent unauthorized use of GI and to protect consumers from deception
3. To promote the goods having GI in the export market.

The study reveals that the GI Act fails to protect the interest of producers. While conducting the empirical study, one of the producers/manufacturers said that there is a law relating to GI, but it is not getting enforced. The concerned authorities are not at all aware of it. Another issue raised by the producer is that the act fails to prevent the unauthorized use of goods. Many duplicate GI products are available in the market. This is one of the main challenges faced by producers. The government is not taking any initiative to export GI products to other countries. Only a few products having GI like Darjeeling Tea is getting exported. Also, the lack of awareness among consumers about GI is a challenge faced by the producers. Consumers are mostly buying the GI registered product only because of its popularity. Hence, we can make out that the GI Act fails to achieve its core objectives.

Suggestions

This research put forward some suggestions to resolve the issues and challenges faced by the producers/manufacturers. As GI is mainly introduced to curb the fake products, to protect the interest of producers, it should be heavily implemented to:-

- ❖ Make the consumers aware of GI.
- ❖ The concerned government authority must ensure the laws pertaining to GI must be appropriately enforced against production and manufacturing of duplicate products which are registered under GI.
- ❖ One of the major concerns raised by the producers was regarding the premium pricing of the product. The government must set a premium price for all products registered under GI. This will promote and encourage the producers of these products not to deviate from the traditional approach.
- ❖ The government must undertake worldwide marketing of these products and promote these products as an exclusive category brand which can be termed as GI brand.

- ❖ There should be tax benefits for the producers of GI products. A special category tax for GI products can be introduced.
- ❖ GI products can also be promoted under tourism and can be marketed in airports and tourists places.
- ❖ Proper legal knowledge and advice must be made available to the producers of GI, to protect their product from illegal

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- ❖ The TRIPS Agreement