

**CRITICALLY ANALYSING GEOGRAPHICAL INDICATIONS IN INDIAN  
CONTEXT: A BOON OR A BANE**

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**ABSTRACT**

*Geographical Indication (GI), as the name suggests is an Intellectual Property protection which is provided to location specific or community based innovation or product. This concept was introduced in India by Geographical Indications of Goods (Registration and Protection) Act, 1999. But compared to other Intellectual Property Rights such as Patents, Copyrights or Trade Marks, the Geographical Indications lack recognition in the Indian society. The recognition and protection that are made available to the products by this Act necessitates certain duties and obligations to the GI fraternity along with the rights that they enjoy. But the hard fact is that, in the Indian society most people are unaware about what a GI protection actually provides and the worst case is that usually people mistake GI for Patent, even though both are individually different entities.*

*The seminal aim of this paper is to facilitate a layman with all the basic knowledge that he requires while dealing with a GI protected innovation or product. For this, the paper will be divided into various parts, where the introductory part will be dealing with all basic notions of GI, flashing light into fields like what does GI actually mean, how it differs from other IP rights, the context of Indian market before and after the introduction of the GI Act, 1999 etc. The paper also deals with economic oriented areas of GI such as the positive and negative implications that a product with GI protection makes in the market, the pros and cons a GI fraternity is obliged to have with such a protection. The major highlight of this paper is relating GI with Competition law highlighting various unfair and anti-competitive market practices that are very much prevalent in the modern society. The paper also portrays the comparison of Indian GI standards with US and EU. The conclusion part of the paper gives suggestions to enhance GI in India clarifying the boon or bane stand, which has been incurred through strict in-field analysis consulting various GI fraternities.*

**1. INTRODUCTION**

In the modern day scenario, the rights on Intellectual Property are economically and politically important and controversial. In a knowledge based economy, an understanding on IPRs is indispensable in policymaking processes as they play a major role in the development of society. Geographical Indications (GI), as the name suggests is an Intellectual Property protection which is provided to location specific or community based innovation or product and is an emerging field of Intellectual Property with every region having its claim to fame and the necessity to get it protected. Every reputation was carefully created and painstakingly

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maintained by the indigenous communities, combining the best of natural resources and human skills and traditionally handed over to generations gradually resulting in a specific link between goods and place of production resulting in the development of the concept of GI.

Geographical indication is basically a name or sign that is used on some products to specify its geographical origin, qualities or reputation that it possess. The GI certification ensures the customer that the product possesses certain qualities as it follows some traditional methods of production and holds reputation of quality due to its geographical origin. India has a sui generis Act, Geographical Indications of Goods (Registration and Protection) Act, 1999, which deals with the protection of geographical indications and section 2 (1) (e) defining GI.

Some examples of registered geographical indications include, agricultural goods like Banganapalle Mango, Malabar Pepper, Handicrafts like Kancheepuram Silk, Balaramapuram Handlooms, and Handicrafts like Sikki grass work, Kinhal toys, food stuffs like Thirupathi Laddu, Bikaneri Bhujia etc.

The term GI was first used in international IP laws in the TRIPS agreement of WTO which came into force in 1995 with Article 22(1) of the agreement defining the term. It also provides for an enhanced minimum level of protection especially for products such as wines and spirits. Prior to TRIPS some international treaties such as Paris Convention, Madrid Convention and Lisbon agreement formulated provisions for protection of indications of source and appellations of origin. The recognition and protection that are made available to the products by this Act necessitates certain duties and obligations to the GI fraternity along with the rights that they enjoy. In the global economy GIs are emerging rapidly as the countries and organisations started recognising it as a valuable market tool as it prevents the misuse of designation or presentation of a product with fraudulent substitutes. Some WTO members believe that GIs should always be in superior in right to a Trade Mark.

## **2. History of GI**

Governments of various countries around the world had started protecting trade names and trademarks used in relation to food products belonging to a particular region since the end of the nineteenth century, using laws against false trade descriptions or passing off, which generally protect against suggestions that a product has a certain origin, quality or association when it does not. In such cases, the limitation on competitive freedoms which results from

the grant of a monopoly of use over a geographical indication is justified by governments either by consumer protection benefits or by producer protection benefits.

One of the first GI systems was the one which was used in France in the early twentieth century known as *appellation d'origine contrôlée* (AOC). Items that meet geographical origin and quality standards may be endorsed with a government-issued stamp which serves official certification of the origins and standards of the product. Examples of products that have such 'appellations of origin' include Gruyere cheese (from Switzerland) and many French wines.

Geographical indications have long been associated with the concept of *terroir* and with Europe, where there had a prevalent tradition of associating certain food products with particular regions. Under European Union Law, the protected designation of origin framework which came into effect in 1992 which regulates the following systems of geographical indications: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialities Guaranteed (TSG).

### **3. Origin and Development of GI**

GI is a form of protection which is stated in TRIPS agreement of WTO. It protects intangible economic assets such as "quality or reputation or other characteristics of such a good attributable to its geographical origin"<sup>2</sup>. The initial idea of GI was to provide protection to producers by "fighting against unfair competition, reputation theft and infringement"<sup>3</sup>. The third generation GIs further extended it to rural landscapes protecting local population, biodiversity management and conservation of indigenous products. GI is a source identifier and indicator of quality.

GI is an invention of TRIPS agreement which came into force on 1 January 1995. It provides minimum standard of protection for GIs and additional protection for wines and spirits and provide legal means to prevent the use of GIs that mislead the public to unfair market practices which are barred by Competition Laws. Articles 22 to 24 of Part II, Section III of TRIPS agreement prescribes minimum standard of protection of GIs to the WTO members. Article 22 of the agreement states that, unless a GI is protected in the country of its origin there is no obligation under the agreement for other countries to extend reciprocal protection. Article 23 of the agreement provides additional protection to GI only in the cases of wines

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<sup>2</sup>United States Patent and Trademark Office, <http://www.uspto.gov/web/offices/dcom/olia/globalip/geographicalindication.html>

<sup>3</sup> Ibid

and spiritand imposes an obligation on member countries to make legislations for preventing the use of GIs which do not originate in indicated places. But under the TRIPS agreement the members are not obliged to protect GIs if it became generic for the goods which itself is a widely abused provision to violate the standards. Article 24 sets out certain exceptions to the protection. Article 23(4) lays down the multilateral system of GIs with a sharp division among members about the model with 4 different proposals.

The Indian courts due to the unavailability of relevant legislations have applied the principle of “passing off” to protect GIs. They even entertained petitions in case of infringement of GIs that mislead the customers to unfair market practices and anti-competitive aspects and granted reliefs including grand of injunctions etc. In 1999, India being a signatory to the TRIPS agreement, in compliance of its obligation enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 along with Geographical Indications of Goods (Registration and Protection) Rules, 2002 to deal with various matters and provisions regarding GI.

#### **4. Concept of GI in India**

The GIs under the TRIPS agreement has been defined as ‘indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of good is essentially attributable to its geographical origin’.<sup>4</sup> While examining the concept of GI as developed and applied by the Indian courts we have to refer the case of Imperial Tobacco v Registrar of Trademarks<sup>5</sup> where the Kolkata High Court explained the concept of “geographic term” which as a stepping stone to the development of GIs in India. Section 2 (1) (e) of the GI Act of India defines GIs in relation to goods. According to this Act<sup>6</sup> in the Indian context in GI, goods may be (i) Agricultural goods, (ii) Natural goods, (iii) Manufacturing goods or (iv) goods of handicraft and foodstuff. The word ‘indications’ has also been defined<sup>7</sup> to include:

- (i) Any name (including abbreviation of a name);<sup>8</sup>
- (ii) Geographical or figurative representation; or

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<sup>4</sup> Para 2.2

<sup>5</sup> AIR 1977 Cal 413

<sup>6</sup> Section 2 (f)

<sup>7</sup> Section 2 (g)

<sup>8</sup> Section 2 (h)

(iii) Any combination or suggest the geographical origin of goods to which it applies

From the above definitions it is clear that India has not only abided TRIPS but also provides a broader definition to GIs. The 'goods' have been delineated giving a broader meaning to the term which is a major exception from TRIPS. The Act also separately defines the term 'indications'.

India has also taken the lead in protecting its origin based products and associated Traditional Knowledge through the promotion of GIs with a sui generis protection system that is considered as a model stipulated for other countries. In India, the application for a GI protection must show the uniqueness of product due to its origin as a combination of both human and natural factors. It should also include the description of method of production, historical proof and a map. The applicant can be any association of persons or producers or any organisation or authority representing the interest of producers. If the application turns successful after completing all relevant procedures the applicant will be the registered proprietor. Since proprietor represents interest of producers GI can be termed as a collective right.

The major significance of the Indian GI Act is that it confers legal protection to GI in India and prevents unauthorised use of a registered GI by others, provides legal protection to Indian Geographical Indications which in turn boosts exports and promotes economic prosperity of the producers of goods produced in a geographical territory. The registration of a GI is valid for a period of 10 years and can be renewed successively for a period of 10 years each. A registered GI cannot be assigned, transmitted, mortgaged, pledged, leased or licensed.

In the modern era of fast paced global economy developing countries need to ensure that the valuable are not becoming generic or semi generic in export markets because then the product will be excluded from the ambit of GI protection in foreign countries as per the TRIPS agreement. In August, 2001 the first Geographical Indication Registry was setup in Chennai. After a GI is registered, the person claiming to be the producer of the good designated by the registered GI can file an application for registration as an authorised user. The GI Act is to be administered by the Controller General of Patents, Designs and Trademarks who is the registrar of GIs too.

The need of the hour is to create awareness about the importance and protection of GI so that the interested parties would come forward to register GI. Simultaneously, we can ensure compliance by other countries under the reach of TRIPS and combat piracy of GIs.

### **5. Process of Registering GI in India.**

**Who can apply for registration:** Any association of persons, producers, or any organisation or authority established by or under any law representing the interest of the producers of the concerned goods can apply for registration. The application should be made in writing in prescribed form and application should be addressed to the Registrar of GI along with prescribed fee.<sup>9</sup>

**Where to file application:** Every application shall be filed in the office of GI registry within whose territorial limits the GIs relates is situated. If it is not located in India the application is to be filed in the registry in whose territorial limits the place mentioned in the address for service in India is located.

**Contents of application:** (a) Statement of how the GI serves to designate the goods as originating from the concerned territory in respect of specific quality, reputation or other characteristics which are exclusive to that geographical environment with inherent natural and human factors in production, processing or preparation, (b) class of goods to which the GI shall apply, (c) geographical map of the territory, (d) particulars regarding the appearance of GI as to whether it is comprised of words or figures or both, (e) statement containing particulars of producers of concerned goods, if any, proposed to be initially registered with registration of GIs as may be prescribed and (f) such other particulars as may be prescribed.

**What goods and area can be registered<sup>10</sup> :** A GI may be registered:

- 1) In respect of any or all of the goods, comprised in such class of goods which is classified by the registrar
- 2) Definite territory of a country
- 3) Definite region in the territory
- 4) Definite locality in the territory

**Duty of Registrar on receipt of application<sup>11</sup>:** The registrar shall examine every application in the prescribed manner in which he may either accept or refuse it absolutely or subject to

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<sup>9</sup> <http://www.wipo.org/athome/enindex.htm>

<sup>10</sup> Section 8

modifications. He shall record in writing the grounds for refusal or conditional acceptance. He shall classify the goods<sup>12</sup>. He may publish in prescribed manner an alphabetical index of classification of goods.<sup>13</sup> In any question arising as to the class of goods or area as referred in sub section (1) in respect of which the geographical indication is to be registered or where any goods are not specified in index of goods published under sub section(3) shall be determined by registrar whose decision shall be final.

**Withdrawal of acceptance**<sup>14</sup>: (a) application has been accepted in error, (b) as per circumstances the GI should not be registered or be registered subject to conditions upon which application has been accepted.

**Advertisement of application**<sup>15</sup>: The registrar as soon as acceptance advertise that the application is accepted in a prescribed manner. After the process of application if any errors are corrected or amendments<sup>16</sup> are made the registrar can make the application to be advertised again.

**Opposition of application**: Section 14 provides for the instances upon which an opposition can be made for an application which was advertised

**Correction and amendment**<sup>17</sup>: The registrar can carry out correction of any error or amendments in an application, whether before or after acceptance if any errors are found.

Prohibition of registration of certain GIs<sup>18</sup>: (1) the use of which is likely to cause confusion,

(2) the use of which is contrary to law, (3) comprises scandalous or obscene matter,

(4) anything that hurt the religious feelings, (5) which would otherwise be disentitled by the court, (6) generic names or which are fallen into disuse in country, (7) literally true as to territory but falsely represent to the consumers that the goods originate in another country

The registration will be primarily for a period of 10 years or till the period on which the right of authorised owner expires, whichever is earlier which can be extended further from time to time and the GI will be removed from the roll once the period expires and is not renewed.

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<sup>11</sup> ibid

<sup>12</sup> Section 8 (1)

<sup>13</sup> Section 8 (2)

<sup>14</sup> Section 12

<sup>15</sup> Section 13

<sup>16</sup> Section 15

<sup>17</sup> Section 10

<sup>18</sup> Section 9

After the registrar accepts the application for registration the GI will be registered and prima facie the registration will be the evidence of validity. No person shall be entitled to institute any proceeding to prevent or recover damages for infringement of unregistered GIs. Nothing in the Act shall affect the passing off goods as the goods of another person. Once the registration is valid, it entitles the proprietor to obtain relief in respect of infringement. Authorised users shall have the exclusive rights to use GIs in relation to the good to which it is registered depending on the conditions and limitations of registration. Two or more authorised users shall have co-equal rights. The Central government may by notification in the official gazette provide for additional protection for certain goods which are notified. A GI once lawfully acquired shall not constitute an infringement unless the goods are impaired after they are put in the market. Any person aggrieved by an order or decision of registrar under this act may prefer an appeal to the appellate board within 3 months from the date on which the order or decision is communicated to the aggrieved parties.

**Procedure for application and granting of GI:** In India, once an application is filed before the concerned GI for procuring registration it goes through some rigorous process before the recognition is given. The first level process that it undergoes is examination of documents submitted. Then if there arises no objections, the application is accepted and is advertised in the GI journal. In case of objections the applicant is given an opportunity of hearing and then too if it is refused he even has a provision to apply before the Intellectual Property Appellate Board(IPAB).The second level process starts after advertisement in journal. Once it is advertised and no objection is received it is entered in the GI register. If there are any kind of oppositions, after scrutiny it may be allowed or refused. On refusal the affected person has the right to appeal before IPAB.After entry into the register, the particulars of the registered GI are entered in Part A of the register and the particulars of registered authoriser is entered in Part B of the register and as the final level the registration certificate is issued.

### **6. Infringement of GI in India**

A registered GI is said to be infringed when (1) an unauthorised user uses such GI by any means in the designation or presentation of goods in such a way showcasing that the good made in some other part as made in area with GI recognition, (2) uses any GI which constitutes an act of unfair competition including passing off in case of registered GIs,

(3) uses another GIs to the goods which falsely represent to the public that goods originate in the region in respect of which such registered GI relates.

The remedies available for protection of GIs may be broadly divided into 2

1) Civil Remedies

The civil remedies that are granted by the courts on infringement includes injunctions which may be interlocutory injunctions or final injunction considering the facts and issues raised in the case. The courts also have the power to award nominal damages. The courts shall not grant relief by way of damages by considering the Accounts of Profit. The suit for infringement has to be filed in District Courts having jurisdiction where the defendant pleads the GIs relating to plaintiff as invalid or with demands of making any changes in register. They can even proceed to the Appellate Board when they are not satisfied with the decision of the lower court<sup>19</sup>

2) Criminal Remedies

The Act contains various penal provisions in case of violations relating to GIs such as

- a) Falsifying or falsely applying GIs to goods<sup>20</sup>
- b) Selling goods to which false GI is applied<sup>21</sup>
- c) Falsely representing GIs as registered<sup>22</sup>
- d) Improperly describing a place of business as connected with a GI
- e) Falsification of entries in register

The punishments prescribed for these offences may range from 6 months to 3 years of imprisonment and fine not less than Rs 50000 which may extend to Rs.200000 and enhanced punishments on subsequent violations. The courts may also entertain Forfeiture of goods<sup>23</sup> or search and seizure of it as criminal remedies.

## **7. Potential Benefits and Harms of GI**

The process of availing a GI recognition to a particular good is a tedious and hectic task even though its procurement would provide the owners, consumers and in short the market as a whole with various benefits. The GI recognition for a good would make a widespread impact in society such as in streams of economics, employment, culture, governance and environment. In the case of economics a GI would lead to localized production of that particular good which would result in increased profitability and demand there by enhancing

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<sup>19</sup> Supra note 8

<sup>20</sup> Sections 38 ad 39

<sup>21</sup> Section 40

<sup>22</sup> Section 42

<sup>23</sup> Section 46

the financial stability of people in that area. It would also result in creating many job opportunities either directly or indirectly which would result in lesser rural emigration. It would enhance the quality and traditional know how among the members of that particular indigenous communities which leads to regional cooperation and local institutional empowerment. This would also lead to Biodiversity conservation, environment preservation and enhancement of common resource.

The benefits that a consumer enjoys out of the GI protection includes:

- i) Higher quality and unique products are available and encouraged
- ii) Conveys messages and minimises search costs
- iii) Producer or manufacturer liability more traceably determined and secured
- iv) Provides a means by which universal values (cultural, traditional and environmental) are preserved by market mechanisms

The benefits that the owner enjoys include:

- i) Higher price for producers
- ii) Protection of local traditions and cultural practices
- iii) Market for differentiation and exclusivity
- iv) Better employment, rural development, governance etc.

These benefits arising out of a GI protection would result in a healthy relationship between products and services based on cultural and territorial identity, enhance the relationship of learning between places, promotes the relationship between owners and consumers, upholds people's traditional knowledge, characteristics and experiences and develop relationship between markets. As a subsidiary result to the process it would also lead to the promotion of economic values of GIs with greater recognition in home market and abroad and would also result in enhancement, promotion and protection of environment and bio diversity along with the typical aspects of traditional knowledge which would further help in preventing bio piracy of traditional goods.

However the benefits that a GI recognition provide being one side of a coin in the market, has another side of demerits or harms along with it. The harms are suffered by both owners and consumers.

The harms suffered by owners include:

1. Higher cost of production
2. May reduce innovation in markets which ultimately result in lack of demand
3. Likely to require greater local governance, institutional capacity and costs
4. In case of in-state run, it elevates cost of legal protection
5. May not be able to meet with conditions of quality stipulated by GI in adverse situations such as climatic changes, unavailability of raw materials etc.

The harms suffered by consumers include:

1. Exclusivity of product may result in elevation of prices
2. Reduce innovation and improvement
3. Public GI system increases public cost of governance
4. May reduce competition and increase protectionism

### **8. Relation between GI and Trademarks**

In Indian society, a hard fact that is observed is that usually the laymen mistake Trademark for GI even though they are completely different entities with mere similarities. The only similarity between a GI and a Trademark is that both of them function as source indicators. But there too a distinction arises that while a Trademark identifies a good or service as originating from a particular producer, GI identifies the geographical region from where the product originates. While going through the definitions given in concerned bare acts we can clearly get the major distinctions between GI<sup>24</sup> and Trademark<sup>25</sup>. But the major problem arises when Trademarks uses names of places for increasing reputation of the mark or to advertise it.

E.g. Darjeeling Lounge of ITC is a Trademark. But layman finds it as a GI.

Therefore to help the layman differentiate between the two the following can be considered

- 1) Trademark is a sign, name or identity of a firm which is used to differentiate the goods or services of one entity from another while a GI signifies the place of origin of the good and any manufacturer in that geographical location can use that GI for that

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<sup>24</sup> Section 2 (1) (e), GI of Goods (Registration and Protection) Act, 1999

<sup>25</sup> Section 2(i) (zb), Indian Trademarks Act, 1999

good. For e.g. Iruttukadai Halwa, in Thirunalveli is a Trademark which cannot be used by any other firms but Thirunalveli Halwa is a GI for Halwa which can be used by any producer of halwa in Thirunalveli area.

- 2) A GI is basically a collective protection given to a group of people in a particular locality in making their special product, where the good has first originated in past. On the contrary, the Trademark is registered as a single entity.
- 3) While only one person or manufacturer can use a registered Trademark with an established good will, every manufacturer or producer of same good in an area following condition stipulates can use a GI.
- 4) A Trademark can be a letter, a word, numeral or simply a number or combination of numerals and letters or abbreviation, a name, a device, a hologram, a sound or a smell but a GI can only be a name or a symbol relating to the place of its origin.
- 5) A Trademark is developed by a human creativity or human intellect and it can be suggestive, descriptive or arbitrary but GI identifies a product based on its place. Factors such as human work, topography and climate etc. determines a GI.
- 6) A Trademark is governed by Indian Trademarks Act,1999 while GI is governed by Geographical Indications of Goods(Registration and Protection)Act,1999

Usually the confusion arises when people uses the name of places in Trademarks such as in case of Tanjavur Masala Dosa or Darjeeling Café. The registry usually objects such marks<sup>26</sup> but if it has attained distinctiveness via long usage then it will be granted<sup>27</sup>.

The famous cases of Tea Board India v ITC limited<sup>28</sup>and Bikanerwala v New Bikanerwala<sup>29</sup> deals with same category of matters.

### **9. Geographical Indications and Competition Law**

In the modern day scenario, the GI for registered goods provide them protection in various areas of concern such as infringement,duplication,and the use of GI to products which are not been made in that particular geographical area or in which the conditions or characteristics stipulated to get a GI protection are not followed. But there are various other sorts of difficulties that the GI holders an even the consumers face which are governed by the Competition Laws.

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<sup>26</sup>Section 9 (1) (b) of Trademarks Act,1999

<sup>27</sup> Section 9 (1)

<sup>28</sup> GA No.3137 of 2010, C.SNo.250 of 2010

<sup>29</sup> 2005 (30)PTC113 Del

Some examples for these barriers that they face include unfair competitions, passing off, holding up, market stagnations and unfair trade barriers.

Certain nations provide geographical indication protection under laws that are aimed to prevent unlawful commercial acts from business competitors such as unfair competition and passing off. Both unfair competition and passing off are common law torts.<sup>30</sup> In order to be protectable, a given geographical indication must have acquired a certain reputation or goodwill. In other words, the potential buyers of the product must associate the geographical indication with the place of origin of the goods or services. Such an action further requires that the use of the geographical indication on goods or services not originating from the respective geographical area is misleading, so that consumers are deceived as to the true place of origin of the products or services. Under some national laws, proof of damages or the likelihood of damages caused by such misleading practices is required.<sup>31</sup>

Passing off means that good will has been established by one trader and another trader tries to take advantage of that good will, to cash in on it to the detriment of the first trader. The House of Lords in *Erven Warnic B.V. v. Townend and Sons*<sup>32</sup>, had an occasion to explain the essentials of the cause of action for passing off. Lord Diplock rules that the plaintiff must prove each of the following of five essentials in an action for passing-off.

- (i) A misrepresentation;
- (ii) Made by a trader in the course of trade;
- (iii) To prospective customers of his or ultimate consumers of goods or services supplied by him;
- (iv) Which is calculated to injure the business or goodwill of another trader, in the sense that this is a reasonably foreseeable consequence and;
- (v) Which causes actual damage to a business or goodwill of the trader by whom the action is brought.

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<sup>30</sup> Marcus Hopperger, Introduction to Geographical Indications and Recent Developments in the World Intellectual Property Organisation (WIPO) at <http://www.wipo.int/meetings/2003/geog-ind/en/documents> (June 13, 2003), Marcus Hopperger is the Head of Information and Training Section, Trademarks, Industrial Designs and Geographical Indications Department, WIPO.

<sup>31</sup> Intellectual Property Reading Material, WIPO Publications, Geneva Oct.1, 1995, p.245

<sup>32</sup> 1970 RPC 31

In some other cases, certain countries put forward unfair trade barriers for trading certain GI protected products in their countries or they won't provide GI protection so as to maintain their market which is needed to be regulated with strict international legislations.

There are some other unfair practices such as use or fraudulent or counterfeit products with the registered GI tag which will have a negative implication in the market. So, in order to protect the GI protected goods from all these sorts of exploitations the Competition laws must be made strict so that more and more producers and manufacturers will be forced to come forward with their products enhancing the market which will have a positive impact in our economy.

### **10. International aspects of GI**

Apart from the very general aspects in the General Agreement on Tariffs and Trade (GATT), 1947 and 1994 and the TRIPS agreement, 1994 and a number of bilateral trade agreements there were few international agreements that have offered protection to GI. These include the Paris Convention of 1883, The Madrid Agreement of 1891, Stressa Convention of 1951 and the Lisbon Agreement of 1958 with WIPO administering the Lisbon and Madrid Treaties.

The **Paris Convention**<sup>33</sup>, adopted in 1883, applies to industrial property in the widest sense, including various IPRs and repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries which in GIs provided for source and regional indications and certification marks.

The **Madrid System**<sup>34</sup> for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

The **Lisbon Agreement**<sup>35</sup> provides for the protection of appellations of origin, that is, 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

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<sup>33</sup>[http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html)

<sup>34</sup><http://www.wipo.int/treaties/en/registration/madrid/>

<sup>35</sup><http://www.wipo.int/treaties/en/registration/lisbon/>

essentially to the geographic environment, including natural and human factors". The Bulletin "Appellations of Origin" is the official publication of the Lisbon system.

The **TRIPS Agreement**<sup>36</sup> prescribes minimum standard of protection for geographical indications and additional protection for wines and spirits. It requires WTO members to provide legal means to prevent the use of a geographical indication that misleads the public to the geographical origin of the goods or constitutes an act of unfair competition. Articles 22 to 24 of Part II, Section III of the TRIPS Agreement prescribe minimum standards of protection of geographical indications that WTO members must provide. Article 23 (4) of TRIPS agreement relates to multilateral system of GIs with a sharp division among the members about the model and they come up with 4 different proposals such as European Community (EC) Model, US Model, Hong Kong Model and International Trademark Association (INTA) Scheme with difference in areas of approach like nature of registration, grounds for challenging registration, legal effects of registration, enforcement, procedure for registration, adjudication system and the role of courts.<sup>37</sup>

A product's quality, reputation or other characteristics can be determined by where it comes from. Geographical indications are place names (in some countries also words associated with a place) used to identify products that come from these places and have these characteristics. Two issues are debated in the TRIPS Council under the **Dohamandate 2001**<sup>38</sup>: creating a multilateral register for wines and spirits; and extending the higher (Article 23) level of protection beyond wines and spirits.

## **11. GI – A Case Study**

### **11.1 Balaramapuram Handlooms, Kerala, India**

#### **Background**

Balaramapuram, in Thiruvananthapuram district is one of the most historically important places for fine cotton handloom fabrics in Kerala. The weavers belong to the Saliya community were migrated from Nagarcoil and Thirunalveli of the present Tamil Nadu. They produced super fine 'Mundum Neriyaathum' for the need of the Travancore royal family. (Mundu: A loin cloth or say Dhoti used to cover the lower part of the body. Neriyaathum: A fine textured cloth used to cover the upper part of the body.) The technique of producing the

<sup>36</sup>[www.niscair.res.in/.../rejour/jipr/.../JIPR-vol%209-January%202004-pp%209-23.htm](http://www.niscair.res.in/.../rejour/jipr/.../JIPR-vol%209-January%202004-pp%209-23.htm)

<sup>37</sup> <https://about.jstor.org/terms>

<sup>38</sup>[www.wto.org/english/tratop\\_e/TRIPs\\_e/gi\\_background\\_e.htm](http://www.wto.org/english/tratop_e/TRIPs_e/gi_background_e.htm)

superfine fabric spread from them to the local weavers in Balaramapuram and the surrounding places of the Thiruvananthapuram district. Initially they were producing 'Mundu' for men with 0.4cm of width of 'kara' (cross border) with black garn. Even before 100 years the Sari from Surat were brought to Balaramapuram and 'Kasavu Sarees' production was started. The Balaramapuram Sarees are well known for its simplicity and worn as a traditional costume by the women folk of Kerala. It is woven from un-dyed natural cotton that compliments the tropical climate of Kerala. It is usually a cream stretch of cloth with "Kasavu" (exquisite embroidery work created from silver wires coated with gold) borders.

The reputation of the name of Balaramapuram handloom products acquired by the Shalia community has now been enjoyed by a large number of people especially those belonging to economically and educationally backward sections. Balaramapuram handlooms have gained good markets not only in Kerala and nearby States but are exported in limited quantities to the Middle East countries also where large numbers of Keralites are working. Presently there are 363 registered co-operative handloom societies, 21687 looms and 45598 registered weavers in Thiruvananthapuram District. Balaramapuram is the main hub of the handloom weaving and related activities in the district.

The process of making this handloom product is very time consuming and tedious difficult process which involves steps like collecting raw yarn ,curing/washing it, warp/weft preparation,sizing,drawing through healds and reeds, weaving, quality checking and then the making of finished product.

### **GI protection to Balaramapuram Handlooms**

**Products:** The GI protection to Balaramapuram handlooms was given in the year 2010.The protection was provided to various textile goods of traditional origin like Grey Sari or Balaramapuram Sarees or Set Sarees, Set Mundu or Pudava & Kavani or Mundum Neriyathum. Double Dhoti or Mundu, Kavani orNeriyathu, Ladies Dress Material or Churidar Material.

**Geographical Location:** Balaramapuram lies 80 25'60" North Latitude and 77o 2' 60" East Longitude. The municipalities are Neyyattinkara, Attingal and Nedumangad.Initially the products were originated from Balaramapuram but with the increase in demand for the product, more and more artisans from the adjacent areas also, adopted weaving of traditional Balaramapuram Sarees and fine cotton fabrics as their main avocation.

**Uniqueness:** Balaramapuram Handloom industry has the unique reputation of having the weaving facility for manufacturing finer count cotton combed Yarn of count 80s to 120s. These traditional handloom products of Balaramapuram are made out of the finest cotton yarn of counts 80s and 100s (Super combed cotton Yarn of counts 80s and 100s). In some cases, even finer yarn of count 120s is also used. Very few clusters are using finer count cotton yarn in India. Usage of Pure Sari (locally known as Kasantu in Malayalam/ in the border, cross-border or Pallav of the traditional products. That is, Pure sari is used for extra warp, extra weft and for motifs in the fabric. Coloured yarn is also used as an alternative to the pure sari in the border and cross border of the products. Another speciality in the technology used in Balaramapuram is the "Reeds" used in the weaving looms which are made out of bamboo pieces which helps in adjusting the gaps between yarns which gives the material a special texture. The Weavers normally avoid any type of improved appliances such as Dobby, Jacquard, Jala, etc. for making designs in the clothes. The weavers use a unique technique by which each end is separately controlled by hand to interlace with the weft wound in small pins known as lace weaving. Another speciality of the weaving in this cluster is the 'temple border' or 'puliylakkara' with kuri designs weaved into the fabric especially to the Saree, Dhoti and Set Mundu.

### **Effects of GI protection**

The Balaramapuram handlooms for its unique and traditional form of weaving received GI protection for the goods produced in 2010. As a result of the case study conducted we could analyse that the producers and consumers face many difficulties along with the facilities that they enjoy. According to them during the period of registration they suffered some economic crisis as they had to pay for establishing a domestic legal structure, defining exact physical boundaries, establishing facilities for criteria and standards, local information and education about GI, control and certification fees, assessing and applying protection overseas, infrastructure and production investments, adaption of rules, methods and specifications, to overcome commercial or technological limitations, vigilance and maintaining protection, administrative and bureaucratic costs. They also face stiff competition from fraudulent goods such as power looms which are available in market at a comparatively cheaper cost. Also, during climatic changes they may not be able to fulfil the quality criteria stipulated.

But now in the long run they are able to enjoy the benefits such as improved market access, increased sales, increased value/profitability, assurance of qualities and characteristics of

authenticity, traceability, complimentary effects on other products in the region, elevated land values, induced and increased tourism, increased employment by increase in demand, increased differentiation or competitiveness as a brand, coalesced local governance and socio cultural valorisation.

## **12. Conclusion**

In the mid-90s, a European IP lawyer, Florent Gevers, described GI as a sleeping beauty in the context of IP rights. Even though the origin of GI can be traced to centuries back, the term as such has got relevant recognition only after the advent of TRIPS agreement. Recognising GI as an IP Right through the agreement paved way for enactment of many national legislations around the world that protects GI. Complying with the TRIPS, India also enacted GI Act and Rules. The Right that a GI recognition and protection guarantees to the stakeholders has now become concrete as compared to the scenario that persisted two decades back but still there are impediments. As of September 2018, India has a list of 323 registered GIs under the categories of agricultural goods, manufactured and natural goods, textiles, handicrafts and foodstuffs. GIs are now recognised as the most ideal IP rights to foster socio-economic and cultural development of the respective regions as it is totally concerned with the funds from within the country than on any FDI. There are numerous benefits that GI ensures. Nonetheless, there are problems that arise out of grant of GI. Even before raise of GI as an international concept, its roots could be observed in the Indian society from the Gandhian ideologies such as ‘Grama Swaraj’ with the basic idea that our cottage industries and traditional knowledge must be preserved and promoted which would make India self-sufficient to bravely face and compete the global economy. Jawaharlal Nehru once observed that “In 2020, India would either lead the world economy being the super power or else will be astonishingly looking into its development by being a mute spectator in the side bench”. Pondering around the current scenario of GI in Indian regime, it can be stated beyond doubt that it has got a strong base, but it’s high time to choose amidst which category we should belong to. Every region in India possesses a gem of locally produced unique goods which should be brought into main stream with all necessary government aids for its protection and promotion which would then result in development of mankind and society as a whole because the major issues in India are of feasible market access and funding for enforcement. If the current law in action be diligently implemented with a few amendments to fill the serious voids described above, then GI can turn into a magic wand which could pave the way for

development of the nation's economy. The national level programmes like Make in India, Protection from Bio piracy, Counterfeit GIs and Promotion of Traditional Knowledge etc. should be introduced and sincerely implemented by the bureaucracy so that the seeds of Indian GI standards would soon sprout as a tree which will bear fruits of enrichment and its consumption will give India a "boon" to become the leader of International market.

**"Modernisation is essential, but it should not be in the expense of your tradition"**

The basic idea that the Indian market should adopt is **"don't walk in the way paved by others, be different, make your own way and pave it so that others will follow you"**

[Inspired from the words of a true patriot]