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The Fate of Geographical Indications Post-Grant - A few success stories

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The concept of Geographical Indications was introduced in the Lisbon Agreement of the Geneva Convention to enable mutual respect and protection for products or goods of territorial significance. These intend to uplift the people of the area or the community manufacturing it and create a market worldwide. The laws under the European Union are much more advance and have systemically classified products based on the significance of the product, pertaining to its origin, the process of manufacture, or if it is a traditional secret being carried on by a family or a community. This allows for the registration of products on a much more specific level. India, being a signatory, adhering to the provisions of TRIPS enacted sovereign laws for the protection of GIs in 1999. Whereas, In India, Geographical indications are conferred to agricultural products, natural goods, manufactured goods, food products, handicrafts, and industrial goods. Unfortunately, most Geographical indications in India meet with a not-so-colorful picture post-grant, they are neither able to keep with the pre-grant pomp nor are commercialized successfully. Most of them lose their glory and registration before the expiry of the first term of the grant. However, despite several challenges, some products have prominently etched a mark for themselves among their ilks.

Keywords: *geographical indications, trips, agricultural products, natural goods, handicrafts, industrial goods.*

INTRODUCTION

Geographical indications are one among the Intellectual properties, a recognition conferred onto goods, identifying the unique features of the product.

TRIPS - Trade-Related Aspects of Intellectual Properties Agreement defines Geographical Indications under Article 22 (1)[1] 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 characteristics of the good is essentially attributable to its geographical origin***".

GIs - Geographical Indications are recognized as PDO-Protected Designation of Origin, PGI-Protected Geographical Indication, and TSG-Traditional Specialities guaranteed in the EU and the Sovereign laws of countries such as the UK, USA, and European countries. These schemes are to protect the name of a product that comes from a specific region and follows a particular traditional production process.[2]

As of 2022, India has a total of 417 registered GIs comprising 129 agricultural GIs, 232 handicrafts products, 35 Manufactured products, 19 Food items, and 2 natural products. Karnataka is the state with the most, 49, followed by Tamil Nadu with 42, Uttar Pradesh with 36, Kerala with 35, and Maharashtra with 33. GIs are marks that aim at protecting the quality, distinctiveness, relation to the geographical area, and unique features.

INTERNATIONAL TREATIES

Geographical indications are protected based on *Sui Generis*, i.e., they are special laws. The Lisbon Agreement of the Geneva Convention provides protection indications as well as Appellations of origin across all jurisdictions, where an application is filed or based on several jurisdictions.

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[1] Geographical Indications of Goods (Registration and Protection) Act 1999, art 22(1)

[2] 'Geographical indications food and drink' (*Europa*) <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/eu-quality-food-and-drink_en#:~:text=Geographical%20indication> accessed 05 September 2022

Consequently, upon India joining as a member state of the TRIPS Agreement *sui-generis* (special protection) legislation for the protection of geographical indication was enacted in 1999. The object of the Geographical Indications of Goods (Registration and Protection) Act, 1999,[3] can be deconstructed to be threefold;

- By specific law governing the geographical indication of goods in the country which could adequately protect the interest of producers of such goods,
- Take measures to exclude unauthorised persons from misusing geographical indications conferred and to prevent and protect consumers from deception and,
- Promotion of goods or products of Indian Geographical origin in the international markets.[4]

Domestic Laws of signatory countries should align with provisions under WIPO and TRIPS. The Geneva convention lays the foundation for rules regarding trade, practice, and norms of geographical indications.

STAKEHOLDERS OR HANDLERS OF THE GI:

A **producer** is a person dealing with three categories of goods

- Agricultural Goods including production, processing, trading, or dealing.
- Natural Goods including exploiting, trading or dealing.
- Handicrafts or industrial goods including making, manufacturing, trading, or dealing.

A **registered proprietor**, about a geographical indication, "means any association of persons or of producers or any organization for the time being entered in the register as proprietor of the geographical indication".[5]

[3] Geographical Indications of Goods (Registration and Protection) Act 1999
[4] 'India: Prtection of Geographical Indications' (*SS Rana*, April 2018) <https://ssrana.in/ip-laws/geographical-indication-india/#:~:text=Geographical%20Indications%20in%20India&text=When%20India%20joined%20the%20TRIPS,indication%20was%20enacted%20in%201999> accessed 10 September 2022
[5] Geographical Indications of Goods (Registration and Protection) Act 1999, s 2(2)(n)

An **Authorised User,**[6] is defined as "the authorised user of a geographical indication registered under Section 17 (1)[7] Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16[8] may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of the such geographical indication; (2)[9] The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed."

RIGHTS CONFERRED BY A GI

- The authorised users are entitled to use the Geographical indication.
- Activities of infringement can be stopped and legal proceedings initiated by the registered proprietor and authorised users.
- Registration affords better legal protection to facilitate an action for infringement.
- It also enables the registered proprietors and authorised users to prevent third parties from using the GI whose product does not conform to the applicable standards.

However, a protected geographical indication does not entitle the registered users to prevent others from producing a good using the same techniques as those mentioned in the standards for that GI. Any person living in the area is free to produce/ manufacture the goods as long as they adhere to the quality standards of the product. "Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication".[10]**PROBLEM STATEMENTS**

1) **Clarity on ownership – mostly state-driven**

[6] The Geographical Indications of Goods (Registration and Protection) Act, 1999, Section 2 (2)(b)
[7] Geographical Indications of Goods (Registration and Protection) Act 1999, s 17(1)
[8] Geographical Indications of Goods (Registration and Protection) Act 1999, s 16
[9] Geographical Indications of Goods (Registration and Protection) Act 1999, s 16(1)
[10] 'Geographical Indications' (*WIPO*) <https://www.wipo.int/geo_indications/en/> accessed 09 September 2022

Ownership is granted to producers or the primary stakeholders. It is an unlaid principle for a cooperative society to register rather than an individual under the registry for the community rights to be viable. While the ownership lies in the trust or the society in whose name the GI has registered, a review of the data of the total of 417 GIs India owns, 226 of them are filed by the government or associations of government. It is unproven as to how the community benefits or how benefits are accrued towards the interest of the stakeholders.

Various stakeholders are producers, manufacturers, processors, traders, or dealers of agricultural products, natural goods, and handicrafts or industrial goods. A stakeholder is a person or even a producer whose interest lies in the production and sales of the product. The authorised users and the registered proprietors are to function in a way that propagates the GI and carries the interests of the producers with the goodwill earned. In addition to this GI Act allows authorised users to register and sell goods to enable the upliftment of the community, yet the number of almost unknown GI products is higher.

2) Clarity of interstate trade

The concept of Geographical indications was introduced to protect the rights of the community and to uplift the local producers of a product and thereby stabilise the economy of the country by enhancing the export of such products. However, some products have a booming international market but interstate or intrastate statistics of sales are bleak. These are recognized to promote unique products restrained to that particular geographical indication. Authorised Users only within the district of the state where the GI is granted are given registration and are recognised to commercialise the respective products is another downfall most products face. The core intent for the grant of GI was value creation but the ways of trade are haphazard and unregulated, where there is no organized manner of collection of the produce, value creation, and marketing chain. Unfortunately, there is no evidence proving one point of contact for commercialization of this GI beyond the recognized area, let alone inter-state trade. However, products are having a regularised export market, through an export license.

3) Clarity on benefit-sharing (value creation)

Benefit-sharing is to happen to encourage the primary users to maintain the quality and thereby encashing the status conferred on it. As the applicants are government bodies and the GI is under a society or a cooperative society it makes it difficult for the benefits to be accrued and the stakeholders to be rewarded for their hard work. Additionally, some authorised users perform the secondary sale and channelise the revenue obtained from the products. Channelized Value creation is essential when a special status is granted to a product, so that would bring about the economic value of the product. It is eminent that the primary producers are innocent of the value created on the goods produced through the registration of a GI. The individuals registered as a cooperative society are the ones reaping and accruing the benefits of the GI.

CASE STUDIES

Darjeeling Tea

Facts:

It is the first-ever GI registered in India, 2004-05 bearing no. 001 & 002 in the registry of the GI. The applicant is the Tea Board, the statutory authority under the Tea Act, of 1953.[11] Darjeeling black tea got its registration in 2004 while Darjeeling white and green tea were registered in 2019.

Value creation:

Pre-grant of GI:

[11] Tea Act 1953

This is one of the few GIs that has been able to exploit the status conferred, they have been able to create a demand for the best quality tea leaves in international markets. The prices have been inversely proportional to the produce. They have been able to earn as high as 1.22 Lakh rupees per Kg for the finest Darjeeling tea leaves. They have been in the international markets even before attaining a GI status and hence have not seen a varied difference in the price acquired. These warehouses are registered under the tea board and their produce is taken further for sale as export, private sale, and auction sale. "India exported 203 million kg of tea, valued at Rs2,392/- crore in 2008. Major buyers include the UAE, UK, US, Iran, Japan, Australia, Germany, and the Netherlands".[12] The estimated harvest for 2021-2022 is 7 million Kgs out of which 3-3.5 million kgs are exclusively for export.

Post-grant of GI:

"It has been observed from the FAO trade data that after Sri Lanka's Ceylon Tea got the GI tag, the average price of its exports jumped to over USD 4,000 per tonne as compared to USD 2,000-3,000 per tonne earlier." "However, the GI tag hardly had any impact on the Indian tea prices which have rarely moved above the USD 2,000- 3,000 per tonne average range. This could be a result of the way these two countries brand their products in the global market," the study said.[13] The average production per year is 10 million kgs, which varies depending on the various external conditions. "About 35% of Darjeeling tea's annual revenue is earned from first flush Darjeeling and orange pekoe tea leaves (are the tender leaves taken from the apex along with the bud), it earns 1200/- to 20,000 per Kg or even more". [14]

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[12] PTI, 'EC seeks views on the Darjeeling tea patent' (*Economic Times*, 15 October 2009) <https://economictimes.indiatimes.com/markets/commodities/ec-seeks-views-on-darjeeling-tea-patent/articleshow/5125316.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 04 September 2022

[13] PTI, 'Lack of product mix variety failure to leverage GI tag led to tea exports slowdown- experts' (*Economic Times*, 13 June 2021) <https://economictimes.indiatimes.com/news/economy/agriculture/lack-of-product-mix-variety-failure-to-leverage-gi-tag-led-to-tea-exports-slowdown-experts/articleshow/83482741.cms> accessed 02 September 2022

[14] Sutanuka Ghosal, 'Darjeeling tea losing out in global trade' (*Economic Times*, 5 May 2020) <https://economictimes.indiatimes.com/news/economy/agriculture/darjeeling-tea-losing-out-in-global-trade/articleshow/75548204.cms > accessed 02 September 2022

Conclusion:

It has been a valued brand much before the conference of the grant of GI hence there has not been a paramount difference in the values accrued pre-grant and post-grant of GI. However, the major product is exported post-grant as the brand got popular worldwide.

Aranmula Kannadi

Facts:

Aranmula Kannadi was granted the tag among the first few and occupies number 003 in the GI registry. Vishwa Brahmana Aranmula Metal Mirror Nirman Society, the applicant- a society of artisans attained a grant in 2005. It was an art that was propagated by 2 families but today they are a widespread business registered by a society under government establishment.

Even though this classifies as a traditional secret existing for about 500 years, a family in Parthasarathy Handicraft centre has been carrying out manufacturing and marketing by itself and the product has created a tremendous value for the unique metal alloy mirror; reflecting an even undisturbed image, manufactured in Pathanamthitta district of Kerala. Now there are about 8 families and 20 units practising the art. "The uniqueness of the Aranmula Kannadi is that it is a front-reflecting mirror, unlike plane glass mirrors where reflection takes place on the

back surface of the glass, where the reflective coating is applied. In-plane mirrors, light travels through the glass and back, so it gets refracted and changes direction".[15] The mirror is said to be made of copper and tin alloys, some other metals in negligible quantities, and some herbal mixes to give that lustre and reflecting surface where an even undisturbed image is reflected.

Value Creation:

Pre-grant of GI

The product was locally recognised and had an existing market as the King had made it a part of the *Ashtamangalya collection* to have an Aranmula Kannadi part of it. These have had an accepting customer base among the effluents to use *vaalkannadi* as a mirror. Even back in the day, these were considered a luxury, due to their high prices. It used to be a demand-based production as the price was around 3000/- for a small mirror.

Post-grant of GI

Apart from a regular number of products in stock, they continue to be a demand-based production, as the probability of the mirror meets the standards of the artisan without withering during the molding process is slim and varies depending upon each design. A 2-inch mirror can cost about 1500/- to 2500/- and larger ones, specifically custom-designed pieces can cost about a few thousand to 7,00,000/- or more.[16] Though the craftsmen followed traditional methods of commerce they had gained popularity alike within and beyond Kerala and Indian territories. In today's tech-savvy world the current generation has fostered business through online sales. There are around 20 workshops in the two villages carrying out this handicraft and exporting them.

Conclusion:

[15] Savera John & Susan Paul, 'See Yourself As You Truly Are in This Mysterious Metal Mirror' (*Atlasobscura*, 16 April 2018) <https://www.atlasobscura.com/articles/metal-mirror-kerala-aranmula-kannadi> accessed 16 Septemer 2022

[16] Data was procured from a telephonic interview with the manufacturers

What used to be a Family's traditional knowledge has now transformed into an industry, however, some units deviate from the traditional methods. The inability of traditional methods to scale up can be a significant block to the growth of the GI. Although there has been success and value creation in place, the basic tenets of making the Kannadi in industries have changed significantly leading to a blurring of distinction. The State has adopted these as its state memento. Apart from catering to the domestic demand, they also export to the US, Canada, Australia, and other European countries, UAE is the largest importer of Aranmula Kannadi. They also hold several State Government, National, and International exhibitions such as IITD-India International Trade Fair- Delhi, propagating the products.

Mysore silk saree

Facts:

Mysore silk saree was granted registration and marked as number 011in the registry. KSIC-Karnataka Silk Industries Corporation Limited applied for the GI in the year 2005-2006. As it was originally regulated by the Wadiyar kingdom and later taken over by the government and was applied for GI recognition. It is also one of the few GIs in India that ingrains their GI number into the product. Silk is sourced from Ramanagara, the largest cocoon market in Asia. The silk is then assorted as per the quality and raw silk is used for weaving sarees. The sarees are desired for extra softness and the pure gold *Zari* in them, which is sourced from Surat. This makes the saree heavy but also adds value to this particular silk saree from its counterparts. Karnataka State Industries Corporation took over and produces these through electric weaving machines now and is marketed systemically.

Value addition:

Pre-grant of GI

Mysore sarees have been a sought-after product for the texture, light-weight, long-lasting lustre, and long life of the saree when compared to the other available authentic silk sarees. Initially, when they were marketed, they were sold for about 8000/- for a simple one and prices elevated depending on the design as they were hand woven.

Post-grant of GI

The market has been ever-growing knowing the unique texture and lustre of the saree but the KSIC has not been very successful in accruing benefits post-grant. The prices have seen a very slight elevation despite high demand. The starting prices for these happen to be 12000/- and it goes higher estimated to lakhs depending on the kind and motifs of the saree.

Conclusion:

Although enforcement has taken place value addition to the product post-grant has not happened. However, it is one of the few products that have an identification code on the product, each Mysore silk saree has a unique code embroidered in a corner, which provides the buyer with the essential details such as:

- The history of the saree;
- Details about the process of manufacturing;
- The number of hours spent on weaving it;
- The wages received by weavers for that saree.

The counter-effect of registering the GI product has resulted in a greater inflow of counterfeit products. However, the originality of the silk saree can be tested by rubbing your palm on the saree, if it generates warmth, it is an original product.

Sankheda furniture

Facts:

A lacquered wooden handicraft, desired for its vibrant colours and motifs imparted on furniture. Available in a few rich colours and motifs with silver or gold, it is rubbed with an agate stone to give the product its lustre. It is registered as the 100th in the registry under the name of the Development Commissioner, Ministry of Textiles, Government of India, in the year 2008-2009. A handicraft started in the town of Sanghedu, where a particular family has carried on the art for centuries now. Though they started by making smaller handicraft products such as toys, bangle stands, dandiya sticks, and other smaller items. The business has expanded many folds and is currently well-accepted for its fully hand-made furniture, such as tables, cots, chairs, swings, cradles, etc. This furniture has a customary significance among the Gujrati community, it is considered an auspicious gift on occasions.

Value creation:

Pre-grant of GI

The products were available only at the State Emporiums, the local markets, and from the artisans themselves. Pricing of smaller handicraft products ranges from 1000/- to 25000/- whereas furniture costs about 30000/- to a few lakhs as per the unique structure of the product.

Post-grant of GI

The community rights vested are owned by all the artisans producing the good. Another example of a commercially successful GI is one that has been able to reach consumers at large through online modes. These goods can be procured through the State emporium, their website, and the artisans themselves. The products are ranged from 1000/- to anywhere between 12-20 lakhs.

Conclusion:

An art form that was restricted to a family has established a market worldwide, recognised for its unique motifs. A family business has flourished since the grant to meet the demands and there are about 80 families and 200 artisans involved in the production of Sankheda Furniture. These are now not only available within the national territory but have established markets worldwide and are catered to successfully.

Udupi Mattu Gulla

Facts:

Udupi Mattu Gulla, a variant of Brinjal grown in the village of Mattu in the District of Udupi, Karnataka. The Mattu Gulla Grower's association filed for a GI in 2010 and was granted the status in 2011 and stands as the 199th GI registered well.

These fruits are unique when compared to other brinjals, they are popular for being highly anti-microbial, pest resistant, resistance to acidic conditions, and high-temperature conditions. These have a comparatively thin outer skin, and fewer seeds. The fruit remains intact when cooked and renders a very different flavour and aroma, this sets the mattu apart from other varieties of brinjal.

Value addition:

Pre-grant of GI

Mattu Gulla before the grant was sold at an average of 40/- to 60/- rupees per Kg whereas the regular varieties of brinjal were sold at 10/- to 15/- rupees per Kg. Though they were known to be special they were not more highly priced than the regular varieties.

Post-grant of GI

The Mattu Gulla Growers Association regulates the trade between farmers and consumers. They directly impact the primary stakeholders. The quality and quantity of production have increased by several folds since they gained recognition. Farmers have begun cultivating the crop around the year since it has been fetching them profits. The prices for Mattu Gulla have increased by 3-4 folds and fetches them 120/- rupees per Kg on average. The association is looking to get an export license as there is a growing demand and this would economically uplift the growers.[17]

Conclusion:

These are one of the most regulated horticulture products being commercialized in such a regulated and successful manner. This is a classic example where the status conferred was exploited, and benefits accrued and distributed among the stakeholders. Value addition before and after the grant of GI has successfully happened. The authorised users have taken responsibility to weed out counterfeits by stickering their produce.

PROPOSALS: CONCLUDING REMARKS

Based on the case studies present herein these are some of the points to ponder, moot, and probably result in the amendment of the Geographical Indications of Goods (Registration and Protection) Act.

- There is a dire need for the government to promote a GI to enhance its economy.
- The state emporiums could be the promotional hub of handicraft materials to have a constant demand and supply of goods in interstate markets.

[17] Data was procured from a telephone interview with the cultivators

- Villages can become a place where life thrives and the need for migration to cities can be curbed.
- There is a need for channelled marketing and benefit-sharing with the stakeholders.