



Geographical Indications as Gateway for Protection of Local Interest- An Analysis Form Indian Perspective

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Abstract: *Geographical Indications also has crucial role in economic development of the country as well as the local producer's community. Geographical Indications are multifunctional, in broader context they exist as an integral form of rural development that can powerfully advance commercial and economic interests while fostering local values such as culture and tradition. Geographical indications have generated rural employment; they provide the structure to protect the unique intellectual and socio cultural property embodied in indigenous or traditional knowledge and artisan skills that are from a particular community. A strong and working legal mechanism for protection of GI is therefore very vital for countries like India which has multifaceted traditional knowledge, geographical variance and large rural society. This paper attempts to address the importance of GI to the interests of local community and the special significance the GI regime holds for India in the era of liberalization, privatization and globalization.*

Key words: *cultural property, climatic conditions, pre-industrial age*

Introduction

Geographical Indications is a unique category of intellectual property rights with collective ownership, linking with its place of origin and producers of goods. Certain goods, whether, naturally found, agriculturally cultivated or manufactured in a particular territory of a country or a region or locality have specified characteristics with regard to taste, aroma or quality such goods are marketed on the basis of their geographical indication. Paris perfume, Scotch whisky, Russian vodka, French champagne, Basmati rice, Darjeeling tea, Swiss chocolate, Nagpur oranges, Kashmir apple,

Bikaneri bhujia, Benaras silk, are some of the illustrations where goods have acquired a special importance on account of their association with indication of their origin.

Geographical Indications are one of the newest additions to the domain of intellectual property rights in the trade related aspects of intellectual property rights agreement. It identifies goods originating from a particular region with unique characteristics associated with the geo climatic conditions like soil, water, cultural heritage or any other essential characteristics associated with it. Beyond their legal meaning as a special category of industrial property rights, geographical



Indications also have a significant economic significance. The purpose of geographical indications is to alert the consumers that particular product have special characteristics. The characteristics of these products

¹. Development of such knowledge base owes its origin to the geographical environment and human interactions and becomes an important part of their economy and tradition. In the globalised society these are vulnerable to be misused, hence the process of preserving the knowledge and heritage is important and such products are usually from the backward communities and rural areas. Hence this paper attempts to show how geographical indications play a vital role in the development of the socio economic conditions of the rural producers of GI products in countries like India.

History and Background of Geographical Indications

In the pre-industrial age, when food and agricultural products were the main source of economies, different parts of the world developed some specialities and reputation in the production of goods to develop their economies. The goods which were unique in terms of quality, design or flavour were demanded highly there by increasing its market ability. This uniqueness was usually the result of the geo climatic conditions and the intellectual ability of the producer or some speciality attached to socio

are necessarily the results of natural condition and traditional knowledge and ancient methods and formulae that are transmitted from one generation to other, of a certain geographical area cultural ethos involved in the product derived.

There by the origin or the area from which the goods are from was given more and more importance in the market. In this process, these products were identified by the consumers in accordance with the name of the region or origin. The origin of the goods by itself use to indicate the consumers about the quality of the goods. As the significance of the origin of the goods grew, there has been a growing tendency to use false or deceptive indication of origin of the goods thereby deceiving the consumers. Then came the concept of geographical indications.

Historically, the concept was known by different names such as appellation of origin, indication of source. It is believed that artisans of Egypt were the first users of region derived indication, when the brick makers used a mark to indicate the origin of the bricks and stones used for building pyramids. During that time, geographical indication was used as assign of quality and strength of the stones². French cheese made from unpasteurised cow's milk in the Franche-comte region of eastern France, dates back to the 13th century. As such, in the 13th century,



the producers had tried to use the origin as a marketing tool for deriving the premium price associated with the products.

The systematic legal protection of geographical indications originated in and was developed in France³. There, the protection of these kinds of designations developed initially through laws against false designations. The goal of this law was apparently to assure that the goods labelled so that a consumer could really understand who made them and where they were produced⁴. This law was primarily directed to protect the relation between sellers and buyers, rather than that between competing producers. Even though the legal justification was consumer protection it was the quality of the goods they produced that they sought to protect from misappropriation. These laws together constituted the concept of indications of source (*indication de provenance*). However all these laws proved to be inadequate by continued controversies over champagne labelling which arose French revolution in 1789. but it was only in 1919 that French legislature had recognised that the quality of certain products, especially cheese and wines, were derived largely from their place of geographic origin. Natural and human factors like soil condition, climate, and method of preparation were responsible for the quality and the attempt of the legislature was to protect this. Thus a new concept got legally crystallized

i.e. appellations of origin (appellation d' origine)⁵. The 1919 Law provided the courts with the jurisdiction to consider the question of appellation of origin, but neither defined the term nor established criteria for determining the same. The primary consideration was the geographical origin of the product, the courts had negated the status of appellation d' origine to many products on the ground that they lacked essential link to the place of origin other than the human factor involved it. Thus it appears that the objective of providing protection was to safeguard the socio economic interest of the producers of the product from a geographical location. It was the collective interest of the community of producers that got legal protection through these legislative and judicial interventions.

The earliest of the treaties touching on geographical indications can be traced to the Paris convention. The Paris Convention for the protection of industrial property (1883), which states one of its objects as protection of appellation of origin⁶. One of the objects of industrial property is the protection of indication of source or appellation of origin.⁷ The term industrial property has been given wide meaning encompassing agricultural and extractive industries and to all manufactured or natural products, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.⁸ But the



Convention was silent regarding the minimum standards of protection, a shortcoming of the Paris Convention is that it remains silent about consumer deception or confusion concerning the geographical origin. The fact that the Paris convention is silent about the reputation and quality of the product and its relationship with the actual producer make it clear that protection of the traditional knowledge of the producers was not the focus of the convention. Due to the ineffective protection afforded by the Paris Convention, a number of countries joined together to establish a union for the protection of geographical indications.

Based on Article of the Paris Convention, the Madrid agreement for the repression of false or deceptive indication of source on goods, 1891 came into force. The Madrid agreement provides a higher level of protection than the Paris convention. It provides for protection against deception, thus showing an orientation towards consumer protection that in turn protects the interest of the producers. The problem of free riding on the reputation of indications persisted even after the Madrid Agreement. This resulted in the formation of the Lisbon agreement for the protection of appellation of Origin and their Registration, 1958. In 1958, from the revision Conference for the Paris Convention of Lisbon adopted a few changes regarding geographical

indications. It mainly provided for broader measures against the importation of goods bearing false representations of origin.

The Lisbon agreement clearly defined the concept of appellation of origin as "geographical name 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, including natural and human factors".⁹ Thus, the intentions of the agreement was to protect the producers of the goods from the geographical area and their socio economic interest. Lisbon agreement stands as an effective mechanism in protecting appellations of origins. But its limited coverage blocked the inclusion of a wide variety of existing geographical indications for protection. And so there were only 23 countries joining the Lisbon agreement.

GEOGRAPHICAL INDICATIONS UNDER THE TRIPS AGREEMENT

The trade related aspects of intellectual property Rights (TRIPS) agreement was the first true international legal agreement in terms of membership and effectiveness due to its dispute settlement mechanism that set minimum standards for goods deserving protection due to their link with a particular geographical area. It eliminated the legal uncertainty surrounding the concept of



geographical indications. The TRIPS agreement came into effect on 1st January 1995, and till date it is the most comprehensive multilateral agreement on intellectual property.

Geographical indications are defined, for the purposes of the agreement, as indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.¹⁰ The agreement has brought about a new dimension in the protection of intellectual property rights for the unique products and provides two levels of protection for the unique products originating from the specific geographical area with special characteristics. The general protection stipulated in Article 22 is available to all products against deceptive or misleading business practices and other sorts of unfair competition, as and when the member country have a legal means to prevent it. On the other hand, Article 23 provides additional protection for the geographical indications designated wines and spirits only. The additional protection stipulates that the member country should prevent any abusive application of such GIs, irrespective of whether the consumer mislead or it constitutes on act of unfair competition. The enhanced protection has turned out to be controversial as

some countries consider the higher level of protection as discriminatory, while some other members endorse it. The controversy has arisen out of the interpretation of article 24.1, which calls for multilateral negotiation on GI.

Thus the TRIPS obligation on GIs is only to provide an effective means for the protection of GIs. Members have enough flexibility to design a system of protection in line with TRIPS, taking into account the social, economic and cultural aspects of their GIs. The TRIPS framework allows enough freedom for developing countries to design domestic laws focusing on the protection for the producers of GIs that may protect the traditional knowledge involved in the production of goods.

Protection of geographical indications in India

In compilation to the TRIPS, agreement, the government of India has enacted the geographical indication of goods (protection and registration) Act in 1999. the GI Act came into force on September 15, 2003 and provides ways and means for protecting the unique products through registration at national level. The government of India also implemented the Geographical Indications rules in 2002.

Since the signing up of TRIPS agreement, many member countries have enacted their own Act for protecting the unique products originating from the geographical



area through the GI. India also have registered more than 170 products since the inception of the Act. The salient features of the Act are defines Geographical Indication, provides a mechanism for registration of GIs, establishes a GI Registry, elaborates the concept of authorized user and registered proprietor, higher level of protection for notified goods and remedies for infringements.

A Geographical Indications Registry with all India jurisdiction operates in Chennai, as per the Geographical Indication of Goods (Registration and Protection) Act 1999. Under the Act, agricultural, natural or manufactured goods originating or manufactured in the territory of a country, 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 cases where such goods are manufactured goods, one of the activities of either production or of processing or preparation of the goods concerned takes place in such territory, region or locality, are registrable as Geographical Indications. Whether a particular product is registrable or not is determined by the Registrar of Geographical Indications, on receipt of the application.

Geographical Indications registration gives to the registered proprietor and its authorised users, the legal right to the exclusive use of the GI and also the right to obtain relief in case of its

infringement. Exclusion of unauthorized persons from misusing GI would ensure that genuine products of the rightful producers are marketed¹¹. The main scope of the Act is to provide effective way of protecting the unique products of the country. And also to provide ways and means to protect the intangible asserts of the producers like weavers, master weavers, artisans, farmers etc. and also to provide means to convert the IPR protection into tangible benefits for emancipation of the socio economic condition of the thousands of people associated with the products. The socio cultural diversity of India has created many unique products and protection of these products can bring about new changes to their livelihood.

Significance of Geographical Indications in India

Internationally the impact of IPR protection of the unique products and traditional knowledge has proved to give potential benefits from GI as an instrument for socio economic development of the producers of the designated products. A consumer study organized by the EU commission in 1999 has concluded that 40 percent of the consumers are willing to pay 10 percent premium per origin guaranteed products. The consumers willing to pay higher premium price to the original products may be attributed to the elimination of uncertainty on the quality and originality of a product thereby promoting the economic



development of the producers who are usually from the rural areas.

Indian economy is always boosting up due to development in use of basic raw materials available in the surroundings. The scope of GI is enormous, particularly in Indian perspective because of its enormous recourses that have not been completely explored because of its wide diversity in climatic condition. It is well known fact that the knowledge in a society, community, and country is a treasure for development from social and economic point of view. The combination of recourses and traditional knowledge producing a product by a particular community from a particular place would definitely promote and boost the economic development of such community and country as well. And such products shall be given protection as there is every chance of duplicating the product. The globalisation threw an open challenge to these age old traditional products in terms of infringement. The infringements threatened the livelihood of the original weavers and marketability of the product and on other hand the consumer of the original products are deceived.

The most important way of protecting global market share is to effectively protect the intellectual property of the producers of the goods based on traditional knowledge. The original producers suffer a loss in market share and reputation of their product when there is unauthorised

use of the geographical indication. The consumers also do not have much information on the quality and the original price of the products. So making geographical indications as a part of the Intellectual Property rights is an effective effort made to safeguard the interest of the producers and consumers. Especially in country like India where there are peculiar human skills, some of the traditional and local knowledge products are still better than the modern technology. And large number of local communities that too from socially, economically and educationally backward groups are involved in the production of the goods and their survival is solely based on the income generated from those products. The products have acceptance in and outside the place because of its uniqueness and high quality and is a good economic source for the people involved in the process.

Case Studies on Geographical Indications and Their Influence on the Local Interest

Globalisation promises social and economic change to all sections of society in the world including people engaged in the production of goods and services from local areas of developing countries like India. One effective way of actually achieving this is to ensure that the products they produce maintain high quality and uniqueness to find a place in the global market. There is an increasing demand for traditional and hand made products in the international



market. The protection of traditional knowledge and sustainable use of natural resources is one of the means accelerating the market share of the producers of these goods. The most effective way of protecting global market share is to effectively protect the intellectual property rights of the producers of product based on traditional knowledge. International and national legal framework for the protection of geographical indications makes it clear that the main objective of protection is to facilitate trade safeguarding the interest of the producers and consumers from deception. It is evident from the case studies that large numbers of local village communities survive based on the income generated from their products using traditional knowledge, and through marketing using geographical indications.

Pochampally: Pochampally is a small village in Nalgonda district of the state of Andhra Pradesh in India, known for its unique Ikat design for handloom silk and other cloth materials. The weavers in Pochampally are basically Hindus of the Padmasali community. The process of weaving is by using tie and dye technique. They also use vegetable colours prepared from local plants and flowers. Historically, this traditional technique of tying and dying was very secret and used only by male members of the family. They never allowed their wives also to see it. Although now it is open. The material used for manufacturing the

sarees and other items are collected from different parts of the country. The weaving of Pochampally design cloth has now spread over entire Nalgonda district, Medak, Mahabooba Nagar, Ranga Reddy and Warangal. The technique they use is traditional and there is no protection for it since it is openly done by the members of local community and known to many. There is no technical mechanism to identify duplicate products. More than a million people are engaged in this business. The socio economic conditions of the weaving communities are very weak. They do not even earn 2000 rupees on weaving 10 sarees when each saree costs 2000¹². The younger generations are not willing to continue this art work as their business. As the art work is not fetching them a good livelihood. Although Pochampally Ikat a registered geographical indication under the Act, the weavers are not familiar with the legal protection available to them because of lack of education and information. So the government has taken necessary measures to form cooperative societies and make the weavers informed about the protection available to them their products. They have measures taken for promoting and improving the products to face the competition in the present world. The registering of the product under the Act has, to a far extent increased the value of the product and protected it from duplication.



Aranmula Kannadi

Aranmula is a rural place in pathanamthitta district of the state of Kerala in India. This is a rural area and the place is known for a peculiar type of metal (combination of tin and copper) mirror called "Aranmula Kannadi". Unlike the normal 'silvered' glass mirrors, being a metal-alloy mirror, it is a front surface reflection mirror, which eliminates secondary reflections, refractions and aberrations typical of back surface mirrors. The exact metals used in the alloy is maintained as a family secret. An Aranmula mirror takes many days to make, and then is polished laboriously by hand for several days to achieve its reflective surface. Aranmula Mirror considered one among the eight auspicious items or "Ashtamangalyam" that make up a Kerala bride's trousseau. These unique metal mirrors are the result of Kerala's rich cultural and metallurgical traditions, and have great historical and cultural value and are even considered to bring good luck. Produced by a single extended family in Aranmula, the origins of the Aranmula kannadi are linked with the Aranmula Parthasarathy Temple. Legend has it that eight families of experts in temple arts and crafts were brought by the royal chief to Aranmula from Tirunelveli district to work in the Parthasarathy temple centuries ago on the mirrors.

The British Museum in London has a 45 centimeter tall Aranmula metal

mirror in its collection. The mirrors have received a Geographical Indication (GI) tag in 2004-05¹³.

The direct manufacturing of mirrors enables the families involved to reap the maximum economic benefit from the geographical indication. The fact that no one could find out how the mirror is made makes the product unique. The case of Aranmula kannadi makes it clear that the traditional knowledge used in the products of geographical indications could be protected effectively only if the knowledge is kept secret by the producers.

Banaras Brocades and Sarees

Banaras is the oldest city of the northern India. It is known all over the world for its religious affinity and as an important production centre for unique hand woven textiles. The hand woven textiles of banaras are famous for its intricate designs and beautiful patterns and motifs since times immemorial. The traditional hand woven textiles have been fetching a premium price since times immemorial due to its unique quality and intricate design. The premium price associated with the products has not only helped more than 1.70 lakh weavers and support providers to earn their livelihood but has also helped in establishing banaras (varnasi) as an important hand woven textile production centre of the world. The globalisation threw an open challenge to these age old



traditional products in terms of infringement.

During the last 20 years, the maximum damage to the products has been done by the infringement. The presence of the infringed products has ultimately reduced the brand value and premium price associated with the product, threatening the income and livelihood of the thousands of the producers associated with the product. It has not only threatened the very existence of such a unique product of the country in the domestic market but has also taken away the export potential of the product. The exploitation in the sector has reached such serious proportions that many skilled artisans have been compelled to shift their age old profession of weaving to other works like making instance sticks, going for seasonal works and women have begun to do domestic labour. In such a scenario, successful completion of the Trade Related Intellectual Property Rights (TRIPS) under World Trade Organisation with the inclusion of geographical indication as one of the Intellectual Property Rights has brought in new hope for the protection of these age old unique products.

Conclusion

The above case studies give a very clear that there are different categories of geographical indications that contribute to the socio-economic conditions of the rural people in the

developing countries. Large numbers of local communities that too from socially, economically and educationally backward groups are involved in the production of the goods and their survival is solely based on the income generated from geographical indications. It is also known that majority of the communities involved in the process of producing the unique products do not know about the legal protection available for their products under the Geographical Indications of goods (Protection and Registration) Act, 1999. In majority of the cases adequate measures were not taken for preventing the misuse of the fame of the products. Only in cases where traditional knowledge is kept secret for example "Aranmuli Kannadi" the actual producers could prevent its use by others.

There are 215 registered geographical indication registered under the geographical indications registry in India¹⁴ from September 15th 2003 to till date. And there are still many more natural, agricultural and manufactured goods in the rural areas which are worth to be given the status of GIs. There are many lives of the rural people depending upon these unique goods. It has also been well established from the case studies that large number of local and village communities survive based on the income generated from their product using traditional techniques. Presently the major economic benefits from the products are not



reaching the actual producers. But effective protection of geographical indications, nationally and internationally is going to contribute to the socio economic conditions of these communities. Thus inclusion of geographical indications as a part of the Intellectual Property Rights has been a boon to the people involved in the process of producing the unique and traditional products. The geographical indications is a community right which not only protects the products from being deceived but also the consumers from being deceived by duplicate products. Information of the rights involved in the geographical indications and good implementation of the legal protection to the products would increase the sustainability and economic wellbeing of the local communities. The employment in the rural areas would also increase to a large extent. So geographical indications is being a life support of a large number of rural people surviving on the income generated from this business.

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