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Critical analysis on the implementing of the geographical indications act in handloom sector

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Abstract

Regardless of location, actors at the local, national, and international levels have an impact on livelihood decisions through their institutional structure, policies, and processes. The emergence of intellectual property rights (IPR) under the WTO framework is an example of how decisions made at the international level have an impact on millions of people's means of subsistence around the world. National governments have been forced to pass new regulations as a result, like the Geographical Indications Act of India, which was passed in 1999. Developing nations have applauded the inclusion of geographic indications (GIs) under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the WTO for its ability to advance rural development, generate wealth, and safeguard traditional knowledge. The price people are ready to pay for a GI certified product is directly related to the product's quality. This necessitates a complete reorganisation of the supply chain to conform to quality standards as well as to guarantee that GI money is distributed fairly along the supply chain. To promote trust and ease access to the market, this calls for developing relationships between stakeholders at all levels. Drawing on the success examples of GIs from around the world, the article addresses the major obstacles to GI implementation in the traditional livelihood sector, such as handloom weaving in India. GIs are a vital component of IPR.

Keywords: IPR WTO international level geographical indications act developing nations TRIPS

Introduction

Since the creation of Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the WTO, Geographic Indications (GIs) have become a significant intellectual asset that not only safeguards the interests of consumers in high-quality products but also confers specific advantages on localised producers through increased economic returns and protection of traditional knowledge or know-how. In other words, GIs are now a significant economic and legal tool for protecting traditional knowledge and promoting rural development. Traditionally, GIs have been associated with agricultural and culinary items, wine, and alcoholic beverages. However, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore noted at its fifth meeting that some traditional cultural expressions (TCEs), such handicrafts that utilise natural resources, may qualify as goods and possibly protected under GI ^[1].

The practise of identifying commodities based on their geographical origin is one of the earliest methods of differentiating them for trading purposes. To put it another way, GIs typically developed to convey information about the origin of the goods as well as other qualities, such the quality of the product due to natural or human causes that are unique to a locality or region. As a result, it is considered by general public policy to be more accommodating to indigenous groups' customary practises since they generate goods that are inevitably at the confluence of culture and geography. Collective monopoly (held collectively by producers and knowledge remains in the public domain as a result), non-transferability (cannot be produced outside the demarcated regions and promotes sustainable livelihoods), non-excludability (individuals from the location cannot be easily excluded from enjoying the benefits), and non-rivalry are some of the key characteristics of GIs (the enjoyment of GI by one does not diminish the same for another) and perpetual rights so long

¹ Consolidated analysis of the legal protection of traditional cultural expressions, (WIPO, May 2003), http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_5/wipo_grtkf_ic_5_3.pdf. 27. Accessed on 15.12.2022 at 10:03 AM

as a good location-quality link is preserved (thereby ensuring intergenerational equity) ^[2].

However, the new IPR regime requires the development of new patterns of ownership over locally held and owned resources or know-how. This in turn may have a significant effect on community governing structures. If distributive equality can be ensured, this is essential to ensuring the equitable distribution of economic gains resulting from GI, which can reduce poverty in the supply chain's lowest rungs. The purpose of this article, which draws inspiration from global GI success stories, is to investigate the major issues associated with GI implementation in the traditional livelihood sector, such as handloom weaving in India.

Scope of geographical indications

The practise of using a product's geographic origin to identify it for trade purposes is not new. Geographical indicators provide information about the origin of the good bearing them as well as other traits or qualities of the product. A locality or region's unique natural and human elements are related to the product quality as expressed by the Indication of Geographical Origin (IGO). The economics of information can be used to explain this occurrence. Based on the information that consumers have access to or that is readily available, products can be divided into three categories: search, experience, and credence goods ^[3]. Consumers who are shopping for items establish a solid perception of quality prior to purchase through inspection or study. Contrarily, experience commodities are defined as those whose quality is known via use and experience. Credibility goods are those in which neither before inspection nor future use is sufficient to establish a reliable sense of quality and in which reputation plays the largest role. In other words, producers differentiate their products based on variances in consumer preferences, which leads to market segmentation. For instance, A fabric's colour indicates its "search good" quality, its "experience excellent" fastness, its "kind of dye used" (natural, chemical-free), or the fact that it was woven by weavers from Pochampally indicates its "credence good" quality. Therefore, there is no question that the geographic origin of a product, such as Champagne wine, Pochampally saris, Basmati rice, Roquefort cheese, Pinggu peaches, etc., is a major factor in determining the preference of the consumer. It is crucial to distinguish between indications of geographical origin, geographical indications, appellations of origin, protected designations of origin, protected geographical indications, and trademarks in order to properly grasp the many terminologies covered by GI in TRIPS. IGOs can be roughly categorised into two groups ^[4]. Simple IGOs, sometimes referred to as indications of source (IOS), such as "made in China," do not imply any connection between a product's characteristics and its place

of manufacture. On the other hand, qualified IGOs suggest a connection between the product's geographical origin and its qualities, traits, and/or reputation. Consequently, GIs fall under the category of competent IGOs commonly referred to as an indication of source (IOS), such as "made in China," do not imply any connection between a product's characteristics and its country of origin. On the other hand, qualified IGOs suggest a connection between the product's geographical origin and its qualities, traits, and/or reputation. As a result, GIs are considered to be qualified IGOs.

The TRIPS definition states that GIs are not always geographical designations (such as the name of a town, region, or country), but can also be symbols if they can be used to denote the origin of the goods without actually naming them. One such illustration of GI is the term "Basmati" for a specific variety of aromatic rice cultivated in specific areas of Pakistan and India. However, AOs are less flexible than GI or indications of origin. According to Article 2(1) of the Lisbon Agreement, "appellations of origin" refer to the geographical name of a country, region, or locality used to identify a product that originates there and whose quality and characteristics are solely or primarily attributable to the geographical environment, including both natural and human factors ^[5]. A GI can only qualify as an AO if the quality and characteristics of the product identified by it are due exclusively or essentially to the geographical environment, including natural and human factors. Although reputation, quality, and "other characteristic" are individually sufficient conditions in and of themselves to qualify for GI status under the TRIPS definition, a GI can qualify as an AO only if this is the case, all appellations of origin would be considered geographical indications (GIs), but not all GIs can obtain protection as appellations of origin. Similarly, not all indications of origin can be GI, but all GIs can be indications of origin.

The European Economic Community has adopted two categories of IGOs under its Regulation EEC 2081/92, in addition to the definitions that are frequently used under other international treaties. Protected designations of origin are names of a region, a city, or, in rare circumstances, a nation that are used to identify agricultural products or foods whose quality or distinctive characteristics are primarily attributable to a specific geographic environment with its inherent natural and human factors, and where the production, processing, and preparation take place. Protection of geographical indication, on the other hand, is a broader concept in which names of a region, place, or, in exceptional circumstances, a country, are used to denote an agricultural product or food item, and whose quality, reputation, or other characteristics are attributed to the geographical area of origin, and the production, processing, and preparation take place in the defined geographical area. Even though trademarks and GIs serve similar purposes, there are still significant variances. Trademarks set one company's goods or services apart from those of another; if certain grounds for infringement are met, a registered trademark grants its owner a monopoly or exclusive right over those goods or services and shields them against unfair competition and infringement. GIs specify the region of

²Rangnekar D, The socio-economics of geographical indications: A review of empirical evidence from Europe, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No 8, 2004, p. 17, 22, 25-32, www.ictsd.org/downloads/2008/07/a.pdf (15 June 2011). Accessed on 15.12.2022 at 10:43 AM

³Nelson P, Information and consumer behaviour, *Journal of Political Economy*, 78 (2) (1970) 311-329.

⁴Correa C M, Protection of geographical indications in CARICOM Countries, (September 2002), <http://www.crn.org> Accessed on 15.12.2022 at 01:39 PM

⁵International Encyclopedia of Intellectual Property Treaties, edited by A Iardi and M Blakeney (Oxford University Press, New York), 2004, p. 675-692.

origin of the product and are typically applicable to all producers within the specified region. In other words, "Tata Tea" is a trademark that may be used on tea powder regardless of its geographical origin, whereas "Darjeeling Tea" is an example of GI. However, if a geographic sign has become unique through use, it may be registered as a trademark. However, it will be feasible for third parties to refer to the source of their goods or services by using the registered sign in a descriptive manner.

It is important to note that certification marks may be used by anyone who complies with the same standards established by the owner of the certification mark, whereas collective marks may also identify a group of businesses that are not based in the same location but are merely producing the same goods (for instance, Inter flora used globally by a flower ordering service) (for instance, Woolmark). Basically, the person who owns the certifying mark should be qualified to do so (for example, Tea Board of India in case of Darjeeling Tea). The owner of a certification mark, in contrast to the collective mark, typically cannot utilise the mark. However, a group of producers or artisans from a particular geographic area may use collective marks, and the need to join the association is that one must be a resident of the specified region. It is advantageous for the producers to utilise a collective mark in the absence of or without access to a certification authority. This is especially true for unorganised producers like weavers, artists who make handicrafts, and other producers. The producers may further add certification marks like the Handloom Mark or Silk Mark, trademarks like "PochampallyChikat," or registered geographical indications (RGIs) like Pochampalli Ikat, Chanderi fabric, and so forth to the collective mark.

National and the international perspectives of the GI

International

Articles 22, 23, and 24 of the TRIPS agreement deal with geographical indications. According to TRIPS (Article 22.1), "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" are considered GIs for the purposes of this Agreement. The definition makes it clear that the GI is based on the "quality," "reputation," or "other feature" of the good. Additionally, it must be possible to connect the indication, quality, reputation, or features with geographic origin.

The level of GI protection has a hierarchy despite just having one term in Article 22. Under Article 23, wines and spirits are given additional protection. Some of the member nations are trying to extend this additional protection to GIs for other products, which is the basis of the TRIPS Council negotiations. In other words, while it is prohibited by the Agreement to refer to American-made champagne or Antarctica Merlot wines, Kenya or Sri Lanka may refer to their tea as "Darjeeling tea, produce of Kenya/Sri Lanka." Additionally, the Agreement does not outline the recommended legal strategy or the assortment of legal tools that 'interested parties' may use to pursue the adoption of

GIs⁶. Scholars contend that this, however, reflects the wide variety of legal tools available for IGO protection, as demonstrated by the various domestic systems or national laws adopted by member nations⁷. Finally, it is important to note that Article 24.9 of TRIPS states that WTO member countries are not required to protect GIs that are not protected, no longer protected, or that have been abandoned in another WTO member country (the "country of origin"). This is important to note before moving on to India's GI legislation.

National

In India, which is rich in both natural and agricultural products⁸ as well as in renowned handmade textiles and crafts, protecting GIs has considerable significance. The Geographical Indications of Goods (Registration and Protection) Act was the first pertinent law in India (henceforth the GI Act). The Geographical Indications of Goods (Registration and Protection) Rules, 2002, came after this (GI Rules). According to the GI Act, any term that is not the name of a nation, territory, or locale may be regarded as a GI if it refers to a particular area and is used in connection with specific commodities coming from that area. To put it another way, this allows plenty of room for protecting symbols other than geographic names, like 'Basmati'. The mention of actions for the manufacturing, processing, or preparation of commodities is another important aspect of Indian law. In India, it is vital to take into account "human elements," which makes room for handicrafts and locally produced textiles⁸. Additionally, under Articles 22(2) and 23(2) of the GI Act, the enhanced protection for wines and spirits included in TRIPS is extended to all goods. Because unregistered GIs are not protected, Section 20.1 of the GI Act makes registration of GIs necessary⁹. The Act divides registration into two parts: Part A deals with the registration of GIs, and Part B deals with the registration of authorised users/proprietors, including names, addresses, and descriptions that are specified. Each kind of good has a comparatively low application fee of Rs 5000. The Geographical Indications Registry, with all of India under its jurisdiction, has been formed by the Central Government in Chennai to make GI registration easier. 151 products were protected as of May 12, 2011, including items from the handcraft (97), agricultural (39), manufacturing (12), and food stuff (3) categories. There are two ways that GI is enforced: civilly and criminally. 11 Criminal penalties apply to falsifying and

⁶ Three major approaches which have been identified under the range of legal options include; laws focusing on business practices, trademarks and special measures for protection.

⁷Rangnekar D, The International Protection of Geographical Indications: The Asian Experience, at the UNCTAD-ICTSD Regional Dialogue, Intellectual Property Rights, Innovation and Sustainable Development, Hong Kong, 8-10 November 2004, p. 1, 7, 29, [http://www.iprsonline.org/unctadictsd/dialogue/docs/Rangnekar 2004-11-08.pdf](http://www.iprsonline.org/unctadictsd/dialogue/docs/Rangnekar%202004-11-08.pdf). Accessed on 15.12.2022 at 04:22 PM

⁸ Das K, Protection of geographical indications: An overview of select issues with particular reference to India, Centre for Trade and Development, New Delhi, Working Paper No 8, 2007, p. 29.

⁹ According to Section 20.1 of the GI Act 'no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

applying GIs to items, selling goods to which fraudulent GIs have been applied, advertising a GI as registered when it is not, misrepresenting a location as being associated with the GIs registry, and falsifying entries in the register. Penalties include both jail time and fines. If the defendant claims that the registration of GIs connected to the claim is illegal with regard to civil remedies, the court must delay any related lawsuits now underway before the registrar or appellate board and if there aren't any such processes going on, then bring up the matter and put the case on hold for three months so the party in question can ask the appellate board to correct the register.

The handloom sector and GI

Indian hand woven textiles have a long history of popularity. With its intricate designs and wide range of items, hand woven fabrics may best capture India's rich cultural diversity. From Patola and Mashru in Gujarat, Kota Doria in Rajasthan, Banaras silk in Uttar Pradesh, Daccai Jamdani in West Bengal, and Sambhalpuri in Orissa, to Mysore Silk in Karnataka, Chanderi in Madhya Pradesh, Balaramapuram saris and Kannur hosiery in Kerala, Chettinad and Kancheepuram in Tamil Nadu, Narayanpet and Poampally in Andhra Pradesh, and Pashmina in Kashmir, handloom weavers for thousands of years have woven rich variety of designs and textures that are often considered the pride of India.

Regional natural and human variables, such as the weaver's abilities, the weaving process, the dyeing of the yarn, and other characteristics peculiar to the region or locale frequently have a significant impact on the handloom items produced there. The types of cloth produced on handlooms are diverse, ranging from weaving coarse cloth for local markets to creating a variety of medium and fine fabrics for bigger (often metropolitan and export) markets. Every location is well-known for a certain good that is distinctive in both design and style. In actuality, where and how something is weaved cannot be separated from what is woven. In other words, the industry is a veritable gold mine of regional cues.

Given that power looms (automated looms) make similar goods at a significantly lower price, GI offers enormous potential for handloom items as a marketing strategy. Given that the handloom industry is India's second-largest employer after the agricultural sector in terms of employment, this assumes significant significance ^[10]. In terms of fabric manufacturing, the handloom industry makes up around 15% of the nation's overall production (excluding hosiery, khadi, wool and silk). The handloom industry accounted for orders worth US\$ 260 million in exports. Furthermore, 87 percent of the nation's handlooms are located in rural areas, according to the most recent Census data. Therefore, the effects of a good support programme for this industry on fairness and poverty reduction are enormous. The handloom sector is an example of a household-based cottage industry in terms of how production is organised.

In the handloom clusters, which are frequently a collection of villages in a specific geographic area, weavers can be found in great numbers. Family labour is still a significant part of the production process. Every member of the household has a specific role to play in each stage of production. It resembles subsistence agricultural households in many aspects, which self-exploit labour to maintain their subsistence level. Due to the industry's extremely decentralised structure, issues that are frequently related to micro, small, and medium-sized businesses start to appear (MSMEs). Their seclusion and small size limit their ability to take advantage of economies of scale. The market premium for distinctive handloom products is, by and large, distributed disproportionately to traders and master weavers who are in a stronger negotiating position in the supply chain. Given the extremely fragmented character of the sector, registration and implementation of GI as well as the distribution of economics present numerous difficulties.

Problems with successful GI implementation in handloom industry

The concept of geographic information (GI) denotes a collective monopoly, but it also assumes a high degree of collective action, frequently involving local knowledge, cultural elements (such as the idea of "good farming" or "intricate weaving"), and the "symbiotic relationship between reputation and geography." ⁷ This is due to the fact that non-excludability and non-rivalry are two of the essential characteristics of GI. These traits create challenges because most nations already have some sort of indicator of origin in place before GI registration, and the latter necessitates a comprehensive reorganisation of the supply chain to meet the needs of an established market. Given the emphasis on quality and the unbreakable link between reputation and geographic considerations, this is necessary. According to studies, the distribution of economic returns is significantly influenced by the position of enterprises in the supply chain. ² GI thus clearly has the capacity to safeguard traditional knowledge and advance rural development. If the distribution of economic advantages benefits stakeholders along the supply chain, it can be a vital instrument for reducing poverty. Identification and registration of GI are cumbersome in terms of paperwork, time, and costs, and they also assume the possibility of financial gain from GI, which is clear from a thorough market analysis. They highlight issues with collective action in terms of registration cost sharing and uncertainties about GI grant and its execution. In addition, non-excludability might result in stakeholders "free-riding" on adjusting to the requirements of the "club," especially because the advantages are non-rivalrous. Any stakeholder's (horizontal or vertical) unreasonable behaviour runs the danger of jeopardising the protected good's reputation. Since quality control is the foundation of GI, enforcement also includes product standardisation. The supply chain will be reorganised by bolstering networks and connections on both a horizontal and vertical scale. The TRIPS Agreement does not specifically include any legal means for GI implementation, which suggests that a wide variety of legal means may be used. But according to Article 24.9, a violation of a GI is not going to be taken into account unless such GI is protected by national law. The GI Act is India's primary piece of law in this regard.

¹⁰ NCAER Handloom Census 2009-10: Third National Census of Weavers and Allied Workers - Primary Census Abstract (Ministry of Textiles, New Delhi), 2010, p. 17, 37, www.ncaer.org/downloads/Reports/HandloomCensusReport.pdf Accessed on 15.12.2022 at 06:45 PM

Conclusion

TRIPS was introduced during the Uruguay Round of negotiations, and this was accompanied by controversy regarding its possible effects on the developing world, particularly the potential increase in the cost of life-saving medications. However, given its ability to support rural development by safeguarding traditional knowledge, GI under TRIPS is seen as a tool beneficial to the poor. Given its expanded reach and an appropriate framework for distributing the economic gains that result from its use, GI's communal monopoly feature gives it a higher potential to reduce poverty. Additionally, GIs are a highly effective marketing tool, particularly for traditional sectors like India's handloom industry. The handloom industry's decentralised structure, rural setting, pro-poor rural population that depends on handloom weaving, and other factors present a special possibility for GI to be a tool for reducing poverty. However, there are numerous implementation issues with GIs. The ability of stakeholders to form an association or other types of groups is required for the identification and registration of GI. Additionally, as quality is at the foundation of GI, links between the various stakeholders along the supply chain, both vertical and horizontal, are essential. Additionally, it is necessary to use strong marketing techniques to emphasise the validity of the protected indications, which can be both time- and money-consuming.

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