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Geographical Indications in India: Hitherto and Challenges

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ABSTRACT

Every geographical region has its name and fame. Mostly the qualities and characteristics of certain goods attributable to some geographical locations and reputable to "as produce of certain region" come under Geographical Indications (GI). It is an emerging trend in Intellectual Property Rights. This review provides an overview of the past and current scenario of Geographical Indications in India with its challenges. It also provides a list of important Geographical Indications in India registered till today. The geographical indication in relation to goods, means an indication which identifies or classify such goods as agricultural goods, natural goods or manufactured goods as originating etc. It also considers territory of manufacture, a country, a region or specific locality. The quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. The established registry of Government of India has two characteristics; (i) protection of producers against counterfeiting and misleading commerce, and (ii) striking of balance between trademark and GI protection. The GI Act reveals right of claimants to produce goods designated by the registered GI and can file an application for registration as an authorised user. Also, the relevancy of production and procession of such goods is directly concerns the region or locality, as the case may be.

Keywords: Geographical Indications, India, challenges, IPR, Patent

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INTRODUCTION

A geographical indication (GI) acts as a mechanism that helps producers differentiate their products from competing products in the market and enables producers to build a reputation and goodwill around their products that will fetch a premium price. A number of studies attest to the potential economic benefits of GI registration. A consumer survey undertaken in the European Union in 1999 found that 40 % of the consumers would pay a premium of 10 % for origin-guaranteed products (WTO, 2004). Despite the fact that the GI concept is yet to mature in India, an United Nations Conference on Trade and Development (UNCTAD) study has revealed that GI registered agricultural products can fetch a price premium of 10–15 % whereas for non-agricultural products it would be of 5-10 per cent [1]. The concept of geographical indication has its origin in 19th century Europe and has considerably evolved since then. The current international framework is laid down in Article 22 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement which mandates member countries to provide for the protection of all GIs, where the obligation is for members to provide the 'legal means for interested parties' to secure protection of their GIs. The TRIPS defines GIs as indications which identified it 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' (Article 22). Under Article 22, the scope of protection is composed of three aspects [2].

- Protection against the use of indications that mislead the public or are deceptive
- Protection against the use of indications in a manner that are acts of unfair competition and
- Refusal or invalidation of trademarks that contain or consist of indications, where it may mislead the public.

Article 22.2.a prohibits the use of indications (words, phrases, images or symbols) that will mislead/ deceive the public about the good's geographical origin.

Article 22.2.b prohibits any use of GI that constitutes an act of unfair competition as defined in Article 10bis of the Paris Convention. The language of Article 10bis indicates that in order to prohibit such acts as acts of unfair competition, it has to be established that their use is misleading or will create confusion to the public, and that damages result or there is likelihood of damages resulting from such use of GI.

As per Article 22.3 of TRIPS, registration of GI as trademarks shall be refused or invalidated at the request of an interested party, if their use is likely to mislead the public as to the true place of origin.

Most countries including developing countries disallow the registration of geographical names as trademarks, unless these have attained secondary meaning. The TRIPS Agreement provides for two levels of protection for GI. What Article 22 provides is the basic level or a minimum standard of protection whereby all GI must be offered protection against use which would deceive the public or constitute an act of unfair competition. The second kind of protection, in Article 23, is a higher standard of protection specifically for wines and spirits. This article confers protection on GIs on wines and spirits per se or in

absolute terms, without requiring any test of confusion or likelihood of deception to be met. In the special case of wines and spirits, Article 23.1 of TRIPS prohibits the use of translations of GI or attachment of expressions such as 'kind', 'type', 'style' 'imitation' to products not originating from the place indicated, even where the true origin is clearly indicated. Thus, 'Champagne style sparkling wine, Made in the USA' would be prohibited even though this is evidently not misleading [3].

With Intellectual Property Rights (IPRs) increasingly influencing trade both at the national and international level; harnessing trade benefits depends on the degree of protection enjoyed by the owners of the IPRs. Geographical Indications (GI) is one of the six Trade-Related Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO) that seeks to provide comprehensive and effective protection to goods registered as GI goods. GIs may be associated with agricultural, manufactured or industrial goods. Non-agricultural products, which typically qualify for GI protection include handicrafts, jewellery, textiles etc. (WTO, 2004). Given India's historically vibrant and famous craft traditions, a number of craft genres and products from the crafts sector qualify as GI goods. If harnessed properly, trade gains from enhanced sale of these GI goods could provide tremendous socio-economic benefits to the producers of such goods. India, in compliance with the TRIPS Agreement of the WTO, enacted 'The Geographical Indications of Goods (Registration and Protection) Act, (GI Act) on 15th September 2003 to provide protection to the goods registered under the Act. Seven years down the line, evidence from the ground suggests that while there has been some progress in terms of number of goods registered under the GI Act, there remain a number of issues and concerns in the context of harnessing the potential commercial benefits out of GI registration in India [4].

The Rationale underlying GI Protection

There exists a big information asymmetry in the markets today that lead to typical market information problems in the form of adverse selection and moral hazard. Information asymmetry has direct negative impact on the market: the quality of total supply drops, higher-quality products are driven out of the market and some consumers are no longer able to satisfy their preferences. Producers maintaining the quality of their products are exposed to unfair competition from producers who sell lower quality products at the same price. This unethical practice of selling fake products in the name of reputed products to fetch better prices is rampant in the Indian market and even abroad. In India, for example, cheap Power loom saris are sold as reputed Banarsee handloom saris within and outside Banaras, harming both the producers and consumers of Banarsee handloom saris. While original producers suffer a loss of market for their goods, consumers end up paying inflated prices for fake goods. Consumers usually do not have perfect access to information regarding the prices of goods, and even less so to the quality of the goods. In a situation like this, GI protection has the potential to eliminate information asymmetry and benefit both the producers and the consumers (OECD, 2000). Once the goods are registered as GI, they will be protected under the GI Law and any violation on this account would be tantamount to a legal offence. If the Act is implemented effectively, it will act as a deterrent to unethical producers selling their low quality and cheap products free riding on the reputation enjoyed by GI goods. The GI tag attached to products acts as a signaling device that helps producers to differentiate their products from competing products in the market and enables them to

build reputation and goodwill around their products, which allows them to fetch a premium price. Eliminating information asymmetry is also the rationale of another IPR: Trademarks. But, there are at least two major differences between Trademarks and GI. Firstly, while Trademarks can be owned individually or by a group of people, GIs are collective rights owned by the concerned communities. Secondly, Trademarks can be transferred or assigned to another right holder but GI rights are perpetual collective rights. Besides, since most of these GI goods or potential GI goods have their origin in rural areas, the increased sales of these goods as a result of protection under the GI Act has the potential to lead to enhanced income to the producers' communities and hence to rural development [5].

Functions of Geographical Indications

Geographical indications perform a variety of economic and other functions, which may depend on how producers use geographical indications and consumers view them [6].

- i) **Origin function:** Designations operate as indicators of origin from which the products come or are in some other way connected.
- ii) **Quality Functions:** Designations symbolise qualities which certain products have or which consumers associate them with and guarantee that they measure up to expectation.
- iii) **Investment or advertising function;** Designations are ciphers around which investment in the promotion of a product is built and that investment is a value which deserves protection as such, even when there is no abuse arising from misrepresentations either about origin or quality.
- iv) **Culture protecting function:** Designations protect culture by preserving traditional productions methods, habits of consumption and cultural identity [7].

Definition and scope of a geographical indication

Article 22 contains the basic definition of 'geographical indication' applicable to all protect and describes the general level of protection available in respect of the same.

The text of Article 22.1 reads as follows: "Geographical indications are for the purpose of this agreement, indication which identifies 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". This definition is not limited to words, so images and packaging are potentially included. Nor is the definition limited to foodstuffs, although it apparently excludes services [9]. But there are other aspects of the definition that warrant our attention. First, the definition is ambiguous on whether human production factors may be part of the tally of "quality, reputation or other characteristic of the goods". In contrast, the Lisbon agreement specifies "natural and human factors" and the EU Draft in 1991 had proposed this same construction [10]. The lack of this language has led some commentators to conclude that factors in the consideration of geographical indications [11] but that interpretation is not warranted since neither the 1990 US draft nor any of the other TRIPs proposals expressly attempted to exclude "human factors" of production. Second the standard Article 22(1) adopts for the relationship between the products qualities and the geographic source. The Lisbon Agreement states that, the products "characteristics" must be "due exclusively or essentially

to the geographical environment". TRIPs Article 22(1) requires that the given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Here it is difficult to know whether there is any difference between qualities being "essentially" or "exclusively" due to the land. Since we should not multiply legal distinctions needlessly, it is reasonable to see the same standard being generated by both terms: an essential land / qualities connection. Third, there is the word "reputation" in the Article 22(1) definition –something absent from the Lisbon agreement. TRIPs provision leads to protection of geographic products names "where a given ... reputation of the good is essentially attributable to its geographic origin". Broadly read, this could obviate any land /qualities connection of the sort that has been fundamental to the notion of appellations [8]. To be eligible for protection, there must be a link between the products identifying characteristics, quality, reputation and place of origin. Therefore it logically follows that a geographical indication commonly consists "of the name of the place of origin of the goods".

Historical development

The term 'geographical indication' (GI) is a relatively new concept introduced by the TRIPs Agreement (WTO1994). However, evidences suggest that the practice of using other closely related concepts existed even in the pre-industrial times. The concepts such as 'appellations of origin', 'indications of source' 'designations of origin' and 'protected geographical indications' used names of places and distinctive signs for variety of products as 'indications of geographical origin' (IGO). Foreexample: Mt. Fuji sake and Pisa silk, Champagne, Florida Oranges, New Zealand lamb, Murano Glass, Swiss Watches, Bukhara carpets etc. Prior to the TRIPs agreement of the Uruguay round which concluded in 1994, there were mainly three international conventions dealing with protection of IGOs, i.e. the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). While the Paris Convention and the Madrid Agreement dealt with 'indications of source', the Lisbon Agreement focused on protection of 'appellations of origin' [6]. In terms of providing global protection to these IGOs, however, these multinational treaties offered limited scope as these conventions were ratified only by few countries. Hence, signing of the TRIPs Agreement, which brought GI to the fore in multilateral negotiations; by more than 150 member countries was an important step forward for the international protection of IGOs. The agreement provided the 'minimum' standards of protection for GIs (along with all other IPRs) backed by an enforcement mechanism. However, there remains the problem of a hierarchy in the levels of protection based on an arbitrary and specious categorisation of goods under the TRIPs Agreement. International trade negotiations on IPRs, the European Union has always shown keen interest and even aggression in seeking effective protection to GI goods. The negotiations, particularly on the GI section of the TRIPs Agreement, were among the most difficult and this stemmed from clear division between the main proponents of the TRIPs agreement-the US and EU. The European Union constantly emphasised on inclusion of GI in the TRIPs during the Uruguay rounds of negotiation. The fact that GI was finally included in the TRIPs agreement can be attributed to the EU's remarkable negotiating capacity. The final outcome was tilted in the interest of the European countries. The Current TRIPs text provides a basic standard of protection to all other goods and higher standards of protection to wines and

spirits in which they have clear advantages. The EU and its member states have a diverse portfolio of over 6,000 protected GIs [10].

Permissible Prominence of Geographical Indication

Geographical indications are, for purposes of the TRIPS Agreement, a type of intellectual property ("IP"). "Geographical Indications," ("GIs") are defined, under Article 22(1) of the TRIPS 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 geographic origin." Geographical indications are valuable to producers from particular regions for the same reasons that trademarks are valuable. First, they are source; identifiers; they identify goods as originating in a particular territory, or a region or locality in that territory. Geographical indications are also indicators of quality they let consumers know that the goods come from an area where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographic origin. In addition, GIs are business interests? GIs exist solely to promote the goods of a particular area [12]

Finally, for purpose of the TRIPS Agreement, GIs are intellectual property, eligible for relief from acts of infringement and/or unfair competition. Geographical indications are used to indicate the regional origin of particular goods, whether they are agricultural products or manufactured goods; provided that those goods derive their particular characteristics from their geographic origin. Any producer who meets the standards set by the GI owner can use a GI. In the United States, the owner of a GI can be any legal entity be it a government, an association of producers, or even an individual [13].

The registration of geographical indications confers certain rights on the registered proprietor and the authorized user and they can institute suit for infringements of geographical indications. Controversy regarding geographical indications arises when names that are protected in one region have a common usage in another. For example, products such as Dijon mustard, Feta cheese, or Basmati rice may be viewed as having obtained a generic status in the marketplace. Thus, some may claim that these names should not belong exclusively to a specific group of producers in a specific geographic location as consumers expect these names to identify a class of product that can be produced in one of many locations. On the other hand, others argue that the products associated with the name have a certain quality that derives from the geographic region and specific production process used. Thus, the protection of the name helps prevent the development of a generic association thereby preserving the ability of the product to be made in the traditional manner. If a geographical term is used as the designation of a kind of product, rather than an indication of the place of origin of that product, this term does no longer function as a geographical indication. Where that has occurred in a certain country over a substantial period of time, that country may recognize that consumers have come to understand a geographical term that once stood for the origin of the product - for example, "Dijon Mustard," a style of mustard originally from the French town of Dijon - to denote now a certain kind of mustard, regardless of its place of production. In the current fast changing global economy GIs are emerging as an important intellectual property tool. Some well known GIs are "Darjeeling Tea" from India, "Chianti Wine" from Italy, and "Champagne

Wine” from France; “Tequila Spirit” from Mexico; “Idaho Potatoes” from USA; “Swiss Chocolates” from Switzerland. All these names typically convey an assurance of quality & distinctiveness, which is essentially attributable to the fact of its origin in that, defined geographical locality, region or territory Champagne, Florida Oranges, Prosciutto di Parma, and New Zealand Lamb. While most often used on food products, geographical indications can be used to identify any product (e.g., Czech crystal, Swiss watches, and Indian carpets.) Other examples of geographical indications internationally are: Camembert cheese, from camembert, a village in Normandy, France.

A geographical indication also tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities. In India geographical indications are protected and governed by the geographical indications of goods (registration and protection) act 1999. Under this act an application can be made for registering a geographical indication by an association of persons or producers or any organization or authority representing the interests of the producers of the goods concerned under section 11 of the act [14].

Requirements of GIs application

- The class of goods to which the geographical indication shall apply.
- A statement of how the geographical indication serves to designate the goods as originating from the concerned territory in respect of the quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural, and human factors and the production or processing or preparation of which takes place in such territory or region or locality.
- The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
- The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- A statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and such other particulars as may be prescribed.

After an application for registration is accepted by the registrar and if there has been an opposition which is dismissed the geographical indication shall be registered.

The registration of a geographical indications shall if valid, give to the registered proprietor and the authorized user or users the right to obtain relief in respect of its infringements and to the authorized user the exclusive rights to the use of the geographical indication in relation to the goods in respect of which it is registered. For an unregistered geographical indication only an action of passing off can be taken [15].

The following geographical indications are prohibited from registration under section 9 of the act:

Any geographical indication.

- the use of which would be likely to deceive or cause confusion;
- the use of which would be contrary to any law for the time being in force ;
- which comprises or contains scandalous or obscene matter;
- This comprises or contains any matter likely to hurt the religious susceptibilities of any class or citizens of India.
- This would be disentitled to protection to protection in the court of law.
- which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country;
- which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be, shall not be registered as a geographical indication.

Section 18 of the act provides that the registration of a geographical indicationshall be for a period of 10 years and shall be renewed for a period of another 10 years on an application made in the prescribed manner and within the prescribed period and subject to the payment of the prescribed fees [16].

GI Indications Indian Scenario

The case studies were sought to be substantiated through a survey conducted by TERI for three registered GI- Banarsisari, Malabar pepper and Bikaneri Bhujia, on the basis of a standard questionnaire prepared especially for the purpose. The survey covered in all 60 respondents drawn from producers, traders, representatives of government agencies and other stakeholders.¹³ The findings from the survey indicate that among the present users of the registered GI, only 31.11 % are registered users under the GI Act, with the highest number of registered users being there for Banarasi sari (65 %) followed by Bikaneribhujia (59 %) and Malabar pepper (7 %). The survey indicates that for the GIs surveyed, the major export destinations are Europe followed by the USA, UAE and Australia. However, the volume of international sales is quite low, averaging about 14 % of the total volume of sales for the GIs surveyed. The survey also indicated as far as sale is considered, much of the sale of bikaneri bhujia happens through retail (80 %), while in the case of Malabar pepper, direct sales constitute 57 % and wholesale 36% . In the case of Banarasi sari, 50 % is through direct sales; retail sale constitutes 20 % and exhibitions and wholesale account for 15 per cent. The survey shows that 47.46 % of the registered users approached the registered owners of the GIs, which in most cases have been government and nongovernmental associations and agencies (referred to as the association for the sake of convenience) for obtaining registered user status. For them, the main motivation for seeking user status have been enhancement of brand value (43 %) and prevention of duplication (36 %), Among the registered users who were approached or encouraged by the association to go for registration, the main motivating factors have been expectations to enhance brand value (for 36 % of the respondents), prevent duplicate products (36 %), to retain product originality (18 per cent), while others have been inspired and motivated by the association (9 %). However, the survey indicates that none of the registered users were consulted by the registered owners

of the GIs prior to the application process of the GI itself. Among the respondents surveyed, only 21.43 % claim enhanced profit post registration. However, among the other changes observed post-registration, 33 % claim increase in product demand, while another 33 % say that it has led to revenue increment while 17 % of the respondents claim that registration has led to decrease of duplicates and enhanced brand value respectively.

Registration of GI in India [17]

Section 11(2) of the GI Act specifies the documentation requirements for applying for a GI in India. Section 32(1) of the GI Rules replicates these provisions and in addition stipulates a few more documentation requirements that include the following:

- A statement as to how the GI serves to designate the goods as originating from the concerned geographical territory in respect of specific quality, reputation or other characteristics that are due exclusively or essentially to the geographical environment, with its inherent natural and human factors; and the production, processing or preparation of which takes place in such geographical location
- The geographical map of the territory concerned
- The particulars regarding the appearance of the GI as to whether it is comprised of the words or figurative elements or both
- An affidavit as to how the applicant claims to represent the interest of the association of persons or producers or any organization or authority established by or under any law
- The standards benchmark for the use of the GI or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation, or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any, or other characteristic from the definite geographical territory;
- The particulars of the mechanism to ensure that the standards, quality, integrity and consistency or other special characteristic in respect of the goods to which the GI relates, which are maintained by the producers, makers or manufacturers of the goods, as the case may be;
- The particulars of special human skill involved or the uniqueness of the geographical environment or other inherent characteristics associated with the GI to which the application relates;
- The particulars of the inspection structure, if any, to regulate the use of the GI in respect of the goods for which application is made in the definite territory, region or locality mentioned in the application [18].

Upon receipt of an application, it is scrutinized by the examiners and in case any deficiencies are found, a notice is sent to the applicant to rectify them. After rectification, the applicant is required to send her reply within one month from the date of receipt of the notice. The next stage is the constitution of a Consultative Group of technical expert, chaired by the Registrar, to ascertain the correctness or otherwise of the particulars furnished in the application. Subsequent to examination, the Registrar may refuse the application altogether or may accept it either absolutely or subject to certain conditions,

modifications, etc [19]. Accordingly, on the basis of the comments provided by the Consultative Group, an Examination Report is issued by the Registrar. Compliance, if any, is to be done within two months from the date of communication of the Examination Report to the applicant. Once the objections raised in the Examination Report are satisfactorily responded to by the applicant, and the application is accordingly accepted by the GI Registry, it is advertised in the GI Journal, which is a bi-monthly, bi-lingual (English and Hindi) statutory publication.

Upon advertisement, any person may, within a specified time period (generally 3 months, but if needed 4 months), oppose the application in writing [20]. If the application passes through the specified time period unopposed, or in the event of an opposition, if it is decided in favour of the applicant, the Registrar is required to register the concerned GI as well as the authorized users and include the particulars in the GI Register.³⁴ Upon registration of a GI, the Registrar is required to issue each to the applicant and the authorized users a certificate sealed with the seal of the GI Registry. Notably, the date of filing of the application is deemed to be the date of registration [21].

Figure 1 provides a schematic diagram demonstrating the GI registration procedure in India.

Challenges and Problems in the Post GI Act and rules

The Government of India has established the Geographical Indications Registry with all-India jurisdiction at Chennai, where the GIs can be registered. Authority's claim that this Act has two key characteristics; (i) protection of producers against counterfeiting and misleading commerce, and (ii) striking of balance between trademark and GI protection. According to this Act, once a GI is registered, any person claiming to be the producer of the good designated by the registered GI can file an application for registration as an authorized user. The GI Act is to be administered by the Controller General of Patents, Designs, and Trademarks – who is the Registrar of GIs. The registration of a geographical indication is for a period of ten years. Renewal is possible for further period of ten years. If a registered GI is not renewed, it is liable to be removed from the register [21].

Registration of Geographical Indications in India

The registration of GIs in India has been depicted in Table No. 1, State wise distribution in Table No. 2

It has been observed from Table No. 1, that in India, the maximum i.e. 12 geographical indications are registered by Karnataka forming 44.44% followed by 5 from Tamil Nadu with 18.52% .(See. Table 1)

**Table No.1:-State wise Distribution of Geographical Indications Registered in India [22]**

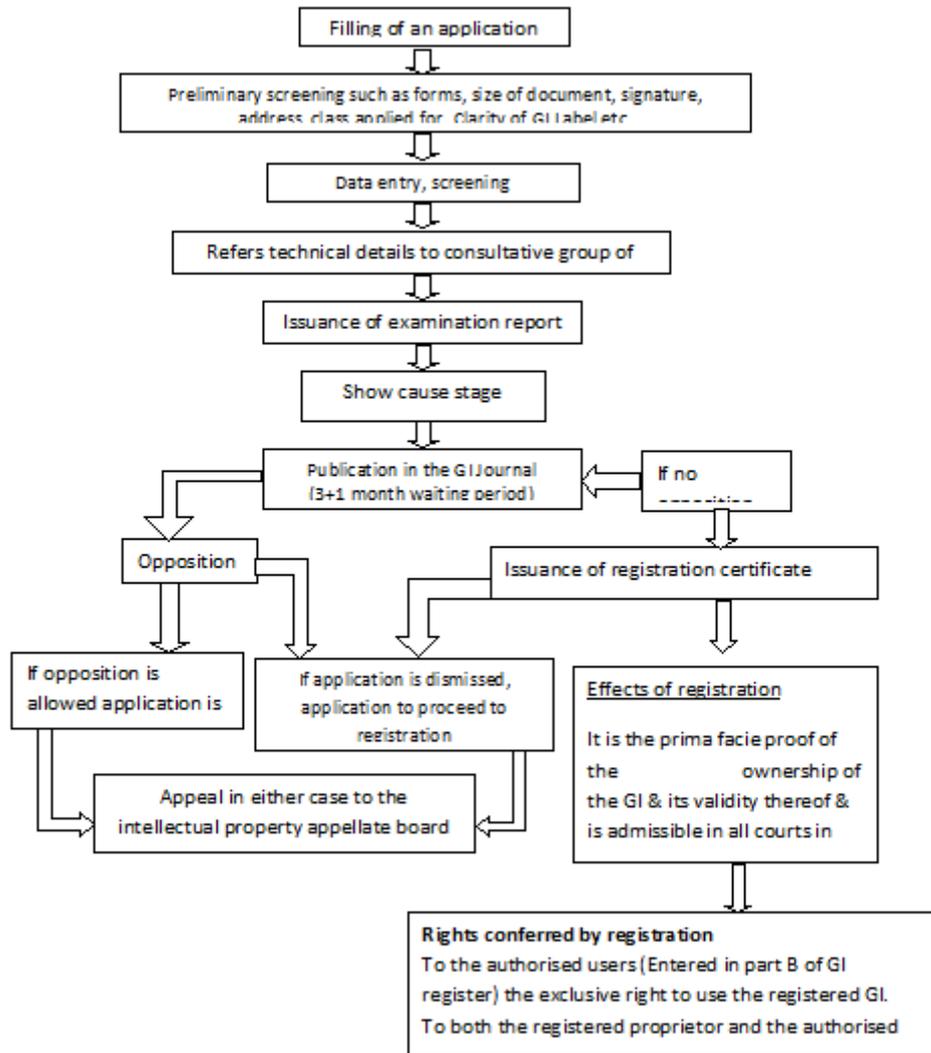
Sr No.	State	No. of GI registered	% age
1.	West Bengal	1	3.70
2.	Andhra Pradesh	1	3.70
3.	Madhya Pradesh	1	3.70
4.	Orissa	1	3.70
5.	Rajasthan	1	3.70
6.	Tamil Nadu	5	18.52
7.	Karnataka	12	44.44
8.	Kerala	1	3.70
9.	Maharashtra	2	7.41
10.	Himachal Pradesh	2	7.41
	Total	27	100

Table No.2:-Product wise Distribution of GIs Registered in India[23]

Sr. No.	Type of Product	No. of GI registered	% age
1.	Tea	02	7.41
2.	Textiles	13	48.15
3.	Incense Sticks	01	3.7
4.	Metal Mirror	01	3.7
5.	Horticulture Product	03	11.11
6.	Essential oil	01	3.7
7.	Soap	01	3.7
8.	Handicrafts	03	11.11
9.	Wet Grinder	01	3.7
10.	Painting	01	3.7
	Total	27	100

The maximum GIs registered are from Textiles category i.e. 13 forming 48.15% of the total registration followed by Horticulture and Handicrafts with 11.11% each. (See. Table 2)

Fig.:1 Registration procedure Of GI registration in India [24]



Law of Geographical Indications in India

A geographical indication (GI) is an indication, whether in the form of a name or sign, used on goods that have a specific geographical origin and possesses qualities or a reputation that are due to the place of origin. Geographical indications are valuable rights, which if not adequately protected, can be misused by dishonest commercial operators to the detriment of both the consumers and the legitimate users [25]. (See. Fig. 1)

The TRIPs prescribes minimum standards of protection of GIs and additional protection for wines and spirits. Articles 22 to 24 of Part II Section III of the TRIPs prescribe minimum standards of protection to the geographical indications that WTO members must provide. India, in compliance with its obligation under TRIPs, has taken legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999,

which came into effect on September 15, 2003 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002 [26].

As per the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999 “Geographical Indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be [27].

GIs have been used in India for a wide variety of products, such as Basmati Rice, Darjeeling Tea, Kangra Tea, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kohlapuri Chappal, etc. By registering a geographical indication in India, the rights holder can prevent unauthorized use of the registered geographical indication by others by initiating infringement action by way of a civil suit or criminal complaint. Registration of the GIs in India is not mandatory as an unregistered GI can also be enforced by initiating an action of passing off against the infringer. It is, however, advisable to register the GI as the certificate of registration is evidence of its validity and no further proof of the same is required [26].

Registration of Geographical Indications

An application for the registration of a GI is to be made to the Registrar of Geographical Indications in the form prescribed under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the GI Act) read with the Geographical Indications (Registration and Protection) Rules, 2002 (the GI Rules) [29].

Duration of Protection

A Geographical Indication is registered for a period of ten years and the registration may be renewed from time to time for a period of 10 years at a time.

Infringement of Geographical Indications

The remedies relating to the infringement of Geographical Indications are similar to the remedies relating to the infringement of Trademark. Similarly, under the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999, falsification of a Geographical Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with fine which may not be less than INR 50,000 (approx. US\$ 1075) but may extend to INR 2, 00, 000 [30].

Recent outcome of GI survey

The case studies were sought to be substantiated through a survey conducted by TERI for three registered GI- Banarsi sari, Malabar pepper and Bikaneri Bhujia, on the basis of a standard questionnaire prepared especially for the purpose. The survey covered in all 60 respondents drawn from producers, traders, representatives of government agencies and other stakeholders [31].

CONCLUSION

The GI Act, which came into force, along with the GI Rules, with effect from 15 September 2003, has been instrumental in the extension of GI status to many goods so far. The central government has established the Geographical Indications Registry with all-India jurisdiction, at Chennai, where right-holders can register their GI. Unlike TRIPS, the GI Act does not restrict its special protection to wines and spirits alone. The central government has discretion to decide which products should be accorded higher levels of protection. This approach has deliberately been taken by the drafters of the Indian Act with the aim of providing stringent protection as guaranteed under the TRIPS Agreement to GI of Indian origin. However, other WTO members are not obligated to ensure Article 23-type protection to all Indian GI, thereby leaving room for their misappropriation in the international arena. Registration of GI is not compulsory in India.

If registered, it will afford better legal protection to facilitate an action for infringement. Once a GI is registered in India, it becomes relatively easier to seek protection in other countries, particularly the member countries of WTO.

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