

CHAPTER-VII

LEGAL PROTECTION OF GEOGRAPHICAL INDICATION IN INDIA

7.1 Introduction

Over the recent past, Geographical Indications (GI) have emerged as a significant form of Intellectual Property Rights (IPR) issue in the Indian context. GI helps a community of producers to differentiate their products from competing products in the market and build goodwill around their products, often fetching a premium price. From consumer's point of view, GIs act as a signalling device, which helps them identify genuine quality-products and also protect them against counterfeits. In view of their commercial potential, adequate legal protection of GIs becomes necessary to prevent their misappropriation. Although India has had in its possession a considerable number of products that could qualify for legal protection as geographical designators, the initiatives to exploit this potential begun only recently when the country established a sui generis system of GI protection with the enactment of 'the Geographical Indications of Goods (Registration and Protection) Act, 1999, coupled with the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002. The Act, which became operational with effect from 15 September 2003, was drafted as part of the exercise in the country to set in place national IPR laws as much in compliance with India's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation (WTO) so as to take advantage of the 'minimum' standards of GI protection that the TRIPs sets out for the WTO members to comply with in their respective national legislations.

7.2 An overview of GI protection in India

In India, the legal system for GI protection has very recently been developed. The Geographical Indications of Goods (Registration and Protection) Act was enacted in 1999 and has come into force in September 2003 (hereafter called GI Act). Before this act, there was no separate legislation for GIs specifically. However, there were three alternative ways in which the then existing legal systems of the country could be utilised for preventing the misuse of GIs.

- (i) under the consumer protection laws;
- (ii) through passing off action in courts; and
- (iii) through certification trademarks.¹

Among these laws, certification trademarks (CTM) were more focused on recognised and protecting indication of sources. In the Indian context, the most common geographical name protected under the CTM system, prior to the GI Act, was “Darjeeling Tea”.² A certification trademark is understood as a mark administered by a proprietor who certifies the goods as to their origin, material, mode of manufacture, or performance of services, quality accuracy or other characteristics, and thereupon allows use of the mark.

Under the CTM system, a proprietor of the mark who proposes to merely administer the mark but not use it him or herself, applies for the registration of the same together with a set of elaborate regulations detailing the process of certification for the use of the mark in relation to the goods in question. It is absolutely imperative in the

¹ Kasturi Das, *Socio-Economic Implications of Protecting Geographical Indications in India*, August 2009, *Centre for WTO Studies*, p.6.

² The Tea Board of India has registered the name Darjeeling as a Certification Mark in India, USA and UK.

CTM system that the person claiming proprietorship over the mark does not him or herself use the same in conjunction with his or her goods or services. It is therefore usual to find that a central agency or association usually administer the mark in question and acts as the certifying authority, which in turn authorises the use of the mark by producers/manufacturers in relation to their own goods. 'Certification trade marks' can be registered under the Trade Marks Act of India.

It may be noted that India has recently established a "silk mark" to certify genuineness of silk textiles in India and Darjeeling, a certification marks for a specific type of Tea produced in Darjeeling and can be marketed, provided the product satisfies the set quality standards. Similarly, WOOL MARK certifies that the goods on which it is used are made of 100% wool and LABEL ROUGE use for high quality agricultural products in France.³

In its simplest form, the principle of passing-off states that 'No-one is entitled to pass off his goods as those of another'. The principal purpose of an action against passing off is therefore, to protect the name, reputation and goodwill of traders or producers against any unfair attempt to free ride on them. Though, India, like many other common law countries, does not have a statute specifically dealing with unfair competition, most of such acts of unfair competition can be prevented by ways of action against passing off.

In India, GIs have been governed by common law principles, which enable an aggrieved person to file an action of 'passing off' for protection of his right. In other words, it is based on usage and common knowledge about the characteristic features and

³ Dr.Prabhuddha Ganguli, WTC Research study Report Geographical Indications its evolving controls, Jan. 2009, p.4.

quality or reputation that the product has already earned in the market either by publicity or by its presence in the market. A survey of decided cases reveals that Indian courts have maintained the action of passing off to protect GIs.⁴ *Scotch Whisky Association v. Pravara Sahakar Karkhana Ltd.*,⁵ is a leading case on this subject. In this case, the plaintiff Scotch Whisky Association, a company incorporated under the Companies Act of United Kingdom instituted the passing off action against the defendants- a manufacturer of various brands of Indian Whisky like ‘blended scotch whisky’ or ‘Blended with Scotch’ under various brand names, ‘Drum Beater’ and ‘God Tycoon’. On these facts, the Bombay High Court held: The Plaintiff had sufficient interest to prevent passing off of Indian Whisky manufactured by the defendant and to prevent damage to reputation and goodwill of Scotch whisky. The defendants were passing off their goods as blended Scotch whisky which in fact they were not. The case therefore merited interim injunction. The defendants resorted to unfair means by using the words ‘Blended with Scotch’ and indulged in colourable imitation and unfair trading in an attempt to harvest unjust benefits by appropriation of plaintiff’s goodwill. The defendant was restrained from advertising or offering for sale or distributing in any country Whisky, which is not Scotch whisky.

It is evident from the aforesaid decision that the judiciary in India has consistently extended the umbrella of legal protection to GIs even in the absence of any legislation in force at that point of time.

⁴ Tushar Kanti Saha and Nalin Bharti, “Beyond Wines and Spirits: Developing Countries ‘GI Products and their Potential in WTO Regime with Special Reference to India”, *Journal of Intellectual Property Rights*, Vol.11, March 2006, p.892.

⁵ AIR 1992 Bom 294.

7.3 Geographical Indications of Goods (Registration and Protection) Act, 1999 – An analysis

7.3.1 Historical background of the GI Act

The need for separate legislation for GIs in form of the GI Act was felt in India due to some important reasons.

7.3.1.1 Socio-Economic Perspective

Geographical Indications are intellectual property rights. Their function is to identify products on the market, similar to trademarks and trade names. Well protected and pro-actively used, GIs are a very interesting marketing tool because they can convey a lot of information from the producer to the consumer. GI give the producers of a region the exclusive right to use the indication for their products originating from that region. It also means that they have the right to prohibit any unauthorised use usurpation or imitation of the sign on a product that is not from the designated area or which does not have the qualities guaranteed by the GI.

Rooted in the soil of the region for which they stand, geographical indications contribute to the socio-economic improvement of regions around the world. They create employment, contribute to the regulation of the market and encourage the diversification of production. In addition, they protect natural treasures and maintain the cultural heritage.⁶ Much like trademarks, the economic rationale of GIs is based on the ‘information asymmetry’ between buyers and sellers in the market and role of reputation, conveyed through distinctive signs, in talking such asymmetry. Thus GI acts as a signalling device that helps the producers to differentiate their products from competing products in the market and enable them to build a reputation and goodwill around their

⁶ Felix Addor and Alexandra Grazioli, 2006, *Federal Institute of Intellectual Property* available at <http://www.ige.ch/e/jurinfo/j110110.shtm>.

products which often fetch a premium price. Finally, geographical indications contribute to sustainable development. This makes them valuable to producers in both they wish to offer their diverse products, identified by the GIs, on the globalised market.⁷

Given its commercial potential the legal protection of GI assumes enormous significance. Without such protection, competitors not having legitimate right on a GI might ride free on its reputation. Such unfair business practice result in loss of revenue for the genuine right holders of the GI and also misleads the consumers. Moreover, such practices may eventually hamper the goodwill and reputation associated with the GI. In order to rule out its misuse and to tap the potential economic and socio-economic benefits emanating from this IP, it is essential to ensure an appropriate legal protection for GIs at the national level.

7.3.1.2 Judicial perspectives

The issue of protection of GI gained particular interest and attention in India only when a patent was obtained for Basmati Rice in the United States by the Rice Tec Inc. and the widespread report of tea from other countries being passed off as Darjeeling Tea. India realised that if it needed to protect its own geographical indications globally, it needed to protect them at the national level to begin with.

7.3.1.2.1 Basmati Rice case

Basmati⁸ is a unique, long grain aromatic rice cultivated traditionally only in the Indo-Gangetic plains of India and Pakistan. India has been exporting “Basmati” rice to several countries of the world including the US, Europe and Middle East countries for

⁷ Kasturi Das, *supra* n. 1, p.2.

⁸ Etymologically, the origin of the word “Basumati” can be traced to the Sanskrit word Vasumati which means earth. Just as smell and fragrance are closely associated with earth, basmati rice is recognised by its unique aroma.

several decades and a over a period of time, it has acquired a unique position in the world market. The patenting of the world famous Basmati rice the crown jewel of the Asian sub-continent India and Pakistan by the US Company Rice Tec Inc. woke India and many other developing countries and made them aware of the unfair world market trend.

The Basmati which has extra long grain, soft textured, aromatic rice has been cultivated since time immemorial in the foothills of the Himalayas. The rare agro-climatic conditions this region endow Basmati rice with certain characteristics, physical and sensory, not found elsewhere nor amenable to replication. This makes Basmati a premium product in the international market and the uniqueness needs to be preserved and protected.⁹

Basmati commands a premium price both in domestic and international markets. Approximately one million hectares in India and 0.75 million hectares in Pakistan are planted in Basmati varieties, where it is cultivated by hundreds and thousands of small farmers.¹⁰

In India alone basmati exports were valued at approximately US\$ 475 million in 1998-99. The serenity of the surroundings was suddenly broken by bold new headlines which read “US Rice Company says India and Pakistan don’t own word “Basmati”. Ever since the company, Rice Tec, based in Texas, United States, patented Basmati rice, there has been a hue and cry in India and Pakistan. The fear of cultural piracy from the western multinationals is felt by the Indian farmers.¹¹

⁹ Chandar M. Lal and Gayathri Jambunathan, India and Pakistan Geographical Indications the Basmati issue. Submitted to the International Trademarks Association (INTA) Annual Meeting, Seattle May 1999, <http://www.iprlawindia.org.doc>.

¹⁰ Suman Sahai Looking beyond Basmati, *Economic and Political Weekly*, February 21, 1998, p.371.

¹¹ Fafi Geno Type “The Basmati Rice Patent”, 1998, <http://www.rafi.organd>, Berne Declaration press packages (in German) “Das Basmati Patent” September, 1999, <http://www.evb.cal>.

In February 1996, the APEDA¹² has found that Rice Tec had registered for a trademark for exporting what they called. ‘Texasmati’ in the UK and had lodged a case against Rice Tec in an UK economic court. Thus this was the authority strategy i.e., to file such cases in all the countries that Rice Tec approaches for trademarks.

The first legal issue, which arose in the protection of Basmati as a geographical indication is as to whether it is a generic name? Rice Tec in its claim states that it is a generic name and therefore cannot be protected as a geographical indication.¹³

Various reports have referred to the US Company’s use of such names as “Basmati”, “Kasmati”, “Jexamati and “Jasmati”.¹⁴ In fact, the company has used the brand names Kasmati, Texmati, and Jasmati in the US and UK since before the patent was issued. It has been using the term “Basmati” as a generic term for considerably longer, “Rice Tec has produced and marketed Texas Basmati and American Basmati rice and labelling it as such for 20 years and exporting the products for 15 years with no objection ever previously raised”, the company states says.¹⁵

Since the word “Basmati” is not a place name, its validity as a geographical indication would depend on whether “Basmati” can be shown to be closely and exclusively associated with a geographical area, although the world trade agreement calls it as geographic appellation.¹⁶

The name and the patent are completely separate issues; and there is also a distinct difference between the use of Basmati as a generic term, and the use of brand

¹² Agriculture Products Exports Development Authority.

¹³ This controversy was a result of the research prepared by an Indian scientist from the Indian Agricultural Research Institute being used by Rice Tec to state that Basmati is a generic term and therefore cannot be protected as a geographical indications. see Radhika Singa – *The Economic Times*, New Delhi, August 11, 1998.

¹⁴ <http://www.rediff.com/business/1998/mar/12rice.htm>.

¹⁵ <http://www.economicstimes.com/today/12>.

¹⁶ <http://www.itd.or/issues/india6.htm>.

names such as Texmati and Jasmati. Two types of intellectual property are involved with names; Trademarks and Geographical Indications.¹⁷

The concern what Indian authorities had was the fear of Rice Tec getting a trademark on Texmati, Texmati is deceptively similar to Basmati and therefore cannot be registered as a trademark. An action of passing off was also expected to succeed.

However this was only an immediate solution available to the problem in hand since by virtue of Article 24.9 of the TRIPs Agreement, at that time India had no law protecting GI. This prevented Indian from approaching the WTO dispute settlement body and asking any other members country to protect our GI. Therefore the only hope we Indians had was relying on tort protection of passing off and unfair competition laws as usual.

It is extremely laborious to prove passing off repeatedly. Moreover, there was the danger of the lack of the tort law (passing off) protection in the country where we seek to protect our GI along with the fact that courts in US have been extremely unpredictable on this issue. This was the position of India which highlighted the need to legislate laws for protection of GI in our country.¹⁸

7.3.1.2.2 Darjeeling Tea case

‘Darjeeling Tea’ could be considered as the most important geographical indication along with ‘Basmati’ for India. Darjeeling tea is the tea produced in the hilly areas of Darjeeling district of West Bengal.

Today, India is the Worlds largest grower of tea with a total production of 826.17 million kilograms in the year 2002. The district of Darjeeling is situated in the State of

¹⁷ The use of place names or worlds associated with a place to identify the origin, type and quality of a product for e.g.; “champagne”.

¹⁸ Ashwath U.Rao, “Basmati Issue”, <http://www.iprlawindia.org>.

West Bengal, India. Tea has been cultivated, grown and produced in tea gardens geographically located in this area for the last 150 years. The unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed, lends the tea a distinctive and naturally-occurring quality and flavour which has won the patronage and recognition of discerning consumers all over the world for well over a century. The tea produced in the region and having special characteristics is and has for long been known to the trade and the public all over the world as “Darjeeling” tea.¹⁹ According to records, the commercial tea gardens were planted by British tea interests in 1852. Darjeeling was then only a sparsely populated hamlet which was being used as a hill resort by the army and affluent people. However, by 1866, Darjeeling had 39 gardens producing a total crop of 21,000 kilograms of tea harvested from 4,400 hectares. By 1874, tea cultivation in Darjeeling was found to be a profitable venture and there were 113 gardens with approximately 6000 hectares. Today, nearly 17, 400 hectares in 85 tea gardens produce around 11.5 million kilograms of tea.²⁰

The Easter and spring flushes have the unique Darjeeling flavour and command a high price. Most of the tea coming on to the world market, as ‘counterfeit’ Darjeeling seems to be coming from Kenya and Srilanka. The other source is said to be Nepal. Nepalese tea is produced in similar geographic conditioned to that of Darjeeling tea. About 60 percent of Nepalese tea is exported to India and most of the Nepalese tea estates gardens are owned by Indians. There are allegations that Nepalese tea is imported in to India is repackaged as Darjeeling tea and exported Nepal is small produces and exporter of tea in the world market.

¹⁹ Rajendra Kumar and Vasundhara Naik, Darjeeling Tea- Challenges in the Protection and Enforcement of Intellectual Property Rights, <http://www.wipolint/index.html.in>

²⁰ *Ibid.*

What will happen if 40000 tons of ‘counterfeit’ Darjeeling disappears from the world market because of protection of the geographical indication for ‘Darjeeling Tea’? We could expect the price of Darjeeling tea to go up depending on the price elasticity of demand of Darjeeling tea, which will benefit the producers of Darjeeling tea.

1. ‘counterfeit’ Darjeeling produced in India and consumed in India.
2. ‘counterfeit’ Darjeeling produced in other countries consumed in India.
3. ‘counterfeit’ Darjeeling produced in India and consumed outside India.
4. ‘counterfeit’ Darjeeling produced in India and consumed out side India.²¹

Since Darjeeling has a high reputation, both the Tea Board and the Darjeeling planters Association have been involved at various levels in protecting this common heritage. The protection is essentially geared to:

- (i) Prevent misuse of the word “Darjeeling” for other types of tea sold world-wide.
- (ii) Deliver the authentic product to the consumer.
- (iii) Enable the commercial benefit of the equity of the brand to reach the Indian industry and hence the plantation worker.
- (iv) Achieve international status similar to champagne or Scotch Whisky both in terms of brand equity and governance/administration.

One of the first significant measures was taken by the Tea Board to protect Darjeeling as a geographical indication about 15 years ago by developing a “Darjeeling” Logo. The Darjeeling logo created in 1983 has since been registered in various

²¹ Niranja Rao, “*Geographical Indications in Indian Context: A Case Study of Darjeeling Tea*,” Sept.2003, working paper No.110, *Indian Council for Research on International Economic Relations*, p.13.

jurisdictions including UK, USA, Canada, Japan and Egypt and some European countries as a Trademark/Certification Trademark/collective Mark.

The Tea Board has obtained “home protection” by registering the Darjeeling Logo and also the word “Darjeeling” as a certification mark under the Indian Trade and Merchandise Marks Act, 1958. Under the new Geographical Indication of Goods (Registration and Protection) Act, 1999 (which has come in to force on September 15, 2003), the tea Board has also filed applications for the Darjeeling logo as well as “Darjeeling” word to be registered as a geographical indication.²² Under the new Act Darjeeling is registered as GI.

7.3.1.3 TRIPs and Protection for Darjeeling Tea

The TRIPs agreement will help in protecting the geographical indication Darjeeling tea in the member countries of WTO.²³

Is Article 23 protection necessary for Darjeeling Tea?- What does the geographical indication for Darjeeling tea lose by not having Article 23 protection? Following are the various components of enhanced protection afforded by article 23.

- 1) Article 23.1 mandates members to provide the legal means for interested parties to prevent use of a geographical indication for products... “not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated...” In the absence of such protection for tea- it would be possible for example, to use “Darjeeling Tea” with “produce of Kenya”. But the producers of Kenya would not be able to use the Darjeeling tea logo if it is

²² *Supra* n.19

²³ Article 22.

protected in Kenya or it could be stopped at the boarder of the importing country if the logo is protected in that country.

- 2) Article 23.1 prohibits the use of geographical indication if "...the geographical indication is used in translation...". Lack of this protection in the case of tea may not pose too much of a threat to Darjeeling tea because it is difficult to translate the geographical name of Darjeeling. This may be true of all Indian geographical indications.
- 3) Article 23.1 prohibits the use of a geographical indication "... accompanied by expressions such as "kind", "type", "style", "imitation" the like". As this is not applicable to tea, it would be possible for example, for tea producers of Kenya to put the words "Imitation of Darjeeling Tea" on its tea products. But they cannot use the Darjeeling tea Logo if it is protected in that country as stopped at the border if it is protected in the country of importation; if they use the logo they are infringing the geographical indication.
- 4) Article 23.2 provides that "the registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contain or consists of a geographical indication identifying spirits shall be refused as invalidated, ex-officio if a members legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin". This is not applicable to tea, but the protection afforded by Article 22.3 in respect of trademarks seems to be sufficient. Article 23.2 merely asserts that in case of tea for example, it is possible to grant a trademark, "Hyderabad Tea", even when

Hyderabad is a geographical indication and it is known that Hyderabad does not produce any tea.

- 5) Article 23.3 deals with homonymous geographical indications and provides that “in the case of homonymous geographical indications for wines, protection shall be awarded to each indication...”. Homonymous geographical indications may not be a problem for all most all geographical indications coming out of India not only for tea but for all products.
- 6) Article 23.3 provides for “... the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those members participating in the system”. In fact a legally enforceable multilateral system could be the only benefit from extension of Article 23 protection to other products.

The TRIPs agreement leaves it to the members to decide on the mode of protection of geographical indications. The modes used by member countries to protect geographical indications are; (1) a *sui generis* law; (2) certification or collect marks under trademark law; (3) under unfair competition or consumer protection laws. In those countries, which protect geographical indications under a *sui generis* law or certification or collective marks under trademark law, it is possible to get protection for a logo indicating the geographical indication. If the producers and exporters of the ‘counterfeit’ goods use the logo it will be an infringement and can be challenged in courts. Here the producer of genuine product has just to prove that the producer of ‘counterfeit’ producer is not authorised to use the logo, as he does not produce it in the region, which the

geographical indication logo suggests. If the producer and exporter of the 'counterfeit' good do not use the logo, he is not infringing any geographical indication.²⁴

In countries, which provide relief to misuse of geographical indications only through unfair competition law or consumer protection law, it is not possible to seek protection for a logo depicting the geographical indication. In case the producer and exporter of 'counterfeit' goods uses geographical indication unauthorisedly, the producer of the genuine product can claim that consumers are being misled because the consumers identify the logo with the geographical indication even without explicit protection. In case the producer and exporter of the 'counterfeit' product do not use the logo unauthorisedly it becomes difficult to prove that consumers are being misled or there is unfair competition. But not many countries are protecting geographical indications only through unfair competition or consumer protection laws.

7.3.1.4 TRIPs compliance

In view of their commercial potential, adequate legal protection of GIs becomes necessary to prevent their misappropriation. Although India has had in its possession a considerable number of products that could qualify for legal protection as geographical designators, the initiatives to exploit this protection began only recently when the country established a sui generis system of GI protection with the enactment of 'The Geographical Indications of Goods (Registration and Protection) Act, 1999' (GI Act 1999), coupled with the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules 2002). The Act, which became operational with effect from 15 September 2003, was drafted as a part of the exercise in the country to set in place national IPR laws as much in compliance with India's obligations under the agreement on

²⁴ *Supra* n.21.

Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation (WTO) so as to take advantage of the 'minimum' standards of GI protection (alongside other IPRs) that the TRIPs set out for the WTO members to comply in their respective national legislations.

7.3.2 Analysis of the GI Act

Prior to enactment of GI Act,²⁵ there was no law for the protection of geographical indication in India. The need and justification for this law has been aptly stated in the statement of object and reasons as under:

“At present there is no specific law governing geographical indications of goods in the country which could adequately protect the interests of producers of such goods. Exclusion of unauthorised persons from misusing geographical indications would serve to protect consumers from deception, add to the economic prosperity of the producers of such goods and also promote goods bearing Indian geographical indications in the exports market. Unless a geographical indication is protected in the country of its origin there is no obligation under the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) for other countries to extend reciprocal protection. India would, on the other hand, be required to protection to goods imported from other countries which provide for such protection. In view of the above circumstances, it is considered necessary to have a comprehensive legislation for registration and for providing adequate protection for geographical indications”.

Until recently and in past, protection from such misuse of geographical indications was granted through passing off action in courts²⁶ or through certification

²⁵ Geographical Indications of Goods (Registration and Protection) Act, 1999

²⁶ Remedy under tort.

marks.²⁷ However, in order to provide better protection to geographical indications, the Parliament enacted Geographical Indications of Goods (Registration and Protection) Act, 1999²⁸ which is quite similar and in lines with the New Zealand GI Act. This received the assent of the President of India on the 30th December 1999.

This Act seeks to provide for registration and better protection of geographical indications relating to goods. It excludes unauthorised persons from misusing geographical indications. This would protect the interest of producers, manufacturers and thereby consumer from being deceived by the falsity of geographical origin to economic prosperity of the producer of such goods and promote goods bearing geographical indications in export market. Unless a geographical indication is protected in the country of its origin, there is no obligation under the agreement under Article 22 of the TRIPs agreement for other countries to extend reciprocal protection. It is in this context that the Act was enacted.²⁹ The Act has been divided into nine chapters. Chapter-I is preliminary which inter alia, defines various terms used in the Act. Chapter II deals with the appointment, powers and establishment of Registry. It also provides for registration in respect to particular goods and areas and prohibition of registration. Chapter III deals with procedure and duration of registration. Chapter IV describes the effect of registration. Chapter V contains special provisions relating to trademark and prior user. Chapter VI provides for rectification and correction of the Register. Chapter VI relates to appeals and Appellate Board. Chapter VII prescribes penalties and procedure. The last i.e., Chapter IX is miscellaneous.

²⁷ Under the Trade and Merchandise Marks Act (1958).

²⁸ WTO and TRIPs – An Indian perspective, <http://www.indiaonline.com/legal/feat/wtrr.html>.

²⁹ Statement of object and Reasons of the Bill.

7.3.2.1 Some Salient and Important Features of the Act

1. Definitions

Section 2(e) of the Act defines ‘geographical indications’ in relation to goods to mean:

“An indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of county, 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 preparations of the goods concerned takes place in such territory, region or locality, as the case may be.³⁰

Meaning of indication³¹

The word indication has also been defined to include:

- (i) any name (including abbreviation of a name)
- (ii) geographical or figurative representations; or
- (iii) any combination or suggest the geographical origin or goods to which it applies.

Concept of goods³²

The Act also defines ‘goods’ to mean any:

- (i) Agricultural goods.
- (ii) Natural goods.
- (iii) Manufacturing goods.
- (iv) Goods of handicraft and foodstuff.

³⁰ For the purposes of this clause, any name which is not the name of country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

³¹ Section 2 (g).

³² Section 2 (f).

The above definition is not exhaustive but merely illustrative. It would not be out of place to mention that while the TRIPs agreement refers to ‘goods’ the Indian Act classifies such goods.

‘Producer’ in relation to goods, means any person who –

- (i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;
- (ii) if such goods are natural goods, exploits the goods;
- (iii) if such goods are handicraft or industrial goods, makes or manufactures the goods, and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods³³

The TRIPs definition refers to goods in general, the Indian GI Act specifies the goods to be either agricultural goods or natural goods or manufactured goods that can qualify as a GI. Further, in the Indian Act, if a producer applies for a GI for a manufactured good, he or she must make sure that at least one of the activities of either the production or processing or preparation of the good must take place in the territory. In that sense, the GI Act is more restrictive than the TRIPs definition.³⁴

This can be explained by taking “Darjeeling tea” as an instance. Darjeeling tea involves manufacture because the green tea leaves plucked from the tea bushes have to go through a range of rigorous processing stages before turning into the final product (called “made-tea”), which is ultimately sold in the market. Now even if the tea leaves are plucked from Darjeeling region, the GI Act will not allow the final product to be designated as Darjeeling tea, unless the processing also takes place within the Darjeeling

³³ Section 21 (k).

³⁴ Kasturi Das, ‘*Protection of Geographical Indications: An Overview of Select Issues with Particular Reference to India*’ working paper 8, 2007, Centre for Trade and Development (centad), New Delhi, India.

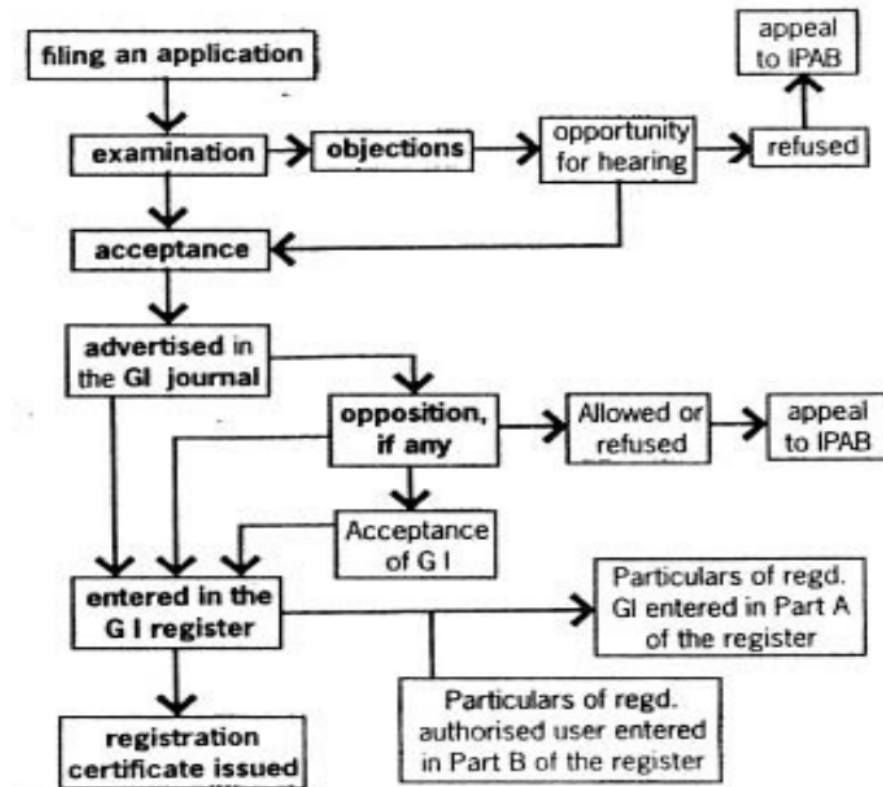
region. The TRIPs definition will, however, allow the final product to be designated as Darjeeling tea, even if the processing takes place outside Darjeeling, because no matter where the processing takes place, the given quality or characteristics (such as flavour, etc.) of the final product will essentially be attributable to its geographical origin.³⁵

As for a given quality, reputation and other characteristic, TRIPs does not clarify any of these requirements further. Thus TRIPs is silent on whether these requirements imply only such qualities and characteristics, which may be attributed to ‘natural factors’ (e.g. climate, topography, etc.), or whether those characteristics that result from ‘human factors’ e.g. specialised skills of artisans) may also be covered under the definition contained in Article 22.1. Unlike TRIPs, the GI Act explicitly mentions ‘human factors’. Section 11 (2) (a) of the GI Act, which stipulates what an application for GI registration should contain, refers to the geographical environment, with its inherent natural and ‘human factors’. Again as per section 32 (1) of the GI Rules, an application for a GI is required to be supported by ‘the detailed description of the human creativity involved’ and ‘the particulars of special human skill involved’. The significance of the explicit reference to ‘human factors’ in the GI Act may be appreciated when judged in the light of the fact that India has in its possession numerous handicrafts and handloom products that are apt to be protected as GIs and in the production of these items specialised human skills and craftsmanship play a significant role.

³⁵ *Ibid.*

Various stages of filing and grant of GI are explained in figure 1

Figure-1: GI registration process in India



(2) Registration of Geographical Indication

The protection is granted to geographical indications through registration. The registering authority is the Registrar of Geographical Indications.

Who can apply for registration?

- (i) any associate of persons;
- (ii) producers; or
- (iii) any organisation or authority established by or under any law representing the interest of the producers of the concerned goods.

Whom to apply?

The application must be made to the Registrar under the Act, the Controller-General of Patents, Designs and Trademarks appointed under sub-section (1) of section 3 of the Trademarks Act, 1999 shall necessarily be the Registrar of Geographical Indications. He shall be assisted by such number of officer, which the central government may think fit.³⁶

A full fledged modern patent office and the country's first geographical indication (GI) registry was put up in Chennai which is really a good step forward in this field. This registry will satisfy the requirements mentioned in the Act further supplementing it.³⁷

Where to file the application?

Every application shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indications relates is situated.

Contents of the Application

The application for registration must contain the following:

- (i) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory in respect of specific quality, reputation or other characteristics which are due exclusively or essentially to be geographical, environmental, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality;
- (ii) the class of goods to which the geographical indication shall apply;

³⁶ Section 11.

³⁷ The office website (www.patent.office.nic.in) provides information on patents and the geographical indications registry.

- (iii) the geographical map of the territory of the country or region or locality in which the goods originate or are being manufactured;
- (iv) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- (v) 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
- (vi) such other particulars as may be prescribed.

On acceptance of this application the registrar of geographical indications³⁸ shall advertise it.³⁹ Any person may oppose it within three months from the date of advertisement or extended period of not more than one month.⁴⁰ The registrar shall, after hearing the parties, if so required, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted.⁴¹ Thus, where the application has not been opposed and the time for notice of opposition has expired; or the application was opposed and it has been decided in favour of the applicant, the registrar shall register the said geographical indication and the authorised users if any, so mentioned in the application.⁴²

Once a geographical indication is registered, any producers of the concerned goods may apply to the registrar for registering him as an authorised user for such geographical indication.

³⁸ Section 3(1) (The Controller-General of Patents, Designs and Trademarks is also the Registrar of Geographical Indications).

³⁹ Section 13.(1)

⁴⁰ Section 14 (1)

⁴¹ Section 14 (5).

⁴² Section 6 (6).

Effect of Registration – No person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of an unregistered geographical indication. This forbids the institution of proceedings for injunctions or for damages. Nothing in the Act of Geographical Indications of Goods shall be deemed to affect the right of actions against any person for passing off goods as the goods of another person or the remedies in respect thereof.⁴³

Prohibition of Registration of Certain Geographical Indications

Following geographical indications are not registrable under the Act:⁴⁴

- (i) the use of which would be likely to deceive or cause confusion;
- (ii) the use of which would be contrary to any law for the time being in force;
- (iii) which comprises or contains scandalous or obscene matter;
- (iv) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;
- (v) which would otherwise be disentitled to protection in a court;
- (vi) 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 in another territory, region or locality;
- (vii) 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. Generic name or indication means the name of goods which although relates to the place or the region where the goods was originally produced or manufactured, has lost its original

⁴³ Section 20.

⁴⁴ Section 9

meaning and has become the common name of such goods and serves as a designation for as indication of the kind, nature, type or other property or characteristic of the goods.

The registration of a GI shall be for a period of ten years but may be renewed from time to time for an indefinite period.⁴⁵

Rights conferred by Registration

It is mandatory to get a geographical indication registered in order to claim any rights in respect of such indication under the Act.⁴⁶ However, the rights of action against person for passing off goods as the goods of another person or the remedies in respect thereof shall remain unaffected.⁴⁷

The registration of a geographical indication shall give:

- (i) to the registered proprietor and the authorised user or users the right to obtain relief in respect of infringement of such geographical indication;
- (ii) to the authorised user the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.

(3) Special provisions relating to Trademarks and prior users.

The Registrar of Trade marks shall, *suo motu* or at the request of an interested party, refuse or invalidate the registration of trade mark which contains or consists of a geographical indication as it would lead to expropriation of a public property by an individual leading to confusion in the market.⁴⁸

⁴⁵ Section 18 (1).

⁴⁶ Section 2 (1).

⁴⁷ Section 20 (2).

⁴⁸ Section 25.

The Geographical Indications Act protects a trade mark which contains or consists of a geographical indication which has been applied for or registered in good faith under the trade marks law or where such trade marks have been used in good faith before the commencement of the Act or before the date of filing of an application for registration of a geographical indication. This Act shall not apply to geographical indication with respect to goods or class or classes of goods which have become the common name of such goods in India on or before 1st January 1995. This Act protects the right of any person to use his name or the name of his predecessor in business except where such name is liable to cause confusion or misled the public. This Act provides that no action in connection with the use of registration of a trade mark shall be taken after five years from the date from which such use or registration which infringes any geographical indication registered under this Act has become known to the registered proprietor or the authorised user.

(4) Infringement of the Registered Geographical Indication

A person, who is not an authorised user of a registered geographical indication, infringes it when he:

- (i) uses a such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or

- (ii) user any geographical indication in such manner which constitutes an 'act of unfair competition'⁴⁹ including passing off in respect of registered geographical indication; or
- (iii) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

It is also an infringement to use a geographical indication in respect of goods not originating in the place indicated by such geographical indication, even if true origin of such goods is also indicated, and the geographical indication is accompanied by expression such as "kind", "style", "imitation" or the like expression.⁵⁰

(5) Additional Protection of certain goods

The Central Government may by notification in the Official Gazette provide for additional protection for certain goods which are notified. A GIs once law fully acquired their dealing in such goods shall not constitute an infringement less the goods are impaired after they have been put in the market.

(6) Rectification and correction of Register

The register or the Appellate Board may cancel or vary the registration of GIs or of an authorised user for the contravention or failure to observe the conditions entered on the register. It enable any person aggrieved by the absence or omission of any entry in the register without sufficient cause or any entry wrongly on the register by the error or

⁴⁹ 'Act of unfair competition' means any act of competition contrary to honest practices in industrial or commercial matters.

⁵⁰ Section 22 (3).

defect, to apply to the Appellate Board or the register to pass appropriate orders. The Registrar and the Appellate board can *suo moto* after giving notice the parties concerned and hearing them, pass appropriate orders for cancelling, varying or rectifying the register.⁵¹

(7) Appeals to the Appellate Board

Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made there under, may file an appeal to the Appellate Board. Such appeal must be filed within three months from the date on which the order or decision is communicated to the aggrieved parties.⁵²

(8) Remedies for infringement of a geographical indication

The remedies available for protection of geographical indications may broadly be classified into two categories.

- (i) civil remedies; and
- (ii) criminal remedies.

Civil Remedies

The Act provides for the following civil remedies for infringement of a registered geographical indication;

- (a) Injunction
- (b) Damages or account of profits
- (c) Delivery up of the infringing labels and indications.

⁵¹ B.L.Wadehra, *Law Relating to Patents Trademarks Copyright Designs and Geographical Indications*, 2nd edn, Delhi: Universal Law Publishing Co.Pvt Ltd, 2000, p.513.

⁵² Section 31.

These remedies are inclusive, not exhausting and the court may provide some other remedies in addition to the aforesaid, such as Anton Piller order.⁵³

(a) Injunction

Injunction includes- temporary injunction and permanent injunction. Further, the court may also order an ex parte injunction for-

- (i) discovery of documents;
- (ii) preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit; and
- (iii) restraining the defendant from disposing of, or dealing with his assets in a manner which may adversely affect plaintiffs ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

The aforesaid remedy of injunction is more effective and can prevent a greater harm to the plaintiff.

(b) Damages or account of profits

The remedy of damages or account of profits is not cumulative but alternative. The plaintiff has to elect one of the two remedies at an earlier stage of the suit. The remedy of damages (other than nominal damages) or account of profits may be denied where defendant satisfies the court that he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was registered when he

⁵³ In appropriate cases the court may on an application by the plaintiff pass an ex parte order requiring the defendant to permit the plaintiff accompanied by solicitor or attorney to enter his premises and take inspection of relevant documents and articles and take copies thereof or remove them from the custody. The necessity for such an order arises where there is a grave danger of relevant documents and infringing articles being removed or destroyed so that the ends of justice will be defeated. (*Anton Piller v. Manufacturing Processes* (1976) Ch.55 (1976) R.P.C. 719). See also W.R. Cornish, *Intellectual Property*, 3rdedn., Delhi: Universal Law Publishing Co.Pvt. Ltd., 2001, p.246.

connected to use it; and that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use it.⁵⁴

(c) Delivery-up of the infringing labels and indications

It is in the discretion of the court to order the defendant to deliver up infringing labels and indications for destruction or erasure. The court by taking relevant circumstances into account may or may not order for such remedy. All the aforesaid remedies are also available for passing off action.⁵⁵ Passing off actions are initiated against the infringement of unregistered geographical indications.

(ii) Criminal Remedies

Criminal remedies are more effective than civil remedies because the former can be disposed off quickly. The pendency of a civil suit does not justify the stay of criminal proceeding in which the same question is involved. Since criminal proceedings directly strike at the honour and social status of an infringer, in some cases he comes for a settlement out of court to save his prestige. Chapter VIII of the Act deals with offences and penalties for such offences.

The Act contains penal provision for violation of various provisions relating to geographical indications given below.

- (i) Falsifying and falsely applying geographical indications to goods.⁵⁶
- (ii) Selling goods to which false geographical indications is applied.⁵⁷
- (iii) Falsely representing a geographical indication as registered.⁵⁸

⁵⁴ Section 67 (3).

⁵⁵ Section 67 (1).

⁵⁶ Section 38 and 39.

⁵⁷ Section 40.

⁵⁸ Section 42.

- (iv) Improperly describing a place of business as connected with the geographical indications registry.
- (v) Falsification of entries in the register.

The punishment prescribed for the aforesaid offences varies from six months to three years imprisonment and a fine of not less than rupees fifty thousand but may extend to rupees two lakh. However the court for adequate and special reasons in writing may impose lesser punishment.

The Act⁵⁹ also prescribes for enhanced penalty for second or subsequent conviction. The term of imprisonment in such cases shall not be less than one year but it may extend up to three years and fine of not less than one lakh rupees which may extend up to two lakh rupees. The discretion is vested with the courts to impose a lesser punishment after recording in the judgment adequate and special reasons for awarding such lesser punishment. No cognizance would be taken of any conviction made before the commencement of this Act. The offence under the Act is cognizable.

Forfeiture of Goods - The element of *mens rea* is essential for conviction. If *mens rea* is lacking, the accused may be acquitted. The court may, however, where a person is convicted or acquitted because of lack of *mens rea*, direct the government to forfeit all goods and things by means of, or in relation to which the offence has been committed. The court may either order for the forfeited goods to be destroyed or otherwise disposed of.⁶⁰

⁵⁹ Section 41.

⁶⁰ Section 46

Search and Seizure – the Act empowers the Deputy Superintendent of police to take cognizance of geographical indications offences and may search and seize things and articles involved therein without warrant if he is satisfied that any of the offences has been or likely to be committed and all the articles so seized shall be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be as soon as practicable. However, a police officer before making any such search or seizure shall obtain the opinion of the Registrar on the facts involved in the offence and shall abide by such opinion. A person having an interest in any article seized to file an application to the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, for restoration of such article seized,⁶¹

The interpretation of certain terms used in the Act is worth mentioning since it helps avoiding confusions and lack of understanding both for judiciary and common man. The expression “indication” has been defined inclusively to include any name geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies. Thus “indication” suggests or conveys the origin or source of the goods. It may be in the form of name (in full or abbreviation) or representation (geographical) or figurative) or combination of them; for e.g., the name “Scotch” indicates the origin of Whisky as from Scotland. “Darjeeling” is a geographical representation for indicating the origin of tea from Darjeeling (India), the figure of Taj Mahal on a tea brand.

The definition of geographical indication in the Act is very comprehensive. The important point is that a good should also have an identifiable quality, reputation or other characteristics attributable to its geographical origin. In case of manufactured goods,

⁶¹ Section 50.

method of production or process would become an important parameter, what it would mean at the ground level is that people interested in obtaining geographical indication must establish such features in a distinctive manner which may not be an easy task in many situations and may require technical inputs.

Miscellaneous Provisions

No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.⁶² Every person appointed under this Act shall be deemed to be a public servant.⁶³ Stay of infringement proceedings can be ordered. A stay of a suit for infringement of a geographical indication shall not preclude the court from making an interlocutory order during the period of stay.⁶⁴ In certain cases, specified therein the application for rectification of register should be made to the Appellate Board. Where a geographical indication has been applied to the goods on sale or in contract for sale of goods, there is an implied warranty that the geographical indication is a genuine geographical indication and not falsely applied.⁶⁵ The Registrar is empowered with the powers of a civil court, including award of reasonable costs. The Registrar shall have the power to review his own decision.⁶⁶ Where the Registrar exercises any discretionary power vested in him adverse to an applicant, such person should be given an opportunity of being heard.⁶⁷ The evidence before the Registrar should be normally in the form of affidavit only and in addition to be may take oral evidence.⁶⁸

⁶² S.55 of the GI Act.

⁶³ S.56 of the GI Act.

⁶⁴ S.57 of the GI Act.

⁶⁵ S.58 of the GI Act.

⁶⁶ S.60 of the GI Act.

⁶⁷ S.61 of the GI Act.

⁶⁸ S.62 of the GI Act.

In case of death of a party to a proceeding during the course of the proceeding, the Registrar on proof to his satisfaction may allow substitution of successor of the party or may allow the proceeding to continue with the surviving parties.⁶⁹ The Registrar is empowered to extend the time for doing of act subject to conditions.⁷⁰ If the Registrar is of the opinion that the applicant has defaulted in prosecution of his application, he may by notice require the applicant to remedy the defect within a specified time after giving him an opportunity of being heard. He may treat the application as abandoned unless the default is remedied within the time specified by him.

A suit for the infringement of geographical indication shall be instituted only before a district court. The relief which a court could grant in an action for infringement or passing off includes injunctions, damages, or at the option of the plaintiff account of profits. The court may also order for the delivery up of the infringement labels and indications for destruction or erasure. An injunction order may include an *ex parte* injunction or any interlocutory order including discovery of document, preserving of infringing goods, restraining the defendant from disposing of or dealing with his assets adversely affecting the plaintiff's ability to recover damages or other pecuniary remedies which may be finally awarded by court. The court shall not grant relief by way of damages (other than nominal damages) on account of profits:

- (a) If the defendant satisfies the court that he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register (in case of suit of passing off the geographical indication was in use); and that

⁶⁹ S.63 of the GI Act.

⁷⁰ S.64 of the GI Act.

- (b) When he became aware of the existence and the nature of the plaintiffs right, he forthwith ceased to use the geographical indication.

In every proceeding under rectification and correction of the Register authorised user of a geographical indication has to be impleaded.⁷¹

A certified copy of any entry in the register or any document of indexes mentioned in sec.77 and sealed with the seal of Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original. A certificate issued by the Registrar as to any entry, matter or thing, he is authorised to do shall be prima facie evidence of the entry having been made and of the contents thereof.⁷² The Registrar and other officers shall not be compelled to produce the Register or any other document in his custody in any legal proceedings, the content of which can be proved by the production of a certified copy issued under this Act, or appear as a witness to prove the matter therein recorded unless ordered by the court for special reasons.⁷³

The Central Government may, by notification, require that goods of any class specified in the notification which are made or produced outside India and imported into India to apply an indication of the country or place in which such goods are made or produced with the name and address of the manufactures.⁷⁴

The Appellate Board may grant a certificate of validity of a registered geographical indication or the authorised user in any legal proceedings relating to rectification of the register, and if, in any subsequent legal proceedings as to its validity

⁷¹ S.68 of the GI Act.

⁷² S.69 of the GI Act.

⁷³ S.70 of the GI Act.

⁷⁴ S.71 of the GI Act.

comes up the said registered proprietor or the authorised user, as the case may be, will be entitled to recover the full cost charges and expenses as between a legal practitioner and his client.⁷⁵

A person, who is a legal practitioner, or a person registered in the prescribed manner as a geographical indication agent, or a person in the sole and regular employment of the principal can appear before the Registrar duly authorised.

The Registrar should maintain:

- (a) an index of registered geographical indications.
- (b) An index of geographical indications in respect of which applications for registration are pending.
- (c) An index of the names of the proprietors of registered geographical indications, and
- (d) An index of the names of authorised users.⁷⁶

The documents such as register, the indexes mentioned in sec. 77 and any other document as the Central Government may specify be open to public inspection at the Geographical Indications Registry. Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document.⁷⁷

The Central Government shall place before both the Houses of Parliament once a year a report regarding the execution by or under the Registrar.⁷⁸

⁷⁵ S.72 of the GI Act.

⁷⁶ S.77 of the GI Act.

⁷⁷ S.78 of the GI Act.

⁷⁸ S.80 of the GI Act.

7.4 Challenges and Problems in the Post GI Act Regime

The Government of India has established the Geographical Indications Registry⁷⁹ with all-India jurisdiction at Chennai, where the GIs can be registered. Authorities 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 authorised 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.

7.4.1 Registration status of GIs in India

Around 1500 products from India have reportedly been identified as having the potential to get registered as GIs.⁷⁹ Till July 2012, 178 GI got registered with the GIs Registry⁸⁰ including few foreign GIs.⁸¹

⁷⁹ Natarajan, V. (2008) 'Indian perspective of GI Registration', presentation delivered in the 'Regional Conference on IPR protection through Geographical Indication', organised by the UNCTAD India programme and the Textiles Committee, Hyderabad, India, 3-4, June.

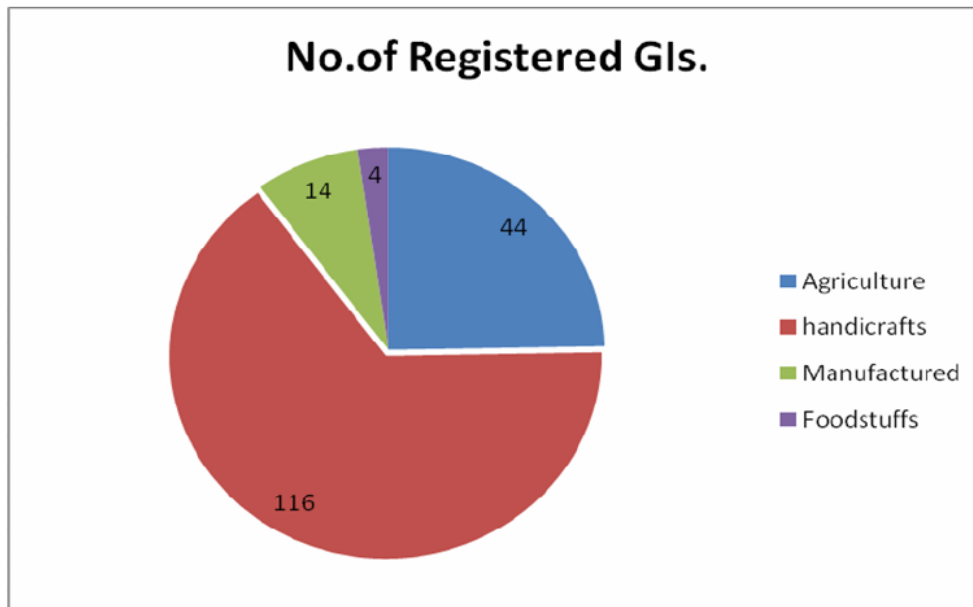
⁸⁰ See Annexure.

⁸¹ 'Champagne' from France, 'Pisco' from Peru, Napa valley from USA, Scotch Whisky from UK Prosciutto di Parma from Italy.

Table -1: category wise registered GIs.

Sl.No.	Category	No.of Registered GIs.
1	Agriculture	44
2	Handicrafts	116
3	Manufactured	14
4	Foodstuffs	4
	Total GIs registered	178

Source: *GI Registry Office, Chennai, as on July 2012*



A striking feature of Indian GIs is the variety of product categories to which they belong. These include textiles, handicrafts, paintings, agricultural products, horticultural products, beverage, among others. This is in sharp contrast with the European Scenario, where GIs predominantly relate to Wine and Spirits, or other food and agricultural products.⁸² Table 1 depicts the distribution of registered GIs in India as per certain broad product categories. As may be noted from this table 1 out of the total of 178 (i.e., 65.16%) registered GI's are in the category of handicrafts (including handlooms,

⁸² The EU has in its possession some 4800 registered GIs, 4200 for Wines and Spirits and another 600 for other categories, mainly food products (European Commission, 2003), p.2.

paintings, etc.). Notably often these are also the products that are based on the traditional knowledge (TK) being passed on from one generation of the artisans community to the next, clearly reflecting India's rich heritage of TK in arts and crafts of diverse genres; and the significant roles that GIs can potentially play in the context of these products. It may also be noted from table 1 that out of 178 registered GIs, 44 (i.e., around 25.58%) belong to agriculture. The predominance of artisanal and agriculture- related products among the registered GIs, which taken together comprise 154 out of the total of 178 (i.e., 89.53%) clearly indicates that GIs have a significant potential to facilitate rural development in India. It is interesting to note in table 1 that out of 178 registered GIs only 74 (i.e., Around 43.02%) belong to manufactured and foodstuffs 4 (i.e. 2.3%)

Table-2: State/Region wise distribution of GIs in India

State/Region	Number of Registered Products
West Bengal	9
Kerala	20
Tamil Nadu	18
Madhya Pradesh	5
Maharashtra	7
Orissa	14
Karnataka	31
Rajasthan	9
Andhra Pradesh	20
Himachal Pradesh	4
Bihar	4
Assam	4
Goa	2
Uttar Pradesh	5
Gujarat	8
Chattisgarh	4
Nagaland	1
Jammu & Kashmir	5
Peru	1
France	2
USA	2
UK	1
Italy	1

Portugal	2
Pondicherry	2
Punjab	1

Source: *GI Registry Office, Chennai as on July 2012*

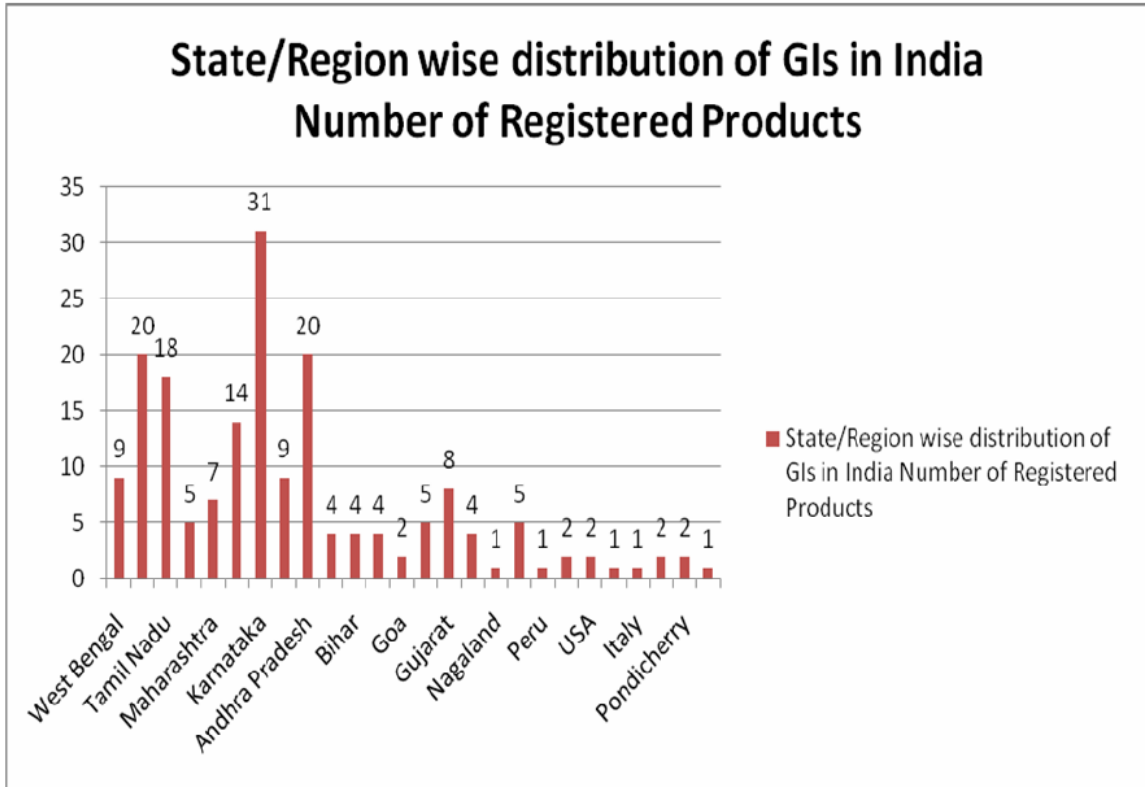


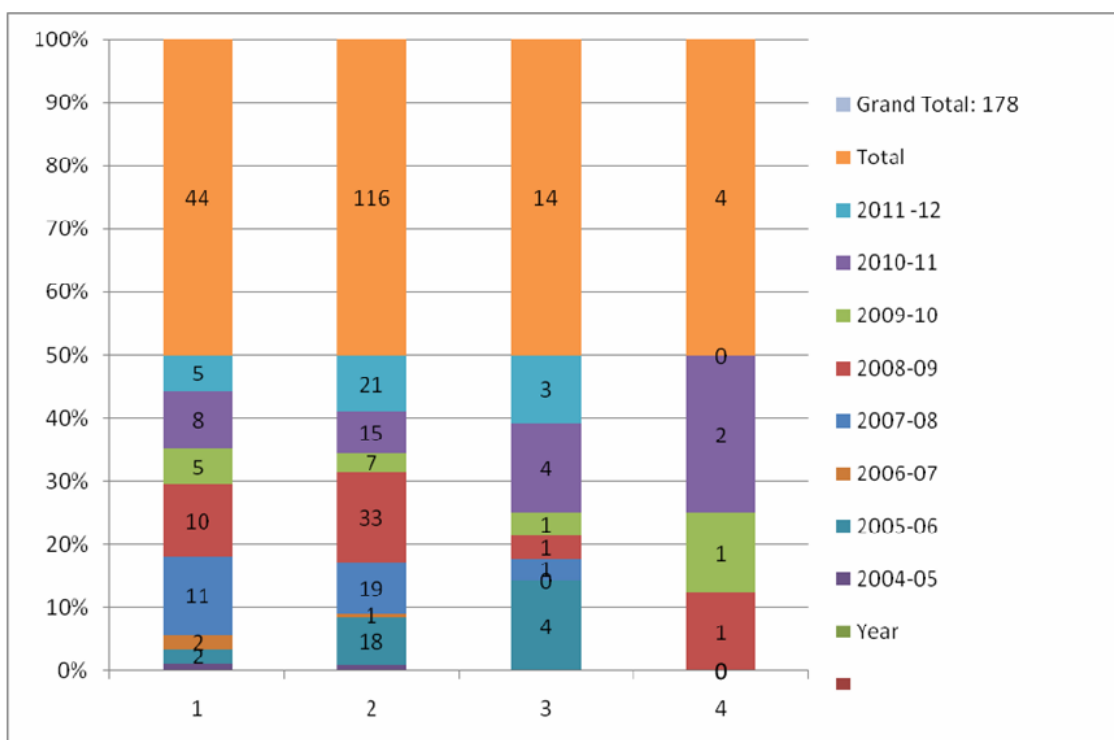
Table-2 depicts that out of the total 28 states and 7 union territories of India products from only 18 states and 2 union territories have been registered under the GI Act. Not even a single product has been registered from 10 states and other union territories of India. While Karnataka has the maximum products registered (32) interestingly few products from outside India has been registered seeking protection with the Indian GI Registry Office.

The trends and patterns in the year wise distribution of GIs in India show that (see table -3), while there has been an overall increase in the number of registered GI products, the increase has not been consistent over the last 8 years. Only three 3 products were registered in the first year 2004-05. The number of products registered under GI recorded a significant increase in the year 2005-06. Twenty four (24) new products were registered in the following year 2005-06 but in the next year 2006-07, only 3 new products were registered. The year 2007-08, 31 new products were registered. The year 2008-09 witnessed the maximum number of new products registered 45. However, in the following year there was a significant drop in the numbers of new GI product registration. Only 14 products were registered in the year 2009-10. In the year 2010-11, 29 new products were registered. Lastly in the year 2011-12, 29 new products were registered.

Table-3: Year wise Distribution of Registered GIs in India

Year	Agriculture	Handicrafts	Manufacture	Foods
2004-05	1	2	-	-
2005-06	2	18	4	-
2006-07	2	1	-	-
2007-08	11	19	1	-
2008-09	10	33	1	1
2009-10	5	7	1	1
2010-11	8	15	4	2
2011 -12	5	21	3	-
Total	44	116	14	4

Grand Total: 178

GRAPH 3: Year wise Distribution of Registered GIs in India

7.4.2 Issues and concerns

There are a number of issues and concerns in the context of harnessing the potential commercial benefits out of GI registration in India. Perhaps the biggest concern is near complete absence of an effective post GI mechanism in the country. Which domestic registration of a GI is a relatively easy task and there has been some progress on this account over the last 9 years, it is important to understand that only registration of goods *per se* does not fulfil the objectives of the Act, unless it is backed by sound enforcement mechanism both, in domestic and export markets. In fact, the enforcement of the Act in other countries is a much more complicated venture as this may pose a variety of constraints including technicalities involved in the registration process in various foreign countries, exorbitant expenses involved in appointing a watch-dog agency to get information on misappropriation; and huge financial resources needed for fighting

legal battles in foreign lands.⁸³ The Government's role is vital in the post GI mechanism because without government support, most producer groups do not have the wherewithal to effectively defend and promote their GI brand in India, perhaps only in the case of one good i.e. Darjeeling Tea, the Tea Board has had some success in defending against misappropriation in a few countries because they have the financial capacity to do so.

Though the Act defines the cases when a registered GI is said to be infringed, it is silent on the mechanism and provisions to fight against the infringement and this is an area where the government needs to play a larger role. In the opinion of Rajnikant Dwivedi, Director of Human Welfare Association, an association based in Varanasi working with handloom weavers, benefits of GI protection under the GI Act will actually depend on how effective is the post GI mechanism. "Banarasee Saree Weavers Continue to be a distressed lot idle looms have not begun functioning and unscrupulous practices of selling imitation products in the name of Banarasee Saree have not been curbed. Mr. Anil Singh, Director Need, a Lucknow based organisation and also an applicant in GI registration for Lucknow Chikan craft says that GI may leave the artisans community completely high and dry as the awareness level on GI, the most basic recipe for success of any policy, is alarmingly dismal. The post GI mechanism must have adequate provision for promotion and continuous awareness building. Chikan Craft, being an eco-friendly, gender sensitive craft, has huge potential to increase the bargaining power of the producers; however, this potential has not been tapped. Attempts have been made by the State Government to tap this potential by merging GI promotion with the department of tourism, promoting producer companies and other promotional measures. However,

⁸³ Kasturi Das (2006), Protection of Geographical Indications: An Overview of Select Issues with Special Reference to India, Working Paper: 8; Centad, Delhi.

these efforts remain restricted to a few areas where civil society is alive. One of the key concerns that Mr.Singh points out is that a majority of producers do not have the capacity to report and fight an infringement case.⁸⁴

At present, the action related to GI appears concentrated on registration of GI goods and in many cases the state governments are acting in haste. The identification and registration is happening without adequate due diligence. Applicants often do not assess the commercial status /prospects of a GI product in the domestic and export markets; the potential of its GI status in contributing to its future growth; and the socio-economic implications of its GI protection for the communities involved in its supply chain. As a result, the larger and the real objectives of the Act are by passed, often leading to frivolous and consequential registration. Moreover, as GIs are a collective rights and not an individual right, the registration process offers an opportunity for community level sensitization and awareness. However, in the haste to register GIs, this opportunity is lost. The awareness and involvement in the registration process of even GI goods remain reduced to the level of a few selected stakeholders. This has in some cases led to seriously erroneous omissions and commission, defeating the large purpose of the GI Act.⁸⁵ In case of Madhubani painting error has been pointed out. Madhubani painting on paper is registered as GI under class 16 which implies that Madhubani painting on cloth is not protected.

Another lacuna is that the definition of ‘producer’ in the Act does not distinguish between a real producer, retailer or dealer. As a result of this discrepancy, the benefits of

⁸⁴ Geographical Indications of India, Policy brief October 2010, aiaca. (All India Artisans and Craftworks Welfare Association), p.8.

⁸⁵ For instance, the map submitted while applying for GI registration of Bah Print (Already a registered GI) excluded some areas where Bagh printing has existed for decades. (Pointed by Mr.Chinmaya Mishra in a Planning Commission Meeting).

the Act may not percolate down to the real producer. Various economically powerful intermediaries may still continue their control over markets and the real producers may still be dependent on these intermediaries for market access. Even if GI protection would yield financial benefits, in such a scenario, firms with superior bargaining positions (located on the upper stream of the supply chain) may end up appropriating a disproportionate share of the economic value generated from securing protection.⁸⁶

7.5 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.

⁸⁶ Rangnekar, D., 'The International Protection of Geographical Indications: The Asian Experience', UNCTAD/ICTSD, Regional Dialogue on Intellectual Property Rights, Innovation and Sustainable Development, Hong Kong, SAR, Republic of China, November 8-10, 2004.