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**FAILINGS OF THE GEOGRAPHICAL INDICATIONS OF GOODS
(REGISTRATION AND PROTECTION) ACT, 1999**

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CERTIFICATE OF INTERNSHIP

This is to certify that Mr. Sriraman Jha, a third year student at National University of Juridical Sciences (NUJS), Calcutta, has successfully completed his report on the *Failings of the Geographical Indications of Goods (Registration and Protection) Act, 1999*. This has been submitted in fulfilment of his internship at the Centre for Intellectual Property Research and Advocacy (CIPRA) between October 11, 2014 and October 31, 2014.

Bangalore, October 31, 2014

Signature of the Guide

Prof. (Dr.) T. Ramakrishna

ACKNOWLEDGMENT

I extend my sincere thanks to Prof. (Dr.) T. Ramkrishna, MHRD Chair Professor of IPR, National Law School of India University, Bangalore, for giving me the opportunity to pursue an internship under his supervision at this prestigious institution. His invaluable suggestions from the presentation session have been incorporated in this essay.

Further, I would like to express my gratitude to Ms. Sadhvi C. Kanth, Research Associate, CIPRA, for being a bright guiding beacon along the unfamiliar path of this IPR. It would be no overstatement to contend that the essay wouldn't have been of the same standard in the absence of her watchful supervision.

I must also acknowledge the contributions of Mr. Vivek Anand Sagar, Research Associate, CIPRA, for his sense of support throughout the internship and Ms. Sadhana Kutty, Office Assistant, CIPRA, for her continual administrative cooperation. In fact, I take this opportunity to point out that most interactions with a diverse range of stakeholders in this university have uniformly exuded positive energy.

Finally, I remember Mr. Ranjan Bachawat, Senior Advocate, Calcutta High Court, whose course on IPR prompted me to seek this internship in the first place.

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METHODOLOGY

For the dual purposes of convenience and consistency, a uniform policy of research was sought to be adhered to. Any failing, real or refuted, emerged from commissions and omissions in the central text: the Geographical Indications of Goods (Registration and Protection) Act, 1999. Seemingly problematic sections were handpicked so as to fully appreciate the underlying logic. Then, when explanations came across as unsatisfactory, case studies were relied upon to understand whether, and if yes, how, the statute had failed to provide solutions, and sometimes even created problems on its own. A similar course was chartered for questions of importance, where reasonable justifications notwithstanding, legislations in other nations were scrutinized to discern whether a solution better suited to the socio-economic background of our country existed.

LIMITATIONS

The author takes cognizance of at least two confines within which research has had to operate:

1. Because the GI initiatives haven't crossed the embryonic phase in certain respects, assessments, particularly in implementation, may be premature. This has been explicitly acknowledged in certain sections.
2. Owing to the substantial reliance on secondary sources, the possibilities of prejudices and biases cannot be wholly negated.

INTRODUCTION

[1] History of GI Protection

In the course of our childhood chronicles, a visit to another part of the country by kith and kin inevitably implied an incoming supply of authentic goods which the place specialized in. The aunt from Mysore would bring agarbattis and sandalwood oil, friends stopping over in Kashmir would steadfastly hold that Pashmina Shawls were quite literally the warmest possible response to cold wintry nights, and for your own trips across the country, you had to keep your eyes open and wallets close: there were oranges in Coorg, chhapals at Kolhapur, patolas in Patan, and bhujia in Bikaner.

The earliest known legislative protection for products of this nature dates back no less than six centuries, when the exclusive rights for the process of ageing the Roquefort Cheese went to a village with the same name. Couched in different names across ages, geographical indications had long been guarded by a shield of local and national legislations.

This changed with the 19th century, however, when the expansion of commerce was so far-reaching that it occasioned imitations outside the country of origin across increasingly porous boundaries, thereby necessitating international protection through bridges of consensus-building and mutual reciprocity.

Historically, the early mechanisms for defending such geographical indications conditioned protection of ‘appellations of origin’¹, explicitly mentioned as an object of industrial property protection in the Paris Convention of 1883. A detailed definition would come only in 1958 in Lisbon with its Agreement on Appellations of Origin.

Because of the short-sightedness and constrictions of Lisbon, which called upon nations to draw a *sui generis* legislation as a pre-requisite, the Agreement was rendered incapable of putting a full-stop to the issue. These deficiencies were then sought to be addressed by the TRIPS Agreement, which introduced ‘geographical indications’ to the world. In Article 22 therein, they found definition as “indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”². While this meant that member nations of the WTO now had the choice to pick the

¹ BERNARD O’CONNOR, SUI GENERIS PROTECTION OF GEOGRAPHICAL INDICATIONS 42 (2004)

² Agreement on Trade-Related Aspects of Intellectual Property Rights, Art 22, Jan 1, 1996

most appropriate method for implementation, the improvement came attached to a flipside: coordination and harmony across jurisdictions went lacking.

[2] Build-up to the 1999 Act

In India's casket lie a large number of products capable of qualification under the concept. Yet, no particular system had been devised to safeguard the rights and interests of their producers before this legislation. In Article 24.9, the TRIPS Agreement frees WTO members of the obligation to protect GIs that are not protected in the country of origin. At the same time, they are mandated to extend protection to goods imported from other countries that do provide such protection. This detail tilted the government's decision in favour of developing a specific legislation to protect our GIs when the US patent office granted a patent to RiceTec Inc. to call rice grown in a crucial export market as 'Basmati'. Before this approval in 1997, RiceTec had been making failed attempts to enter the international Basmati market by describing brands like 'Kasmati' and 'Texmati' as Basmati-type rice.

Registration of GI is not compulsory in India. It just affords better legal protection to facilitate an action for infringement. Moreover, once a GI is registered in India, it becomes relatively easier to seek protection in other countries, particularly in other member countries of WTO.

Furthermore, it was held that the Act would protect another set of vulnerable stakeholders through its exclusion of unauthorised users: consumers.³ Therefore, one economic aim, and therefore a measure of success, is the fruitful creation of a larger demand for these premium products among perceptive consumers prepared to shell out more in exchange for authenticity. In a way, GIs also become a mechanism for the consuming public to discover the origins of the product being consumed.

Given that the vast majority of Indian GIs are linked to artisanal works and agriculture, two sectors that provide livelihoods for scores of poor in our countryside, their potential rural development implications are difficult to ignore. The incessant competition, with its armoury of cheaper imitations and other competing products, is increasingly finding its feet, and thus the route to the consumer, in the background of fluctuating markets which globalization has

³ G.I. Act, 1999, Statement of Objects and Reasons

given rise to. Naturally, this has caused both profit and survival threats for these traditional products and their producers, thereby adding a fresh layer of implications and complications. A mechanism for GI protection also assumes importance for ensuring the preservation of local culture, traditional knowledge, and other such tangible expressions of culture.⁴

It is important to note that unlike any other intellectual property right, the GI application must be made by an association of persons or producers or any organisation or authority established by or under a law for in force that represents the interests of the producers of the goods concerned. Given the fact that most people engaged in the production of such products are small households or small units, convincing them to form associations to move the application for registration with standards and inspection mechanisms in place can be an elephantine task in many instances. Yet, over two-hundred geographical indications have been registered in only a decade.

The credit for this statistical achievement rests upon the shoulders of this elaborate legal system. Stated simply, the statute is a detailed law for the recognition, regulation and administration of GIs in India. It starts out by defining ‘geographical indications’ before establishing the procedure for their recognition, while setting out the rights and protections available to registered proprietors and authorised users, and the legal processes they may initiate to protect and enforce these privileges.⁵ Backed by the two-pronged threat of civil and criminal penalties, the consequences are considerably more far-reaching than the TRIPS Agreement. Moreover, areas of operation for geographical indications and trademarks are suitably demarcated. The Act also contains distinct provisions to address commercial and international issues, and in doing all these things, accentuates the importance of a specific legislation for this IPR in the developing world.

Despite all these advantages, the menace of fake Pashmina shawls has not stopped. Aligarh does not have a GI tag upon its locks yet, and the stone sculptures of Mahabalipuram cannot stake such a claim either. Is the Act to be put to blame? The essay ventures to find out the answer.

⁴ T.C. James, *Protection of Geographical Indications: The Indian Experience*, Bridges Vol. 13 No. 3 (2009)

⁵ MARSHA A. ECHOLS, GEOGRAPHICAL INDICATIONS FOR FOOD PRODUCTS: INTERNATIONAL LEGAL AND REGULATORY PERSPECTIVES 105 (2008)

SHORTCOMINGS

[1] Post-registration Troubles

A practical perspective underlines how registration is not a one-stop solution which fulfils the objectives of the Act.

On the road to exploit the commercial potential dormant in this IPR, a vehicle of stakeholders is bound to stumble when face-to-face with the obstacle of all obstacles: enforcement. This is especially so in foreign markets; if the technicalities and costs involved in the registration process in different countries do not drain stakeholders out of all fuel: time, money and effort, the outcomes that ensue are bound to. More specifically, the employment of a watch-dog agency to gather information about misappropriation of GIs necessitates huge financial resources, while fighting legal battles in foreign countries involves costs which, by a developing nation's standards, can only find description as exorbitant.⁶

In the case of Darjeeling Tea, the Tea Board of India has seen limited success in its backlash against misappropriation in a few countries. This end has partly been achieved by way of appointing Compumark, a World Wide Watch Agency in charge of monitoring and reporting infringement. Unfortunately, this example falls within the exceptional category, and occupies all the space therein too, because most producer groups do not have their financial wherewithal to effectively defend and promote their GI brand inside or outside India. For example, in the course of a field report, TERI researchers discovered that none of the stakeholders were aware of any legal action initiated against any of the counterfeit manufacturers⁷, despite clear-cut knowledge of their existence and the socio-economic impact of their imitations. Their helplessness is revealed by so much as a glimpse at the sheer diversity of blended and machine-made products sold and purchased at formal and informal outlets across and beyond the country.

It is in this context that the role of the government assumes potential protagonist proportions. However, in either ignorance or indifference, the Act is reticent with regard to mechanisms and provisions to fight against cases of infringement. Instead, because the responsibility of

⁶ Kumar Gautam and Nupur Bahl, *Geographical Indications of India: Socio-Economic and Development Issues*, All India Artisans and Craftworkers Welfare Association (October 2010) http://www.switch-asia.eu/fileadmin/user_upload/Project_Downloads/Batch_1/policy-briefs-geographical-indications-india-socio-economic-development-issues.pdf

⁷ Nitya Nanda, *The Protection of Geographical Indications in India: Issues and Challenges*, TERI (March 2013) http://www.teriin.org/div/briefing_paper_GI.pdf

dealing with GIs has not been specifically entrusted upon a department or body, agency initiatives and involvements across various states and levels suffer from wide inconsistencies.

It is testing to resist a comparison with the European Union on this issue, where administrative enforcement authorities are made answerable for policing and ensuring GI protection so as to bring down the burdens, monetary and otherwise, of this protection for producers. From an economist's angle, the price of enforcement of such rights becomes cheaper in these countries vis-à-vis India.

Moreover, this cost is on the rise every passing minute: as the extent of misuse goes up, the difficulties in enforcement, if and when attempted, climb another level. Given the extent to which an operative enforcement scheme impairs the Act, neither the importance nor the urgency of the need for such an agency can possibly be overemphasized. Until this realization dawns upon the legislature, the right holders must take a cue from Pochampally Ikat, the producers of which filed India's first infringement suit under the Act in the Delhi High Court in 2005. This compelled the manufacturers and retailers of the duplicates to destroy their products. Likewise, Chanderi Fabric, which has strategized and analysed selling points and supply chains of fakes, offers another silver lining. At least one of these groups will have to step up until the golden key i.e. multilateral WTO register locks all doors of infringement and multiplicity. In the present period, by virtue of American pressure and the administrative hassles involved in the creation of a multilateral register, the WTO is in this matter a mere letterbox that consolidates the list of items protected under geographical indications in each member nation.

[2] Lack of Proper Inspection

In fact, perhaps the only watchdog in the course of the entire GI process comes into being on an application of registration through the constitution of a Consultative Group of seven members or less at the behest of the Registrar. While he retains control by virtue of being the chairman, the other members are supposed to be persons of authority well versed in the varied intricacies of either the law or the field⁸ so as to be capable of suitably ascertaining the truth (or the lack of it) contained in the particulars.

⁸ G.I. Rules, 2002, Rule 33

Yet, this watchdog seems to be predisposed to slumber, and the classic case in point is provided by the infamous Jamnagar Petrol ‘G.I.’, the application for which was filed by a conglomerate, while evading fees payable on four separate products without any historical linkage or relevance by way of a single application, marketing in none of which had used the generic ‘Jamnagar’ in describing its products, which in turn had no characteristics specifically attributable to the geographical area in question where they were the solitary ‘authorised user’. Despite falling at every obstacle in the process, the application was not quashed right away during inspection, and instead swiftly lifted above these hurdles and crossed over in a record timeframe of one month by a routine seven member expert committee, with the clout of India’s largest business empire serving as fuel. But for objections filed by vigilant citizens, the ‘G.I.’ would have proceeded to registration, giving permanent fodder to the international community to view our G.I. protection process with a mixture of contempt and ridicule. In the case of Tirupati Laddoo, however, we did not meet such good fortune, as India set a bad precedent by granting monopoly to a single producer.

While extensive details are required to be supplied by the applicants, it is equally essential that they be examined with care. In the case of GIs whose application is anyway satisfactory, the sincerity with which its inspection has been conducted cannot be known. It is only on review of improper applications that this sincerity comes to the forefront, and that it has gone missing becomes apparent on examining registered GIs such as Madhubani paintings. In this case, protection is accorded only to images on paper, meaning that the same images on cloth fall outside the guarded boundaries.

[3] Examination of ‘Geographical Map’

In Chapter III of the Act, applicants are called upon to supply a geographical map of the territory of origin or manufacture.⁹ This is in consonance with Article 4 of EU Rules, which requires the geographical area to be defined in a detailed and precise way that presents no ambiguities. According to Chinnaraja G. Naidu, assistant registrar for Geographical Indications Registry, “The GI (geographical indication) application remains imperfect if it

⁹ G.I. Act, Section 11 (2) (c)

fails to cover the actual producing area. Not even a micron point space of actual cultivation area should be left uncovered.”¹⁰

Even in the face of such seemingly lofty ambitions, Mysore Silk has been registered with Mysore as the geographical map, despite the fact that only 40% of the total production takes place in the district. Similarly, the map submitted while applying for GI registration of Bagh Print excluded some areas where Bagh printing has existed for decades.

The reverse anomaly is encountered in cases such as the painstakingly intricate Baluchari GI: even though only 1200 weavers in Bankura are engaged in the production of these silk saris whose origin lies 200 km away in a village called Baluchar in Murshidabad district, the entire state of West Bengal has been conveniently accorded protection under the G.I. application. This happened by virtue of the state government’s confusion with regard to one simple question: Bankura or Murshidabad, which of the two ought to be the legitimate region for protection? Given the role of the Bankura weavers in the revival of its manufacture, as well as the submergence of the village of origin, the answer ought not to have been problematic to locate. For the sake of clarification, these are not cases where the extension would be justified by virtue of some connection with the rest of the included territory. In other instances such as Mysore Agarbatti, for example, the inclusion of territories strictly outside Mysore finds justification because of the procurement of raw materials from these regions. For the same reasons, the geographical map for Kolhapur chhapals extends into Karnataka. Baluchari affords no such justification.

However, it is not just the applicants and the inspectors who are to be put to blame for overstating/understating the geographical boundaries. This is because defining exact geographical boundaries as per the requirements of the Act is difficult, sometimes even impossible, particularly for non-agricultural products such as Pashmina Shawls derived from sheep who roam, breed and shed their wool on both sides of the Indo-Pak border.

[4] Need for ‘Authorised Users’

Point [3] also ties up to the shortcomings of ‘Part B’. While the author admits that a specification of the geographical area, however tedious, is absolutely essential for realizing

¹⁰ Sanjay Vijaykumar, Madhya Pradesh’s Basmati plea may delay India’s geographical indication battle, ECONOMIC TIMES, Jan 7, 2014, at Chennai

the objectives of the Act, the same cannot be said for 'Part B' in all GI applications. The Act states that this part shall contain the particulars relating to the registration of authorised users in the prescribed manner.¹¹ On the completion of formalities, these users are vested with the exclusive right to the use of the geographical indication in respect of the goods.¹²

Towards this end, it is suggested that authorised users be made to register only for GIs in which this process does not cause substantial hardship. Meaning, indications like Darjeeling Tea, where there are a limited number of tea estates, ought to call for this requirement as additional protection, but it should be done away for goods like Basmati Rice grown at the foot of the Himalayan mountain ranges by countless farmers. For GIs falling under the latter category, a strict geographical specification and proprietor details should be made to suffice. If this is the law, any producer in the demarcated area would be able to use the GI tag provided the other specifications are satisfactory.

This would also do away with the substantial financial burden of the application cost of potential authorised users, which stands at Rs. 500 as per the first schedule of the G.I. Rules, 2002. A number of studies, such as Rangnekar's report on the Goa Feni¹³, have also found that Part B can lead to the formation of exclusionist clubs which prevent others from enjoying the benefits. If Part B is not mandated for certain products, this issue would also be dealt with automatically.

Even if some sort of validation is said to be required, it might be easier for a producer to join an association as an 'authorised user' than file a separate application as one. A list of producers is necessitated by Part A as it is. In light of these considerations, potent questions about the need for Part B, regardless of the ease (or otherwise) with which this requirement can be fulfilled, emerge.

[5] Concurrent Protection as Certification Trademark

The G.I. Act, 1999 and the Trademarks Act, 1999 were not only passed in the same year, but in fact accorded assent on the same date, with the former borrowing brazenly from the latter. Despite the proximity in time and content, both legislations chose to remain silent about the

¹¹ G.I. Act, 1999, Section 7 (3)

¹² G.I. Act, 1999, Section 21 (1) (b)

¹³ Dwijen Rangnekar, *Geographical Indications and Localisation: A Case Study of Feni*, Univ. of Warwick CSGR, 17 (2009)

possibility of concurrent protection as a geographical indication and as a certification trademark.

A certification trademark (CTM) may be defined as a source-identifying logo which indicates that the goods on which it has been impressed have been certified by a competent authority other from the producer with respect of characteristics such as mode of production, composition, source and quality. In a bid to ensure the supply chain integrity and consistency of tea from Darjeeling, Assam and Nilgiri, for instance, the Tea Board of India registered these three certification trademarks in various foreign jurisdictions, as well as closer home under the Indian Trade and Merchandise Marks Act, 1958.

After the G.I. Act came into force on September 15, 2003, Darjeeling Tea became the first good to benefit with its registration as a geographical indication in India. The reasons for this extra layer of protection were set out by the Tea Board of India itself:

1. CTM registrations were met with rejection of in certain jurisdictions (such as the French),
2. Internal G.I. registration was a pre-requisite to reciprocal protection under the regulations of the European Union, and
3. The link of the product with its geographical origin was best substantiated in this manner.¹⁴

In fact, along with passing off actions and consumer protection laws, the CTM system had been one of the ways in which the misuse of such goods could be prevented prior to September 15, 2003.¹⁵ In fact, the links between these concepts are so proximate that GIs are still registered through the CTM system in countries without *sui generis* legislations such as Australia and USA. Unlike these nations, India chose to enact a specific legislation, however, and the question of simultaneous protection arose after it came into being as the silence of the Acts on this point had cast it in a shroud of mystery.

This was because of an obvious overlap between the individual territories CTM and GIs occupied. While GI's edge over its counterpart has already been brought out by the claims of the Tea Board, they suffer from certain relative disadvantages as well: the aforementioned absence of standardization in GI protection mechanisms worldwide, which makes CTMs

¹⁴ S.C. Srivastava, *Protecting the Geographical Indication for Darjeeling Tea*, Managing The Challenges of WTO Participation: Case Study 16 (2007)

¹⁵ Kasturi Das, *Socio-Economic Implications of Protecting Geographical Indications in India*, Centre for WTO Studies 6 (2009)

easier to secure, serves as a case in point. In light of this, the prospect of a scenario where a product would seek both these safeguards continues to linger. It would because it could: Darjeeling Tea was one such good under the intersecting domain capable of simultaneous protection, and the Tea Board lost no time in seeking and securing both.

The only conceivable legal explanation is accorded by Section 26 (1), which accords protection to trademarks either registered or acquired through use before the enforcement of the GI Act or the filing of such application. This end is achieved by the simplest of actions: leaving them unaffected. However, the same legislation is tight-lipped on trademarks which do not precede the Act or the application. The Trademarks Act, its partner in crime, offers no leads either.

Clearly, this is a glaring omission in an Act which dedicates an entire chapter to ‘Special Provisions Relating to Trademarks and Prior Users’.

[6] Definitional Discrepancy

The definitions of ‘geographical indications’¹⁶ and ‘goods’¹⁷ are contained in the G.I. Act, 1999 in Section 2 (1) (e) and (f) respectively. However, they do not seem to be in complete consonance as only agricultural, manufactured and natural goods are expressly included under ‘geographical indications’, whereas the description of ‘goods’ in the succeeding subsection extends to ‘goods of handicraft or of industry and includes food stuff’. The Act could have stayed silent in its detailing in Section 2 (1) (e) [for ‘goods’ have already been systematically defined in Section 2 (1) (f)]. Alternatively, it could have specified *all* possible ‘goods’ as per Section 2 (1) (f). However, it did neither, choosing a mysterious middle path instead which only creates room for potential confusion and inconsistency. Leaving these definitions open to such challenge can safely be classified as dangerous because they are the two founding pillars upon which the entire application process, and perhaps even the entire temple of the Act, rests.

¹⁶ “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.

¹⁷ “goods” means *any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff*.

While there is potential to harmonize the sub-sections by holding that ‘manufactured goods or any goods of handicraft or of industry and includes food stuff’ form a singular third unit of the goods train together with ‘agricultural’ and ‘natural’ goods, it is difficult to resist the urge to point out the ease with which this conundrum could have been evaded.

Notwithstanding the detailing of ‘classes’ under the G.I. Rules, 2002, the author is of the opinion that the definition of ‘geographical indications’ does not reflect the realm of ‘goods’ in its totality, and given the centrality of these definitions to the Act, this merits mention as one of the statutory shortcomings.

[7] Reciprocal Protection to Foreign Goods

Special provisions for citizens of ‘convention countries’, which extend the privileges granted to their own citizens to Indians, are envisaged under the Act itself.¹⁸

In the case of an application from one of these convention countries, however, certain additional particulars are also required to be furnished. These include but are not limited to legislative and administrative details such as the name of the country of origin of the geographical indication along with evidence of the existing protection of the GI in its country of origin in the form of copies of documentation, serial number, and filing and registration dates.¹⁹

However, the past few years point towards the emergence of a new trend: at this very instant, the largest share of applications pending before the G.I. Registry Office comes from the European Union, largely in the shape of wines and spirits. Reports suggest that the policies of our government, which earnestly considered a sharp fall in import duty²⁰, coupled with the presence of a relatively unexplored consumption market, may well have spiked their interest, and consequently the number of applications therefrom.

Because this interest is of such recent origin, it may not be completely prudent to draw conclusions at this juncture. However, one wonders why significant interest was not generated earlier despite the fact that India was an important product market even in those

¹⁸ G.I. Act, 1999, Section 84

¹⁹ G.I. Rules, 2002, Rule 24

²⁰ P.V. Krishnakumar, European wines seek geographical indication tag in India, Economic Times, June 21, 2013, at Chennai

years, and whether this was down to a lack of faith in the Act. At a time when over a hundred applicants from Europe patiently await approval, primarily because documents have not been provided by applicants, it is natural to ponder whether the application process could be made suitable to the requirements of outsiders.

The only prophecy which may be made in a definite tone concerns the reality of the challenge these foreign applications present, for in the times to come, they are bound to test the resolve of the Act in matters of both theory and implementation.

[8] Unnecessary Ten-Year Clause

In no uncertain terms, the Act rules that the registration of a geographical indication shall hold validity for a period of ten years, and that the GI status may be renewed in the last leg of this duration.²¹ Darjeeling Tea became the first registered geographical indication of India ten years ago on October 29, 2004. Hence, starting now, it will be possible to draw readings in this regard without overlooking ground realities.

Regardless of what ensues, what is near certain is this 10-year clause has been carelessly copied from other Acts like the Trademark Act, 1999²² without bearing in mind its (lack of) application for this IPR. The application procedure for the GI involves an examination of the geography and history, natural and human factors, uniqueness, et al. It is improbable that much of this would have undergone any considerable change after a decade. Even if it were argued that this period is set in order to evaluate the existence and vigour in the supply of the product after a lengthy period of time, some of which face possibilities of extinction doubtless, mandating re-application for GI is still needless.

A parallel may be drawn to World Heritage sites; the Ajanta-Ellora Caves or the Chola Temples are not made to periodically renew their stamp of historicity. Perhaps the legislature could take a cue from UNESCO. And if this seems far-fetched, the country could peep into a neighbour's house: in China's *sui generis* regime, protection for GIs is unlimited in time as long as the conditions of use of registered GIs are respected. Similarly, European wines protected in Australia are indefinitely protected so long as the bilateral agreement is not nullified.

²¹ G.I. Act, 1999, Section 18 (1)

²² Trademark Act, 1999, Section 25 (1)

CONCLUSIONS

1. The G.I. Act is not a comprehensive solution for the onslaught on duplicates or the defence of the rights and interests of artisans, but only an indispensable part thereof. However, this cannot restrain the legislation from exercising the totality of its potential, and it is with this objective in mind that the following limitations of the legislation are brought to the forefront as the key findings of the research report.

Firstly, registration is not a one-stop solution which fulfils the objectives of the Act. This is particularly true for enforcement in foreign jurisdictions. Because most producer groups do not have their financial wherewithal to effectively defend and promote their GI brand, it is recommended that the government specifically entrust this responsibility upon a department, body or agency.

Secondly, with regard to inspections carried out by the Consultative Group of persons of authority well versed in the varied intricacies of either the law or the field, the need for due diligence, seemingly absent at this junction, has been stressed upon with the help of case studies such as Jamnagar Petrol and Madhubani Paintings.

Thirdly, the deficiencies with regard to the examination of the geographical mapping in GI applications have been underlined by looking at GIs where both over-stressing (as in Baluchari Sari) and under-stressing (as in Mysore Silk) of the real boundaries has been accepted by the Registry without objection.

Fourthly, it is argued that 'Part B', which gives authorised users the exclusive right to use the GI tag, ought to be done away with for products where the enumeration of such a list causes substantial hardship. The financial burden it causes also finds mention.

Fifthly, given the overlaps and pros and cons between CTMs and GIs, the absence of clarity with respect to simultaneous protection in either this legislation or the Trademarks Act, 1999 is lamented.

Sixthly, the definitional discrepancies between the two founding pillars of the Act: 'geographical indications' and 'goods', where the former does not reflect the full ambit of the latter, are pointed out.

Seventhly, the small number of foreign goods registered, and the large number of their pending applications in the Registry, raises the question as to the Act's suitability and sufficiency to deal with them.

Eighthly, the necessity of the ten-year renewal clause, which has been carelessly copied from other Acts like the Trademark Act, 1999²³ without bearing in mind its (lack of) application for this IPR, is put under the scanner. Parallels to UNESCO's World Heritage Sites and China's *sui generis* legislation, where indefinite protection has been made available, are drawn.

2. None of the stakeholders can afford to lose track of the fact that actual realization of the commercial potential entrenched in GIs is contingent upon a host of dynamic issues - not least the consumers - for GIs do not sell simply by virtue of being GIs. This is because the market potential for this 'niche' rests heavily on this stakeholder's recognition and valuation of the product-place link. The author hopes that even in this country where attractive pricing is such a clincher, there will come a time when Indians will be as particular about the origin of the Dharwad Pedha as they are about their Roquefort Cheese.

3. In order to make full use of the potential for these extra profits, producers, processors and packagers must make every possible attempt to showcase the GI tag by placing it on the packet in a strategic style, etc. Because only few products such as Mysore Silk seem to be cashing in on this potential at the moment, this ought to be either mandated or encouraged for the rest. The European Union mandates products to display their PDO/PGI symbols on packets prominently.²⁴ India can also cash in on the historical stories, legends and myths surrounding its more traditional GIs so as to create a new layer of folklore and mystique around them.²⁵

4. In the European Union, only producers or processors working with the GI in question can apply for registration. The definition of the term 'producer' in our legislation does not

²³ Trademarks Act, 1999, Section 25 (1)

²⁴ Dominique Barjolle and Bertil Sylvander, PDO AND PGI PRODUCTS: MARKET, SUPPLY CHAINS AND INSTITUTIONS, FAIR 1 - CT 95 - 0306 (June 2000)

²⁵ Kasturi Das, supra n. 15

distinguish between real producer, retailer or dealer. As a result of this, the benefits of the registration may not percolate down to the real producer in light of economically powerful beneficiaries. Even when it does, 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. This phenomenon has been observed during socio-economic impact assessment of registered goods such as Muga silk and the Banarasi Sari.²⁶

5. The GIs already registered in India represent only a sliver of the actual number of unique products manufactured in the country. One study notes that at least 3,000 items in India have the potential to get GI tags. Because this is arguably down to widespread ignorance and legislative deficiencies, these two issues must be tackled on a priority basis.

6. Since there is one central office in Chennai for registration of GIs, the entire process can be made to go online so that communities in remote parts of India are not denied access to their rightful claims.

²⁶ Nitya Nanda, *supra* n. 7

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