



Protection of Geographical Indication Products from Different States of India

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Geographical Indication protection is becoming an increasingly important issue for producers who consider that one of their main challenges is to secure a better legal protection for their product at the national and the international level. The purpose of this article is to assess and analyse the weaknesses in the protection system available for GIs in India, including difficulties in protection and enforcement of GI rights. The article further gives an analysis of data collected in a survey by the researcher relating to GIs in India and interaction with stakeholders. An analysis of the legal framework, data relating to GIs in India and interaction with stakeholders indicate that the legal framework available for the protection of GIs is quite insignificant in terms of scope, effect and protection. There is a loss of producers' revenues caused by selling counterfeit products. In order to strengthen the existing system of GI protection, there is a need of creating awareness about protection of geographical indication products across India. Although national legislation has paved its way in protecting geographical Indications, the government requires the producers and the stakeholders to realize their responsibilities and come up for the registration of their products under the GI Act.

Keywords: Geographical indications, intellectual property rights, GI Act, lack of awareness, authorized users, stakeholders

GIs are a class of intellectual property which is used primarily to identify products as originating from a particular geographical area. In addition to providing consumers accurate information about the origin of a product, they confer exclusive rights on the producers of a geographical region to use distinctive signs for differentiating their products from competing goods in the market.¹ All well-known geographical indications such as, Alphonso, Nilambur Teak, Kashmiri Hand Knotted Carpet, Darjeeling Tea, Scotch Whisky, Basmati, Nagpur Orange, Antigua coffee are what they are today because of sustained efforts by individuals, communities and organisations to keep their authenticity, mystique and genuineness in existence and promote and preserve the quality of these products. Geographical indication is a peculiar kind of intellectual property, protection of which has been subject to many hindrances throughout the world, especially in the developing countries. Geographical indications prevent misuse of designation or presentation of a product, which indicates that the product originates in a place different from where it actually originates.

For example, using "Nashik" for grapes, which is not grown in Nashik (Maharashtra), is detrimental to consumers. If the products offer competition in

international markets, it is for their quality, rather than quantity. Quality is determined by the geographical, natural and human factors. It, therefore, becomes imperative that adequate protection be granted to the geographical indication.

GI protection is becoming an increasingly important issue for producers who consider that one of their main challenges is to secure a better legal protection for their product at the national and the international level. At the end of the year 1999, the Indian Government approved The Geographical Indication Act according to which a producer or an authorized user can register a GI and protect the name.² It appears that existing GI legal framework for the protection of Geographical Indications in India is an interesting route. It is considered that the GI Act is an instrument that could:

- (i) Provide producers with an effective protection system; and
- (ii) Be used as a promotional tool, allowing producers an economic advantage over their competitors in the market because of already existing reputation.

Meanwhile issues like the right of use, creating quality management, anti-imitation, building marketing strategy, etc. are still unanswered questions. There are a number of products which can be registered as a GI.³ These products need immediate attention for registration due to mass poaching and

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duplicity by unauthorized producers. The infringement of these products ultimately deceives the consumers on one hand and takes away the market base of the original products and hence threatens the livelihood of the poorer stakeholders of the products. The purpose of this article is to assess and analyse the weaknesses in the protection system available for geographical indications in India, including difficulties in protection and enforcement of GI rights. The study also highlights some of the suggestive measures for eliminating the bottlenecks. The overall objective of this article is:

- (i) To provide the precise information regarding protection of GIs in different States of India
- (ii) To determine whether or not the existing GI regime in India is adequate for the protection of GI products.

In order to do so, the following methods were adopted:

- (a) Protection available to the GI products at the regional level in the different states of India was assessed;
- (b) An analysis of the market for protected and potential GI products was carried out;
- (c) A stakeholders' survey to obtain information on their needs and expectations concerning the potential protection of geographical indications was conducted;
- (d) To determine the best options for the protection of GI products, key legal expert, Deputy Registrar of Trademarks office was interviewed⁴ who was selected based on the good understanding of intellectual property issues of the GI concept, and his previous experience in studies regarding IP issues.

Based on the findings and outcome of this assessment, the recommendations with regard to options for the better system of protection of GI products were drafted. The primary data was gathered and out of so many research methods approved on primary data, questionnaire, interview, field observation and narrative analysis research methods for the survey were adopted. The study was aimed at collecting as much information as possible on the legal protection of GI products post GI Act and awareness of the same among the GI holders. Bearing in mind the resources available to conduct the study, it was impossible to conduct analysis and survey on each product from different states, that is why a

survey was conducted in Surajkund,⁵ Delhi Haat⁶ and State Emporia Complex⁷ where a list of products was selected based on a highly varied sample of products from as many states as possible.

Selection of Studied GIs

To ensure that the study would generate consistent and reliable outputs, the definition of geographical indications provided in Section 2 (1) (e)⁸ of the GI Act was used as a basis. In order to be able to assess the current legal means and model of protection and to undertake an analysis of the market for GI products, the researcher had first to identify which GI products are already protected in different States and which could be eligible to such protection.

Protected GI Products

Protected GI products in the different states were identified through desk research.⁹ The intellectual property registers were consulted, in particular GI registers at the national level were looked for relevant information on several databases, notably national databases, the website of GI registry.¹⁰

Potential Products

The potential products which could benefit from a protection as a geographical indication were identified and assessed for whether the distinctiveness of the product could be linked to its traditional place of manufacture on the basis of the presence of at least one of the following criteria:

- (a) Production of the good in a determined geographical area;
- (b) Reputation of the good at the regional or national level; or
- (c) Availability of producers' groups to provide data.

In order to determine whether a product could be considered as a potential GI, the core element analysed was the geographical link of the product with a specific area. It is important to underline that the purpose of the study was not to provide an exhaustive list of existing or potential GI products in the 29 states of India. There were not enough resources available to do so. Furthermore, some of the products found by the experts may also not be able to qualify for the protection as GI. However, the aim was to get an overview of the potential that exists in different States of India in relation to geographical indications.

Concrete challenges were faced while looking for specific information on GIs in the present study.

Several products identified as protected GIs were not available in the places selected for survey. Also, in some states, it was impossible to identify products which could qualify as a GI. It should be noted that the ability to analyse the products in detail lied heavily on the willingness of producers and/or their association to cooperate with the researcher. In several States, there was no interest shown by these stakeholders and it was just impossible to gather information. In many cases, organizations or producers did not answer to the researcher’s requests.

Data Collection

The following research instruments were used in this study: ¹¹

- (i) Background information
- (ii) Questionnaires
- (iii) Interview questions
- (iv) Narrative technique

In order to collect as much information as possible, two questionnaires, each for producers and their associations and for the experts were prepared. All the questions in the survey were open questions because the intention was to exploit maximum idea of interviewees. However, the interviews were orienting exchanges, rather than surveys. The survey covered in all 100 respondents drawn from producers, traders, representatives of government agencies and other stakeholders. These questionnaires were translated when necessary to the identified producers or associations of producers followed up with personal interaction to explain the purpose and stress the importance of the questionnaires and to clarify the objective of the study. The answers were collected and translated in English where necessary. Specific information on the national legal framework available for the protection of GI products in each of the States through desk research was also gathered and, where necessary, through contact and exchange of information with the relevant authorities.

Stakeholders’ Survey¹²

The survey was carried out towards producers and other relevant stakeholders with a view to gather information with regard to the following issues:

- (i) Awareness about the concept and protection of geographical indication;¹³
- (ii) Satisfaction/dissatisfaction with the existing means of protection of geographical indications;
- (iii) Whether producers wish to have a broader choice of legal instruments to protect their

geographical indications effectively at national level; and

- (iv) What are the specific qualities of products bearing geographical indications that should be controlled by a public body (before and after registration)?

The answers to the survey (Fig. 1) show that a large majority of the respondents don’t know what a GI is. The results show that a majority of producers and other relevant stakeholders (58 out of 60 in Surajkund Crafts Mela, 25 out of 30 in Delhi Haat and 8 out of 10 in State Emporia Complex) who answered the survey were unaware of the GI concept. Even without taking into account the questionnaire, the one to one interview (Fig. 2) revealed that a majority of producers and other relevant stakeholders, (56 out of 60 in Surajkund Crafts Mela, 25 out of 30 in Delhi Haat and 8 out of 10 in State Emporia Complex), have not protected the name of their products.

A majority of respondents think that the economic effects by the introduction of the GI Act 1999 for the protection of geographical indications products could

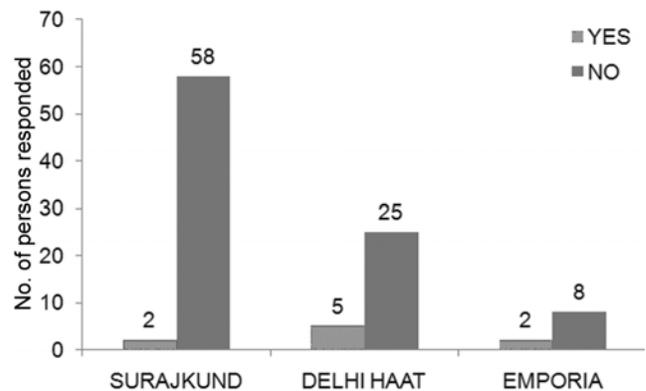


Fig. 1 — Response to General Question- “Do you know what a Geographical Indication is?”

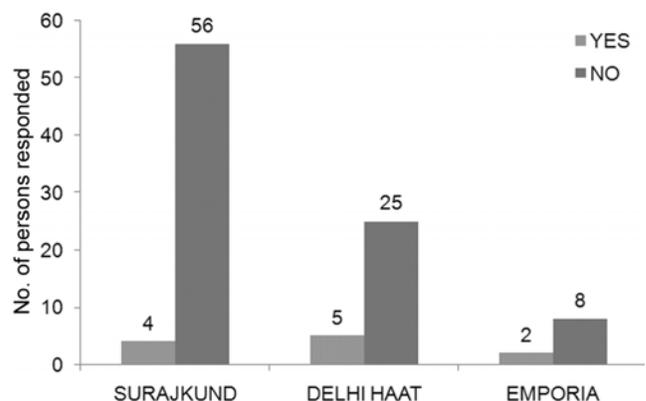


Fig. 2 — Response to General Question- “Have you protected the name of your product?”

have impact on the sales volume; the price of the product from a producer’s point of view; and on promotion costs. Regarding the question on the reaction of the consumer towards an authentic GI for consumers, a majority of respondents think that the consumer is satisfied as he is assured of quality of the product and also he will be better informed on the specific features or characteristics of the product and ensure the product comes from a specific area.

Means and Model of Protection Available¹⁴

Based on the information gathered, the detailed analysis was prepared on the means of protection available to GI products in India. The assessment covered the weaknesses of the GI legislation at the national level with the focus on the fact that there is a loss of producers’ revenues caused by selling counterfeit products. Results of the analysis are as under (Table 1):

- (i) Most of the producers of GI products contacted in the context of this study had a limited understanding of geographical indications. Even for the most prominent players, those were tapped in the questionnaire survey, less than 1 per cent had applied for registration. Lack of awareness precludes legitimate producers of the GI product from registering their products.¹⁵ They were not familiar with the legal instruments available for the protection of their products.¹⁶ For most of them, the protection of their intellectual property rights appeared to be a relatively new priority.
- (ii) Many states in India have a number of fledgling GIs. They may present considerable range of opportunities. Though with interesting and unique reputation, they are yet to be registered as GIs.¹⁷ The primary reason for this is the complete lack of awareness with respect to potential benefits arising from the registration of GIs and thus limited use of GI laws.

- (iii) Stakeholders in selected industry segments reported that copying is rampant and that they are aware of the perpetrators. However, given limited trust on overburdened judiciary, added to high cost of litigation has posed as a severe barrier for seeking legal recourse in case of infringement. Enforcement under the legal regime is frustrated further through absence of will on the part of GI holders to take action against the imitators. The registration of a GI under the GI Act could make sense only if the infringement of the same is proceeded against. However, there seems to be not many takers for initiating infringement actions. The survey conducted showed that only few respondents were party to an infringement action. Many of the respondents answered that they knew about the infringement of their GIs, but were not initiating any action.
- (iv) The survey also revealed that the traders enjoy more economic benefits than the actual producers of GIs and hence the right to use the registered GIs is not confined to the actual producers from the identified geographical area.¹⁸
- (v) A majority of respondents expressed dissatisfaction with the existing means of protection for GI products at the national level.
- (vi) An analysis of the data from the Indian Patent Office reveal that the number of applications for GI registration is very small compared to trademark and patent applications.¹⁹ It is worthwhile to note here that the registration process for GIs is comparatively easier than patent and trademarks registration in India. Moreover, in granting registration to a GI there is a liberal approach on the part of officials as opposed to the registration of patents and trademarks.²⁰ The data analysed from 2006–07 to 2010–14 show that GI applications constitute less percentage of the total number

Table 1— Key issues raised in the survey

S. No.	General	Registration	Examination	Enforcement of the Act
1	Lack of awareness	Lack of understanding of the law	Need of proper documentation for filing an application for registration	Weak enforceability as most of the infringements go unnoticed
2	Limited use of GI laws	Registration time to be reduced	Unavailability of relevant information for cross verification	Lack of trust on the enforcement mechanism
3	Tendency to avoid legal hassles	Need to open more centers in India for GI registration	Need to speed up the process	Absence of will on the part of GI holders for initiating infringement actions

of applications filed for registration.¹⁹ GIs are the cheapest form of IP protection with minimum procedural hassles involved. Despite these advantages GI rights are largely underrated in the portfolio of most of the IP right holders.

- (vii) Further discussion with officials indicated that there are limitations faced by the examiners for registering a product as GI in the form of unavailability of relevant information for cross verification due to poor documentation and lack of understanding of the law and its interpretation on the part of applicant.⁷
- (viii) As per the GI Act, 1999, in order to register a GI, an application is to be addressed to Registrar of Geographical Indications, Geographical Indication Registry, in Chennai.²⁰ This in a way makes it difficult for people from other parts of the country to come up for the registration of GIs. This issue points out the need to open more centers in India for GI registration as has been done in case of trademarks.⁷

Conclusion

In nutshell, the protection granted under the GI Act remains largely theoretical as it does not seem to be used in practice to defend against the misuse of GI products. An analysis of the legal framework at the national level and data relating to GIs in India, and interaction with stakeholders indicate that the legal framework available in India for the protection of GIs is quite insignificant in terms of scope, effect and protection. GI Act is available to seek redress in all the states, but barely used by producers and stakeholders. In order to strengthen the existing system of GI protection in India, there is a need of creating awareness about protection of geographical indication products across India. The main objective of the awareness is to prepare the producers and stakeholders particularly the manufacturing associations, exporter and trade associations, civil society organizations, institutions & centers of excellence and grass root level stakeholders associated with the production, marketing and overall development of the products on the emerging issues relating to geographical indication, so that they can prepare themselves for protecting their products under the Act. Although, national legislation has paved its way in protecting geographical indications, the government requires the producers and the

stakeholders in particular to realize their responsibilities and come up for the registration of their products under the GI Act. If producers are able to advertise their products that the GIs concerned are registered and any infringement of the right related to such GI may attract legal actions, then the chances of such infringement can be reduced. From the field work it could be gathered that the promise of geographical indication protection has not curbed the menace of fakes. Moreover, post-registration, there is need for promotion and continuous awareness building particularly among the consumers. All these issues will need to be addressed for GI registration to serve the desired goals of providing an assurance of quality to the consumers and socio-economic benefits to the producers.

References

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- 2 The Geographical Indications of Goods (Registration and Protection) Act, 1999, http://www.ipindia.nic.in/writereaddata/Portal/IPOAct/1_49_1_gi-act-1999.pdf (accessed on 2 April 2017).
- 3 Status of GI applications, <http://ipindiaservices.gov.in/GirPublic/DetailsGIR.aspx> (accessed on 2 April 2017).
- 4 Verma G L, Deputy Registrar of Trademarks, Govt. of India, was interviewed on 18 February 2013 in Delhi IPO –Dwarka.
- 5 DilliHaat is located in one of the most important commercial centres of South Delhi, opposite to INA market. It was established and opened in 1994 with the joint venture of Delhi Tourism (DTDC), D.C (Handicrafts), NMDC, D.C. (Handlooms) and Ministry of Tourism and Textile, Government of India. There are fixed stalls representing many States. Here one sees a synthesis of crafts, food and cultural activity. It aims at providing encouragement to the needy artists from all over the country in order to sustain and preserve the rich heritage of India. DilliHaat is not just a market place; it has been visualized as a showpiece of traditional Indian culture- a forum where rural life and folk art are brought closer to an urban clientele.
- 6 Strung out along Baba Kharak Sing Marg, Delhi are the official emporiums of the different Indian states, showcasing state-produced goods and handicrafts. Shopping here is like taking a tour around India – top stops include Kashmir, for papermache and carpets, Rajasthan, for miniature paintings and puppets, Uttar Pradesh for marble in lay work, Karnataka for sandalwood sculptures, Tamil Nadu for metal statues and Odisha for stone carvings.
- 7 “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. Explanation:- For the purposes of this clause any name which is not the name of a 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.

- 8 Protected GI products in different states of India, <http://ipindiaservices.gov.in/GirPublic/DetailsGIR.aspx>(accessed on 2 April 2017).
- 9 <http://www.ipindia.nic.in/gi.htm>(accessed on 2 April 2017).
- 10 Narrative technique uses different approaches to look for personal stories or analyzing narratives that allows having a clear understanding of the surroundings where people interact with one another
- 11 The studied sample cannot be considered as representative and should be treated only as case studies
- 12 Most of the respondents emphasized on the need for raising awareness of stakeholders and benefits an industry can derive from registering GIs.
- 13 The legal analysis is based on the information gathered between January to July 2013.
- 14 One to one interviews with the producers revealed very low awareness about the GI protection.
- 15 When asked whether they would use the present GI system the producers replied positively.
- 16 The desk research also points out that the registration procedure in India is not very complicated. The lack of support by industrial associations came out very prominently in the survey. These findings and the comparative data clearly point to the need for more awareness programmes and a greater role by industrial associations in helping the small firms in filing for registration and other legal assistance.
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- 18 GI Registry Office, Chennai, as on October 2014.
- 19 The registration process for a product “Banginapalli mango” from Hyderabad, which was under the stage of examination by a committee of experts on 18 February 2013 in Delhi IPO – Dwarka. The liberal approach on the part of officials was observed.
- 20 <http://www.ipindia.nic.in/the-registration-process-gi.htm> (accessed on 2 April 2017).