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**ANALYSIS OF THE EFFECTIVENESS OF EXISTING MECHANISM FOR
REGISTRATION OF GEOGRAPHICAL INDICATIONS IN INDIA WITH SPECIAL
EMPHASIS ON EAST INDIA LEATHER- GI AND ITS PRACTICAL IMPLICATIONS**

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Abstract

The aspect of getting the geographical indications approved is very much vital in various aspects such as fostering the specific needs of indigenous and local communities, farmers who are responsible for producing or processing the particular product. Considering the importance of getting the “Geographical Indications” approved, the process and the effectiveness of such process requires analysis which would be carried out by this research project with special reference to East India Leather-GI obtained by Trichy Tanners Association. The East India Leather which is currently approved as a “Geographical Indication” took a long process to be approved which was initiated by “Trichy Tanners Association” and “Dindigul Tanners Association”, whose analysis would definitely bring out the effectiveness of the currently existing mechanism.

Keywords- East India Leather, Geographical Indications, approval mechanism.

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Introduction

Geographical indications generally refers or indicates that the particular good originate from a particular country and has certain special characteristics. French Government through its legal instrument named, “French Appellation d’origine controlee (AOC),”², initially recognised the aspect of geographical indications to be protected as a form of property. Followed by this, Lisbon Agreement for Protection of Appellation of Origin and their International Registration, 1958 recognised “appellation of origin” to be a form of property which in a way relates to geographical indications³. TRIPS Agreement was the major international instrument which uses the term “Geographical Indications”⁴ as the indication which identify a good as originating in the territory of a country 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”. In the Indian context, The Geographical Indications of Goods (Registration and Protection) Act, 1999, defines “Geographical Indications” as follows,

"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;

² Felix Addor and Alexandra Grazioli, “ Geographical Indicatioons Beyond Wines and Spirits: A roadmap for better protection for Geographical Indications in the WTO/TRIPS Agreements, *The Journal of World Intellectual Property*, 2002,pp. 865-97 at 866

³ Jayashree Watal, “Intellectual Property Rights in the WTO and Developing Countries”(The Hague, 2001) pp.272-73.

⁴ Jayashree Watal, “Intellectual Property Rights in the WTO and Developing Countries”(The Hague, 2001) pp.272-73.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 prescribes various standards and formalities for registering the “Geographical Indications” such as hearing the parties, appeal mechanisms etc.

Research objectives:

To analyse the currently existing mechanism for registration of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999, To analyse the effectiveness of the currently existing mechanism for registration of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999 with special reference to the “East India Leather-GI” which is currently registered by “Trichy Tanners Association” and “Dindgul Tanners Association”, To analyse and find out effective rectifications (if needed) to the currently existing mechanisms currently existing mechanism for registration of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999 by comparing it with certain effective alternatives in other jurisdictions.

Research questions:

Whether registration mechanism of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999 is effective?

Whether the process of registering “East India Leather-GI” by “Trichy Tanners Association” and “Dindgul Tanners Association” indicates the drawbacks in the mechanism of registration of GI?

Whether there exists any better effective methods for GI registration in any other jurisdictions?

Research methodology:

This research is a doctrinal study which would be carried out with the help of primary data sources such as Charters, conventions, statutes and secondary data sources such as journal articles, interview from the GI applicants etc.

Analysis of the currently existing mechanism for registration of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999

Firstly, Geographical Indications and its importance needs to be understood in order to analyse the mechanisms for obtaining Geographical indications which would in turn strengthen the arguments to be made in subsequent chapters. Geographical Indications assumes or attains significance due to the following reasons:

- They are very much helpful in identifying the goods by referring to a particular locality or specific area.⁵
- It helps in setting a narrative in the minds of consumers that the particular good with GI, is originating from a particular region which brings with it the quality, reputation and the brand equity attached with that particular region.
- This quality, reputation and brand equity would help the manufacturers attached with the goods in promoting their product in a convenient and easier manner.⁶

Thus, it could be understood that Geographical Indications is very much important considering the aspect of trading that particular product. As trading and the commerce connected with the product is an important element, it makes the aspect of Geographical Indications and the process connected therewith significant.⁷

The process of obtaining geographical indications in India has been stipulated in The Geographical Indications of Goods (Registration and Protection) Act, 1999.

Firstly, the process of submitting the application for obtaining Geographical Indications would be initiated by the applicants by submitting an application in triplet, followed by details which are required for structure or locality which requires to be inspected. It is important to note that in case of large number of producers, are involved in the production and have applied for GI tag, then the application would be combined.

Following this, a preliminary examination of the application so submitted would be carried out by the examiner and the examination report would be submitted before the Registrar. In case of dissatisfaction in the hands of Registrar⁸, a show cause notice would be issued, for clarifying the discrepancies (if any)⁹. Once, the application is accepted, it would be published in the Geographical Indications Journal within 3 months of acceptance, which is the step to make the application public.¹⁰

⁵ Shashikant B Bagade and Deven B Metha, "Geographical Indications in India: Hitherto and Challenges", Research Journal of Pharmaceutical, Biological and Chemical Sciences, 2014.

⁶ VK Ahuja, "Intellectual Property Rights in India", (Lexis Nexis, 2nd Edn, 2015).

⁷ Cerkia Bramley, The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Researching in Developing Countries, The Economics of Intellectual Property

⁸ The Geographical Indications of Goods (Registration and Protection) Act, 1999, (Act 48 of 1999), §.3

⁹ Swati Sharma, "Geographical Indications in India: Current Scenario and their product distribution", *International Journal of Social Science and Economic Research*, 2019.

¹⁰ The Geographical Indications of Goods (Registration and Protection) Act, 1999, (Act 48 of 1999), §.13.

Now, based on this publication, any person can file opposition within three months¹¹ which would lead to hearing of the issue which would eventually decide by the Registrar. Any orders of the Registrar in this regard may be appealed before the IPAB- Intellectual Property Appellate Board.¹²

Now, the objections by both the general public and registrar would be on the grounds which are specified by the provisions of section 9 of the GI Act, 1999:¹³

- The use of GI tagged product shouldn't be likely to deceive or cause confusion; or
- The use of GI tagged product shouldn't be contrary to any law for the time being in force or it shouldn't contain scandalous or obscene matter
- The GI tagged product should not contain any matter likely to hurt the time being in force; religious susceptibilities of any class or section of the citizens of India, so that the peace and order of the country is protected.
- Products which are determined to be generic names or indications of goods and are, not feasible to be protected only in the country of origin.

Explanation 1 to section 9 says that for the purposes of this section, "generic names of indications" in relation to goods which although relates to the place of the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for an indication of the kind, nature, type of other property or characteristic of the goods.¹⁴

Explanation 2 further says that in determining whether the name has become generic, various factors shall be considered including the existing situation in the region or place in which the name originates and the areas in which the goods or products are consumed.

Thus, the mechanisms involved in obtaining the registration of Geographical Indications in India could be understood as a mechanical process guided by factors provided in GI Act, 1999. The drawbacks and the ambiguity in such process would be discussed in Chapter 3 of the research.

¹¹ The Geographical Indications of Goods (Registration and Protection) Act, 1999, (Act 48 of 1999), §.14

¹² The Geographical Indications of Goods (Registration and Protection) Act, 1999, (Act 48 of 1999), §.31

¹³ The Geographical Indications of Goods (Registration and Protection) Act, 1999, (Act 48 of 1999), s§.9

¹⁴ Patel, Rajiv M. Mr and ZALA, LAVJI N. Dr., "*Geographical Indications in India: Present scenario*", Library Philosophy and Practice (e-journal), 2021.

Still, the important finding from the analysis of Registration mechanism is that the State Government has no role to play in the registration mechanism of Geographical Indications in India.¹⁵

Analysis of effectiveness of the currently existing mechanism for registration of Geographical Indications by ways of The Geographical Indications of Goods (Registration and Protection) Act, 1999 with special reference to the “East India Leather-GI”

Now, based on the analysis of the existing mechanism for registering Geographical Indications in India, the intricacies and the procedural defaults could be understood by way of analysing the difficulties which were faced by applicants of GI-East India Leather.

The applicants for this particular Geographical Indications were Trichy Tanners Association and Dindigul Tanner’s Association, who emphasised that there exists a specific type of leather in the name “East India Leather” which was specific to the localities of Trichy and Dindigul.¹⁶ Their claim for GI was based on the following historical facts which were eventually accepted by the Registrar. The particular specimen which were added as specification is as follows:

“Colour characteristic light beige - Pale Golden yellow

Taste: Astringent

Tensile Strength: About 180 Kg / cm²

Shrinkage Temperature: About 85°C

Degree of Tonnage: 40Vo

Smell: Characteristic fragrance of vegetable Tanned Leathers Smell

Sound: Exclusive characteristic crackling sound if handled by hand.”

The Historical facts which were used by the applicants in order to obtain the Geographical Indications could be quoted as follows:

“Traveller adventures like Venetian diplomat, Marco Polo wrote about his finding in India one such saying is "They dress in this country (India) Great Numbers of skins of various Kinds, Goat Skins, Ox Skins, Buffalo and wild Ox skins British arrived in India in the early 17th century in order to get replenishments of army related leather accoutrements, Tanneries were set up based on European methods of vegetable Tanning. First Tannery was started by Thomas Parry in 1805 in Santhome Madras. In 1840 when a French Eurasian in Pondicherry, Charles de Susa introduced Techniques of Leather Tanning using myrobalan to prevent locally Tanned Leather getting

¹⁵ Government of India, Manual of Geographical Indications Practise and Procedure as modified on July 26, 2011.

¹⁶ <https://hidesign.com/blogs/news/the-story-of-our-east-indian-leathers>

discoloured, with some modification in process of wattle bark Tanning using myrobalan extract the famous E.I. Tanning Technology was created, that has endured till today almost unchanged. Records and by hearing from elders it is found that Tanneries were existing from 1865 as N.Mohamed Mian Rowther Co Tannery is more than 120 years old and a shed in present V.M. Tannery having Malabar Tile engraved with the year 1865 in it. J. J. N. Mohamed Mian Rowther and his son Kaja Mian Rowther of N.M. Tannery, V.S.M. Mohamed Ibrahim Rowther of V.S. Tannery in Trichy were Founder Vice President, Hono. Secretary and E.C. Member Respectively of Southern India Skin & Hide Merchants Association Madras Started on 25th October 1917 (Presently Aishtma). Hence the Vegetable Tanned Leather is in use from mid-19th century in Trichy.”¹⁷

Still, these historical facts were not accepted by certain Tanning Merchant's Association who claimed that the specific category of leather which has been applied for GI tag is not only restricted to the particular locality as mentioned by the applicants, rather it has been also put into use by Tanners located in Ambur, Gudiyatham, Walajah and Vaniambadi. Various Documents were produced by the persons objecting the grant of Geographical Indications such as

Extracts from book titled, “AISH'TMA” - 75 Years Platinum Jubilee Souvenir

Article titled, “An Overview of the Leather Industries in Tamil Nadu,” by VM Khaleellur Rahman (25.02.2010).¹⁸

Extract from book titled, “History and Evolution of the Leather Industries ”- Vellore District (2010)

An Article titled, “About the Leather Industries in Tamil Nadu (11.10.16).”¹⁹

Thus, these oppositions are still pending before the Registrar of Geographical indications, for a period of almost 6 years, due to the ambiguity in interpretation of the historical facts. The Registrar of Geographical Indications, have however sought the help of United Nation Industrial Development Organisation, which appointed a consultant Mr. V.Padmanand, for studying on the historical and dynamic growth of leather tanning industry for preparation of report.

Still, the mechanisms which were analysed earlier for registration of Geographical Indications in India has attained certain drawbacks which were clearly visible from the analysis of procedural

¹⁷ GI Office No. GIR/GI Appl No. 9512017-18143

¹⁸ VM Kaleelur Rahman, “An Overview of the Leather Industries in Tamil Nadu”, 2010

¹⁹ GI Office No. GIR/GI Appl No. 9512017-18143, Written Submissions in favour of applicant, GMS Law Associates.

difficulties involved in granting GI tag to East India Leather²⁰. Some of the drawbacks identified are as follows:

Firstly, the aspect of time lapse in deciding issues is the major concern which cumulates due to the absence of a concrete body or set of individuals in order to study the history of the particular product or process and its attachment to a particular locality, as in the present case the history of East India Leathers were interpreted by historians in different manner and there is no neutral body certifying the truth or the more reliable source.

The lapse of time is also because of allowing any persons to oppose the grant of Geographical Indications, without deciding on the admissibility or the interest of persons so opposing the grant of geographical indications.

Apart from this, the absence of intervention by the State Government or the Central Government in this process is another drawback as historical proof and records would be easily accessible to the State Machinery and State in the lower level, through its various levels, study the issue in hand considering its surplus resources and the importance of Geographical indications towards trade development which in turn is very much vital for the development of economy of the nation in whole.

Analysis of any other effective methods or proposals for GI registration in other foreign jurisdictions

Based on the findings of the previous chapter, it could be understood that the absence of an advisory board specializing on various sectors, and an initial scrutiny of the applicants is the major drawback in the existing mechanisms for obtaining Geographical Indications. These drawbacks could be rectified in an effective manner by having an independent advisory board consisting of experts from various sectors and the initial scrutiny of applications. These recommendations are present in the amended European Commission Proposal on “REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754”

²⁰ GI Application No. 95, Geographical Indications Journal, IP India, 2019.

The 27th proposal of this particular report emphasizes on the need for establishment of the advisory board having an autonomous power consisting of various scholars who are expertise in various fields in order to deal with issues relating to grant of GI. This Advisory board proposed is quoted as follows:

“27. It is necessary to establish an Advisory Board, which is a pool of experts, composed of representatives from Member States and the Commission. The purpose of the Advisory Board is to provide the necessary local knowledge and expertise concerning certain products and knowledge about the local circumstances that may influence the outcome of the procedures laid down in this Regulation. In order to support the Office on its assessment of individual applications at any stage of the examination, opposition, appeal or other procedures with specific technical knowledge, the Geographical Indications Division or the Boards of Appeal, at its own initiative or at the request of the Commission, should have the possibility to consult the Advisory Board. The consultation, when necessary, should also include a general opinion on assessing quality criteria, establishing reputation and renown, determining generic nature of a name, and assessing fair competition in commercial transactions and the risk of confusing consumers. The opinion of the Advisory Board should not be binding. The appointment procedure of the experts and the operation of the Advisory Board should be specified in the rules of procedure of the Advisory Board approved by the Management Board.”²¹

This particular proposal as given by the European Commission was adopted by Article 33²² of the regulation which was previously relied. The establishment of the Advisory Board would definitely reduce the time span in which the objections are heard and decided, which in turn would solve the issue identified in the procedure of obtaining GI tag for East India Leather.

Apart from this, Article 13 of the Regulations proposes the mechanism for hearing objections as follows:

*“That procedure shall ensure publication of the application and provide for a period of at least 60 days from the date of publication within which any person having **a legitimate interest** and established or resident on the territory of the Member State in charge of the national phase of the registration or of the Member States in which the product concerned originates (‘national*

²¹ European Commission, Regulation Of The European Parliament And Of The Council on geographical indication protection for craft and industrial products amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, 2022/0115 (COD), Proposal 27.

²² European Commission, Regulation Of The European Parliament And Of The Council on geographical indication protection for craft and industrial products amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, 2022/0115 (COD), art.33

opponent') may lodge an opposition to the application with the competent authority of the Member State in charge of the national phase of the registration."²³

Thus this provision ensures that once the preliminary examination is completed, only the persons with legitimate interest could be admitted to file oppositions and the applications by person who don't have a legitimate interest would be rejected in the first instance.

In order to identify the persons with legitimate interest, the competent authority by the report was given the autonomous power to frame rules by the same Article 13 of the regulation as follows:

*"The competent authority shall establish the detailed arrangements of the opposition procedure. Those detailed arrangements may include criteria for the admissibility of an opposition"*²⁴

Thus, it could be concluded that based on the European Commission recommendation on an advisory board and initial scrutiny of oppositions would solve the currently existing drawbacks in the process of obtaining Geographical Indications in India.

Conclusion

The mechanisms involved in obtaining the registration of Geographical Indications in India could be understood as a mechanical process guided by factors provided in GI Act, 1999 which contains certain drawbacks such as the absence of an advisory board specialising on various sectors, and an initial scrutiny of the applicants through analysis of the existing mechanism of obtaining GI tag in India with special emphasis on "East India Leather-GI Tag."

It is suggested that these drawbacks on the existing mechanism of obtaining GI tag could be rectified by implementing the recommendations proposed by way of implementing Article 33 and Article 13 of REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, which stresses on establishment of a separate autonomous body for providing opinion on certain external matters and initial scrutiny of the opposition with the respect to its legitimate interest.

²³ European Commission, Regulation Of The European Parliament And Of The Council on geographical indication protection for craft and industrial products amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, 2022/0115 (COD), art. 13

²⁴ European Commission, REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on geographical indication protection for craft and industrial products amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, 2022/0115 (COD), art. 13(2).

Still, another important findings of this research is the absence of intervention by the State Government or the Central Government in this process is another drawback as historical proof and records would be easily accessible to the State Machinery and State in the lower level, through its various levels, study the issue in hand considering its surplus resources and the importance of Geographical indications towards trade development which in turn is very much vital for the development of economy of the nation in whole.

This could be addressed by the constitution of the expertise committee, as proposed earlier. As the State Governments embodies the spirit of the favoured locality, it is also recommended that the States should be given adequate representation in the expert committee so proposed. This could be done by the statute enabling the expert committee so proposed to have state's representation. The Union if it feels that the presence of Intellectual Property within the ambit of Union list is the hindrance to this particular suggestion, then it could even be transferred to the concurrent list for the utmost benefit.
