



THE SUCCESS AND FAILURE OF GI TAG IN INDIA: A CRITICAL ANALYSIS OF THE WORKING OF GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

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ABSTRACT

Geographical Indications, the potential messiahs of farmers, weavers and local traders came to India with the Geographical Indications of Goods Act, 1999. Ever since, a lot of government entities have advocated for an increased number of registrations; providing a glimmer of hope to communities that things would change for good. This paper briefly introduces you to the concept of GIs and its history. Things have not been so black and white in this context for India. There are various problems faced by producers post the registration process and the GI remains somewhat symbolic in nature. The paper highlights how much of these GI-tagged products stand marred by those disadvantages which come with lack of quality control and scientific vigour. The Banarasi and Venkatagiri sarees, along with the Pashmina Silk face adversities even though they are registered as GIs. The issue of genericide is also discussed, emphasising on how we ought to have kept its scope narrower than it is in India. However, there also exists a silver lining. There are also some success stories, which although are less in number, provide deep insights into how we can improve the status quo. The Darjeeling tea and Chanderi saree are foremost examples. By showing our successes and failures as two parallels, this piece advocates for betterment through resolution of the different problems highlighted. Strict legal vigilance is required to inhibit the threats faced by these indigenous products and their producers.

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INTRODUCTION

A Geographical Indication (hereon mentioned as GI) is a type of intellectual property which identifies goods originating in a territory, region or locality, where a given quality, reputation and other characteristics are essentially attributable to their geographical origin. GI protects intangible economic assets such as the attributes and reputation of a product through market differentiation.³

In the marketplace, consumers often find it difficult to assess product quality without searches or experience and normally possess limited information about the valuable attributes of the product. The producers, however, possess full information about the product's attributes and quality relative to other goods in the market. This results in the 'natural chaos' of asymmetrical information. Such information asymmetry can negatively impact the market, or the purchasing choice of consumers, when it is exploited by certain producers who may be inclined to lower the quality of goods supplied, precisely because consumers lack complete information as is often the case. In such a scenario, GIs can help restore the symmetry in information by offering consumers additional information on the products' quality and reputation so that they are not adversely placed against producers. In his model on reputation, Shapiro suggested that reputation operates as a signalling device, which transmits information about a certain quality to the consumers, thereby reducing the consumer's search costs.⁴

It has also been validated that consumers are ready to shed more of their money on buying GI-tagged goods. As per surveys done by the United Nations Conference on Trade and Development (UNCTAD), consumers are ready to pay a premium of up to 10 to 15 percent for GI registered agricultural products. Similarly, consumers are ready to pay a premium of anywhere between 5 and 10 percent for non-agricultural products.⁵

The idea of GIs was rigorously pursued by the European Union in the form of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). By recognising IPRs as a crucial component for the development of mankind, it has paved the way for introduction of intellectual property through a systematic approach.⁶

³ Kundan Kishore, Geographical Indications in Horticulture: An Indian Perspective, JIPR Vol. 23 (4-5) 151, 159 (2018).

⁴ Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia-Pacific (Irene Calboli & Ng-Loy Wee Loon eds., 2017).

⁵ Id. at 337.

⁶ J Adithya Reddy & Siladitya Chatterjee, A Critique of the Indian Law and Approach towards Protection of
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The rationale for such protection was best given by Pascal Lamy, the then European Trade Commissioner:

‘they reinforce the economic fabric in farming communities through the presence of additional industries; they are a wealth multiplier, a collective right that belongs to communities; it guarantees that the use of a name will remain attached to a region and to the community that saw its birth; they encourage a more balanced distribution of added value between producers and distributors, and between countries of the North and the South, on the other; they stimulate quality and consequently strengthen competitiveness; and they contribute to the identity of the heritage of countries and regions.’⁷

Article 22.1 of the TRIPS Agreement defines GI as

‘Geographical indications are, for the purpose of this agreement, 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’⁸

Articles 22.2 and 23 of the agreement clearly reveal that it provides for two different levels of protection for GIs. Article 22.2 provides for the general standards of protection that must be available for all GIs against unfair and misleading business practices.⁹

Article 23 of the TRIPS Agreement provides additional protection to GIs only in cases of wines and spirits which means they should be protected even if there is no risk of misleading or unfair competition. The Article further imposes an obligation upon the member countries to legislate to prevent the use of GIs regarding wines or spirits, which do not originate in the place indicated.¹⁰

It was the granting of a patent of Basmati Rice to Rice Tec Inc. by the US Patent office in 1997 that caught India off-guard. Even though India was a signatory of the TRIPS Agreement, it was yet to enact any domestic legislation regarding GIs. India had to resort to

Geographical Indications with Specific Reference to Genericide, JIPR Vol. 12 (6) 553,573 (2007).

⁷ Reddy & Chatterjee, *supra* note 4, at 572.

⁸ Kishore, *supra* note 1, at 159.

⁹ *Id.*

¹⁰ *Id.* at 160.

challenging the patent in the US Court of Law which was an expensive procedure. Fortunately, India was successful, and Rice Tec was granted a narrower patent of only a few variants of Basmati.¹¹

India finally enacted the Geographical Indications of Goods (Registration & Protection) Act in 1999 (hereon referred as the Act). The GI Act was followed by the Geographical Indications of Goods (Registration and Protection) Rules of 2002. The Intellectual Property office in Chennai is in charge of the GI Registry of India. While some claim that the Act is largely based on European Regulations, others believe the Indian system to be sui generis one.

The definition of GI as adopted by India is 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.’¹²

Under the act, names that do not denote the name of a country or region or locality can still be considered for registration as long as they relate to a specific geographical area and are used in relation to goods originating from that region. This provides the leeway for extending protection, to other symbols, such as ‘Alphonso mangoes’ and ‘Basmati rice’.¹³

Unlike other intellectual property rights, any association of persons, producers, organisation or authority established by or under the law can apply for registration of a GI. It provides exclusive rights to the community/ authorised users for GI products and the GI is non-transferrable. GIs embody the collective reputation that consumers place on the association or group of producers. Unlike a patent, a GI can be continued to be protected indefinitely by renewing its registration (after ten years).¹⁴

¹¹ Id.

¹² The Geographical Indications of Goods (Registration and Protection) Act, 1999, § 2 (1) (e).

¹³ Calboli & Wee Loon, *supra*, 344.

¹⁴ Kishore, *supra* note 1, at 160.

Chapter VIII of the act is entitled as ‘Offences, Penalties and Procedure’. Therein, Section 38 mentions the elements necessary for constituting the offences of falsifying and falsely applying GIs. If a person (without the assent of the authorized user) makes a deceptively similar GI (of a genuine GI) or commits the alteration, addition or effacement of a genuine GI, he/she is said to have falsified a GI. If a person (without the assent of the authorized user) applies a GI or deceptively similar GI to goods or uses any such package with the intent of packing, filling or wrapping it with goods other than the genuine goods, he/she would be deemed to have falsely applied a GI. The burden of proving the assent of the proprietor lies on the accused. The above two acts, coupled with the possession of any die/block/machine/paint or other instrument for the purpose of such falsification demands penalty under Section 39 of the Act. The convict shall be subject to imprisonment (of not less than six months, which may extend to a period of three years) and fine (of not less than 50,000 rupees, which may extend to 2, 00,000 rupees).¹⁵

II. UNSUCCESSFUL FACTOR

The benefits of GI are abundant and if utilized properly, they can play a major role in boosting the economy of a region and spearheading the path for growth and development in the indigenous community. Especially for developing countries like India; GI acts like an insurance or protection, for the manufacturing happening in rural areas where the producers cannot invest in branding owing to a lack of marketing skills, infrastructure, legal awareness, etc. The GI tag plays a very important role in creating brand equity for these indigenous producers. Like it has in the case of tequila manufacturers in Tequila (Mexico). Tequila, the oldest GI outside Europe is quite an influential case, recognized as one of the most economically successful non-European GIs.¹⁶

However, it is imperative to understand that the Act has not passed with flying colours when it comes to its scrutiny. Its failures have been allegedly threesome. Some contend that its inability to narrow the scope of genericide as mentioned in Section 9 turns to be problematic. Others are unhappy with its policy implications, for it does not provide for strict post-

¹⁵ The Geographical Indications of Goods (Registration and Protection) Act, 1999.

¹⁶ Sarah Bowen & Ana Valenzuela Zapata, Geographical indications, terroir, and socioeconomic and ecological sustainability: The case of tequila, 25, J. Rural Stud. 108, 108 (2009).

production control as well as support. The third pertains to the lack of scientific vigour that ought not to be associated with the GI-tagging of agricultural products.

A. LACK OF POST- PRODUCTION CONTROL

It is pertinent to mention that the Indian law does provide for some measures guaranteeing quality control. Section 11 of the act prescribes the application for registration of a GI. Section 11(1) states that any association or organisation of producers or persons claiming to represent the interest of the producers can get the concerned goods registered by following a specific procedure. Section 11(2) lists the components of such an application. It must include a statement as to how the good is concerned with a specific territory, in respect of its inherent natural and human factors and production. Also, the respective class of goods, geographical map of the territory, particulars of its appearance and of the producers must be mentioned. Form GI-1 (which is mandated to be filled as a part of the procedure) suggests that the applicant group should identify an ‘Inspection Body’ which is responsible for quality control of the products within the GI.¹⁷

In fact, Rule 32 (1)(6)(g) of the Geographical Indications of Goods (Registration and Protection) Rules, 2002 specifically requires particulars of the inspection structure, if any, to regulate the use of GI in respect of the goods for which application is made in the definite territory, region or locality mentioned in the application.⁶³¹ Still, it is important to note that the non-existence of an inspection structure will ultimately not be considered as sufficient ground for demonstrating the inadequacy of an application to register a GI for the final granting of the GI under Indian law. It has been contended that the current legislative framework has no teeth as there is no statutory liability imposed on inspection bodies under the current Act in the event that they fail to conduct periodic verification of compliance with the product specifications of the associated GI. At present, if members of the collective group entitled to use the GI, or consumers, want to hold a member of the group accountable for not complying with the quality standards of the products, the only course of action available is under Section 27 of the act, which provides for the cancellation of registration of the non-complying member from the list of authorised GI producers.¹⁸ It says that the tribunal can cancel or vary the registration of a GI on the ground of any contravention or failure to

¹⁷ The Geographical Indications of Goods (Registration and Protection) Act, 1999.

¹⁸ Calboli & Wee Loon, supra, 345.

observe the condition entered on the register.¹⁹ Here, the tribunal means the Registrar or the Appellate Board.²⁰ Before making such an order, they are bound to give notice to the parties concerned, and provide them with an opportunity to be heard. If an order for rectification is passed by the Appellate Board, it shall direct such a notice to the Registrar, who shall rectify the register accordingly.²¹

However, the abovementioned mechanisms have proved to be inefficient in maintaining the quality of GI-tagged products. Lack of quality control, in turn, proves to be an incentive for ‘free riders’ within the said community.

Free-riders are those members within a collective group who decide to lower the quality of the products to compete with other GI producers, or producers of similar products outside the GI-denominated market, especially when consumers are agnostic or unaware about those distinctions.²²

The scenario could have been better if the act would have mandated the setting-up of inspection bodies. These inspection bodies are imperative in checking that the producers do not lower the goods’ quality. Also, to ensure that such necessitation does not allay poor communities from registering, the minimum infrastructural requirements should be kept low as long as the checking is conducted efficiently. Alternatively, the government can consider providing monetary or infrastructural aid to these communities, so that the sanctity of the GI is protected.

What must be pointed out is that even though inspection bodies have been set up for a lot of GI-tagged goods, they are still not able to prevent infringements. This is because the functioning of these bodies is not regulated, and they are not held answerable until and unless a complaint is made to the tribunal. It is pertinent that such legal provisions are included in the act which regularize the number of times inspections are to be carried out and set up a statutory body to which these bodies send timely reports. Any existing body may also be given this responsibility, provided it is well-equipped to do so and no conflict of interest is bound to ensue.

¹⁹ The Geographical Indications of Goods (Registration and Protection) Act, 1999, § 27.

²⁰ The Geographical Indications of Goods (Registration and Protection) Act, 1999, § 2 (1) (p).

²¹ The Geographical Indications of Goods (Registration and Protection) Act, 1999, § 27.

²² Calboli & Wee Loon, *supra*, 334.

It must also be noted that no discrimination should be made in terms of whether the inspection body/proprietor of the GI is a government body. Government departments, boards, academic institutions and entities supported by the government constitute more than half of the total proprietors.²³ Nevertheless, their activities in terms of scrutinizing must also be reviewed and regularized.

It is this very lack of post-production control that has made the producers and stakeholders involved with certain GIs to become helpless. Their expectations with the successful registrations proved to be futile. The famed Banarasi saree, the Venkatagiri saree and Pashmina silk prove to be apt examples.

THE BANARASI SAREE

The Banarasi saree has been quite a fashion statement among celebrities of late. But behind this veil of happiness and tradition, lies a starkly grim reality of the producers of this GI-tagged product.

There has been widespread poverty and malnutrition throughout the traditional weaver community. Such destitution and despondency among the weavers have forced them to commit suicide or has precipitated employment shifts, as evidenced by MGNREGA benefits. Most of the skilled workers have now turned to unskilled work.²⁴

Since the Mughal era, Banarasi sarees have enjoyed a distinguished reputation based on account of their fine silk, gold or silver brocade or zari, and opulent embroidery.²⁵ To protect this very authenticity, several organisations had filed an application for GI registration in 2007. They finally secured the GI in 2009.

The applicant group had identified five inspection bodies in their application to the GI registry. These inspection bodies are the Department of Handlooms (Government of Uttar Pradesh), the Development Commissioner (Handlooms), the Weavers' service centre, Master Weavers' Self-Regulation and the Textiles Committee.

At present, the Banarasi Saree operates with a multitude of certification marks such as the

²³ Soumya Vinayan, Geographical Indications in India: Issues and Challenges - An Overview, 20 J. WORLD INTELL. PROP. 122 (2017).

²⁴ See Krishna Dwivedi et al., Restore glory of the Banarasi sari (Dec. 21, 2012), <https://www.thehindubusinessline.com/opinion/Restore-glory-of-the-Banarasi-sari/article20543149.ece#>.

²⁵ Calboli & Wee Loon, supra, 347.

Silk mark and the Handloom mark. The Silk Mark Organisation of India (SMOI), the registered owner of the SILK mark, had introduced a high-security nano particle-embedded fusion label as a mark of purity for Banarasi silk to enable customers to verify the authenticity of the source of the silk . New ideas have emerged in the attempts to popularise Banarasi sarees as ‘green products’ to capture newer markets abroad.²⁶

However, none of the above seem to have helped the state of Banarasi saree’s collective reputation for it is said that the penetration of markets by inferior quality products is so deep that the ordinary Indian consumer can no longer be sure of the quality of the Banarasi saree he/she is buying.²⁷ Surat-made synthetic sarees and Chinese-made sarees are regularly off as Banarasi products in different markets across India. These ‘Surat-made Banarasi style sarees’ are produced at a fraction of the cost (due to the use of synthetic materials and polyester) in comparison to an ‘authentic’ Banarasi saree.²⁸

Cheap raw material imports have led to the sale of what are known as Kela sarees. These use banana tree resin to create threads which are then polished to give the look of a silver or gold thread. Moreover, there is a tenfold rise in the number of operating powerlooms in the district of Varanasi itself, although certain other studies put higher estimates.²⁹ This uncertainty raises transaction costs for the consumers and thus acts against the collective group of producers.

However, the weavers do not choose to move courts to enforce their rights but instead seek to compete with the Surat and China-made products by lowering their products’ quality itself. This is because they fear that they would be unable to bear the economic brunt that is likely to be associated with such protracted litigation. Instead, most of the producers seem to have no problem with lowering their products’ collective reputation.

The Banarasi saree has not been able to benefit from its GI tag because its inspection bodies have failed to stop its weavers from lowering the quality for their goods. This is why the effective functioning of these bodies must be regulated through legal provisions. Also, the producers do not file cases as they do not want to face the brunt of prolonged and exhausting litigation. Thus, it also becomes pertinent that disputes relating to GI are legally allowed to

²⁶ *Id.* at 346-347.

²⁷ *Id.* at 348.

²⁸ *Id.* at 334.

²⁹ Krishna Dwivedi et al., *supra* note 10.

settle through alternative means of dispute resolution, or separate mechanisms for resolving such complaints are set up.

THE VENKATAGIRI SAREE

The Venkatagiri Handloom Sarees Apex Society of Andhra Pradesh is the registration holder of the Venkatagiri Saree. This saree is woven in Venkatagiri, a small town which is situated about 60 kms away from Nellore in Andhra Pradesh. It is woven with fine 100's cotton yarn in both warp and weft. The saree is ornamented with zari in pallow and border. Jacquards are used to weave extra weft designs. Generally, soft and pastel colours are used in the saree. It is woven on a traditional fly shuttle pit loom. Its speciality lies in sizing of its warp and weft yarns.³⁰ It became the 18th Indian saree to get the GI tag.

Nonetheless, even the Venkatagiri saree could not save itself from facing the brunt of misuse and replication on account of the laxity of rules concerning quality control.

Power looms in Tamil Nadu are reported to have copied the designs of these sarees. The lack of support from government wings coupled with the weavers' lack of awareness of economic activity has proved to be disadvantageous.

It has been reported that the Department of Handicrafts under Ministry of Textiles, Government of India, provides support to these artisans and invites them to exhibitions and other commercial activities in the country. But the department is confined to issuing identity cards ignoring post-production support.³¹

While it is being stressed that the government needs to supply silk yarns at subsidised prices to shield weavers from prize volatility; it is also true that the weavers are not contemplating legal action against the copyists of their designs. This is because they feel consumers would be able to distinguish between handloom and powerloom products. The weavers also blame lack of proper publicity for their downfall.³²

³⁰ Ministry of Textiles, Government of India, A Compendium of Indian Handicrafts & Handlooms covered under Geographical Indications (GI) 159 (2017).

³¹ See PV Prasad, GI tag fails to help Venkatagiri Saree (Jun. 29, 2015, 10:14 AM), <https://www.thehansindia.com/posts/index/Andhra-Pradesh/2015-06-29/GI-tag-fails-to-help-Venkatagiri-sari/160174>.

³² Pathri Rajasekhar, Tag no help to weavers (Jun 14, 2015, 11:26 AM), <https://www.deccanchronicle.com/150614/nation-current-affairs/article/tag-no-help-weavers>.

It is probably the fear of protracted litigation that mitigates the producers from taking any legal action. Thus, the need for setting up or allowing alternative mechanisms or means of dispute resolution stands highlighted again.

PASHMINA SILK

The Pashmina Silk is yet another GI-tagged product which has been facing adversity from the powerloom industry imitating its designs and selling fake Pashmina products. A lot of such fake products can be sourced to Amritsar (located in Punjab).

The locals lament that this mechanisation is threatening their livelihood as well as bringing disrepute to handcrafted Kashmir pashmina.³³

This indigenous fabric is said to have been presented by Napoleon Bonaparte to his lady love, Josephine. The Kashmir Pashmina refers to the extremely soft woollen fabric with fibres spun out of ‘Capra Hircus’, also known as the Pashmina goat.

The Craft Development Institute (CDI) was responsible for facilitating the GI Registration of the Pashmina Silk. However, it only acted as a temporary registered proprietor since the GI was assigned to TAHFAUZ, an association that comprises a diverse group of Kashmir artisans. Unfortunately, when the application for the GI was filed, the identification of an inspection body was suspended until a later time.³⁴

A testing centre had been set up by the Union Commerce ministry at the Crafts Development Institute (CDI) for testing the purity and genuineness of handmade Pashmina. But local artisans allege that the centre exists only in name. According to Rouf Ahmad Qureshi, president of the Kashmir Pashmina Karigar Union (KPKU)-

“The establishment of a testing centre is basically useless as it was never started (became operational). The only thing there is a building with a bunch of fancy equipment inside but it was never put to work, no quality checking has ever taken place there, it’s a wastage of resources.”³⁵

³³ Press Trust of India, Kashmir’s famed pashmina threatened by cheap imitations (Jul. 28, 2015, 03:04 PM), <https://www.freepressjournal.in/india/kashmirs-famed-pashmina-threatened-by-cheap-imitations>.

³⁴ Calboli & Wee Loon, *supra*, 350.

³⁵ Press Trust of India, *supra* note 32.

The Pashmina Testing and Quality Certification Centre (PTQCC) was sanctioned under the Assistance to State for Infrastructure Development of Exports (ASIDE) scheme by the Union Commerce Ministry and Rs. 4.40 crore was provided for its establishment. The authorities claim that they have fined a lot of traders for selling fake Pashmina products.³⁶ Procedurally, authentic Kashmiri Pashmina shawls will receive the Kashmir Pashmina Mark (GI) by the PTQCC after verification of the weaving technology, the spinning method and the genuineness of the raw materials. In order to ensure greater authenticity, a microchip known as the Secure Fusion Authentic Label (SFAL) would be attached to the product with a unique number that could be read under infrared light. To date, the effectiveness of the PTQCC in guaranteeing the quality of the GI-denominated products still needs to be proven, as the system is in a nascent stage.³⁷

In spite of the above provisions, the artisans claim no relief and allege that the traders are mixing some other fabric to it so that it could survive powerloom vibrations.³⁸

The Pashmina Silk, too, has become a victim of the non-regularisation of inspection bodies. It is because there is no legal provision that governs how inspection bodies function which leads to the denigration of the quality of such products and fails to incentivize the artisans.

B. LACK OF SCIENTIFIC VIGOUR

It has been contended that there is a difference between ‘uniqueness’ of a product and product specialty. Product specialty is the outcome of geographical factors, while uniqueness may be the outcome of geographical and other non-geographical factors in combination or exclusively due to the latter. A study of registered GIs reveals the lack of conceptual understanding and scientific rigour in defining uniqueness of the product. In the case of ‘Allahabad Surkha’, the statement in GI Journal No. 19 ‘flesh whitish sometimes pink’ may confuse customers. In case of ‘Naga mircha’, the statement ‘it is known as the hottest chilli on earth’ is not a scientifically established truth. Lot of research initiatives are required to establish the uniqueness of the agricultural products. Both specialty and uniqueness must be given equal emphasis because when consumers are aware about specialty, they lay more emphasis on uniqueness as a decision making criterion for purchase. However, this information is said to be completely missing in most of the registered agricultural GIs in the

³⁶ Id.

³⁷ Calboli & Wee Loon, *supra*, 351.

³⁸ Press Trust of India, *supra* note 32.

country.³⁹

C. THE ISSUE OF GENERICIDE

It has been submitted that even though we were under the obligation to enact a domestic legislation with regard to GIs, we ought not to have included such provisions blindly which may inadvertently affect us. Such a provision is Section 9 of the Act which tackles with the issue of genericide. Section 9 provides a wide ambit to take into consideration whether a good has become generic or not. This is because we not only consider the ‘country of origin’ (as obligated), but also the ‘areas of consumption’ (which is a TRIPS-plus obligation).

The explanation to Section 9 of the Act states that:

‘In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods’.⁴⁰

It has been contended that TRIPS required us to only consider the country of origin; and its predecessor, the Lisbon Agreement, was equally narrow in its consumption.

It may well be that we have walked into a trap where we find that all our traditional agricultural products and food stuffs, which have gained considerable reputation in the market, have become generic names. This is because when we consider areas other than the place of origin, we are likely to find that the producers in these areas have also started producing them on a large scale and selling them to consumers using the original geographical name/ indication- a practice which is not prohibited by TRIPS so long as the consumers are not misled. This has already happened in the case of Basmati Rice, where Ricetec has claimed that the term ‘Basmati’ has fallen into the public domain and is a generic name in North America. Consumers, in turn, may not understand the significance of RiceTec selling them rice named ‘Basmati’ and may well consider the term to be a common or generic name.⁴¹

SUCCESS STORIES

³⁹ See SK Soam & M Hussain, Commercialization of Indigenous Health Drinks as Geographical Indications, JIPR Vol. 16(2) 69, 173-174 (2011).

⁴⁰ The Geographical Indications of Goods (Registration and Protection) Act, 1999, § 9.

⁴¹ Reddy & Chatterjee, supra note 4, at 576.

Whatsoever its limitations, stating that the act has benefitted no commodity/product would be nothing less than a blatant lie.

Taking the example of two major case studies in India, which have ushered in prosperity for both the indigenous workers and the exporters, thus carving a niche for themselves in the market, we seek to analyse some major factors that led these to become the success stories which they are today.

DARJEELING TEA

D. AN INTRODUCTION

Darjeeling tea, with its floral aroma and a distinctive flavour has won the patronage of many consumers, across the globe. Often termed as the Champagne of teas, its connoisseurs have appreciated it for centuries.

Tea cultivation in these steep, hilly areas have brought economic growth and well-being through improvement in the local inhabitants' employment situation. Another, important social aspect to be noted here is that most employees on Darjeeling's tea estates are women. Over 70% of the total produce is exported abroad.⁴² The major portion of the annual production of Darjeeling tea is exported, the key buyers being Japan, Russia, the United States, and the United Kingdom and other European Union (EU) countries such as France, Germany and the Netherlands.⁴³

THREATS TO THE ORIGINAL DARJEELING TEA

An adequate legal protection is essential for the protecting the legal rights of legitimate holders of Darjeeling tea, as a safeguard from malpractices carried out by various commercial entities, both in the domestic and international market. It had been observed on a frequent basis that tea produced in countries like Kenya, Sri Lanka or Nepal had often been passed off around the world as 'Darjeeling tea'. Darjeeling Tea's reputation was at stake as tea produced elsewhere would be sold under the Darjeeling brand, causing damage to consumers and denying the premium price to Darjeeling tea industry.⁴⁴

⁴² Bowen & Zapata, *supra* note 14.

⁴³ S. C. Srivastava, Protecting the Geographical Indication for Darjeeling Tea, World Trade Organization (2005) https://www.wto.org/english/res_e/booksp_e/casestudies_e/casestudies_e.htm.

⁴⁴ Dr. Sudhir Ravindran & Ms. Arya Mathew, The Protection of Geographical Indication in India – Case Study on 'Darjeeling Tea' IPRI 2009 Report. 58, 61 (2009).

LEGAL PROTECTION PURSUED FROM AN EARLY STAGE

The earliest step taken by the Tea Board of India towards protection of the ‘Darjeeling’ brand was undertaken in 1983, when the ‘Darjeeling’ logo was created. The Tea Board obtained home protection for the Darjeeling logo as a certification trade mark under the Indian Trade and Merchandise Marks Act 1958 (now the Trade Marks Act, 1999). In 1986, the logo was registered as a trademark in several other countries like the UK, the USA, Canada, Japan, Egypt, and under the Madrid Agreement covering Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia.⁴⁵

In the absence of a separate law dedicated exclusively to GIs in India during that time, the word ‘Darjeeling’ was also registered under the Trade and Merchandise Marks Act 1958 in class 30 in the name of Tea Board in 1998.⁴⁶

When the Act in India was enacted in September 2003, the Tea Board applied for GI protection of ‘Darjeeling’ in October 2003. In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a GI.⁴⁷

STRINGENT LEGAL VIGILANCE AND ACTION TAKEN AGAINST VIOLATIONS ACROSS THE WORLD

As early as 1998, Tea Board has hired the services of Compumark, an international Watch Agency that keeps the organization informed of all attempts to register the word “Darjeeling” worldwide. Ever since the appointment of the watch agency, several instances of attempted registrations have been found. Some have been challenged through oppositions and cancellations and some through negotiations.⁴⁸ Tea Board of India spends about Rs. 9.4 million to pursue legal protection, employing international watch agencies, and bearing its expenses to combat infringements around the world.⁴⁹

An example illustrating the same would be the case of BULGARI, Switzerland which agreed to withdraw the legend ‘Darjeeling Tea fragrance for men’ pursuant to legal notice and

⁴⁵ Kaushik Basu, Darjeeling Tea -A Geographical Indication (GI), World Intellectual Property Organization, https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_11.pdf (last visited May 27, 2020).

⁴⁶ Ravindran & Mathew, *supra* note 43.

⁴⁷ *Id.*

⁴⁸ Parag Shil & Suchismita Das, Indian Tea Industry In The Context Of Intellectual Property Right (Ipr) And Geographical Indication (GI), APJMMR, Vol.1 No. 2, October 2012 IRJC.

⁴⁹ Vinayan, *supra*, 128.

negotiations. The Tea Board has fought almost 15 cases against infringement and misuse of the word Darjeeling Tea worldwide in countries like Russia, USA, Japan, France, Germany, Israel, Norway and Sri Lanka etc.⁵⁰

Tea Board had filed a case against Republic of Tea (RoT), a US company, which was trying to register Darjeeling tea in the US under the name Darjeeling Nouveau, seeking rejection of the same. Tea Board had filed the case in 2000 before the Trademark Trial & Appeal Board (TTAB), seeking rejection of the trademark application. Tea Board officials said TTAB not only upheld Tea Board's claim, but also denied RoT's counterclaim for cancellation of the Darjeeling certification mark on grounds of genericness.⁵¹

In France, Jean-Luc Dusong had registered a mark consisting of the name Darjeeling, with the logo of a teapot in respect of goods and services such as artwork, engravings, books, journals, etc. Tea Board moved the French court in 2003 to protect the Darjeeling brand under the Act. Initially, the Court of First Instance in Paris rejected the claim on the grounds of dissimilarity and held that Mr Dusong's mark was not deceptive. Finally, the Court of Appeal reversed this ruling and upheld Tea Board's claim. It observed that by adopting the name Darjeeling along with the device of a teapot, Mr Dusong had attempted to benefit from the renown and economic value associated with the GI.⁵²

STRICT QUALITY CONTROL IMPLEMENTED

Since February 2000, a vital step was taken, wherein the statutorily compulsory system of certifying the authenticity of the Darjeeling tea being exported would be implemented which was put in place under the provisions of a Federal Indian Act known as the Tea Act, 1953. The system envisages all dealers in Darjeeling tea to compulsorily enter into a License Agreement with the Tea Board India against an annual License Fee. The terms and conditions included were that the licensees would furnish information relating to production of Darjeeling tea, manufacture and sale of such tea through auction or otherwise. This enables the tea board to compute and compile the total volume of Darjeeling tea produced and sold

⁵⁰ Ravindran & Mathew, *supra* note 43.

⁵¹ Sutanuka Ghosal, Brand Darjeeling is up, running now, The Economic Times (Jan 10, 2007). <https://economictimes.indiatimes.com/industry/cons-products/food/brand-darjeeling-is-up-running-now/articleshow/1115909.cms?from=mdr>

⁵² *Id.*

for the same period. Blending with teas of other origin is strictly prohibited.⁵³

E. CHANDERI SAREE

INTRODUCTION

Chanderi is a town located near Betwa river in District Ashok Nagar (Madhya Pradesh), India. With a population of about 30,000, approximately 10,000 to 12,000 are estimated to be involved in weaving of chanderi sarees/ fabrics. There are 4,000 looms functioning here, thereby leading to the development of a business worth Rs 65 crore every year, as per a 2012 industry report.⁵⁴

The uniqueness of Chanderi lies in its fabric- it is transparent, shiny and has a sheer texture; a close weaving style is involved, and it has individual woven booties – single and double pick (motifs). The most popular and traditional booti is Asharfi Booti, which is in shape of Asharfi (woven in gold and silver zari.). Sarees are considered to be the primary products, while their other upcoming products include dupattas, dress material, home furnishing etc.⁵⁵

THREATS TO THE LEGITIMACY OF CHANDERI SAREE AND ITS WEAVERS

The genuine Chanderi products, which were handwoven by skilful weavers of Chanderi faced severe competition from fake powerloom products made in Varanasi and Surat, which could be sold at a much cheaper rate. They are either woven with zari or woven plain and sent to Jaipur for block printing and are not involved with Chanderi or its weavers.⁵⁶

The finished products look so similar to the original one that it is difficult to make out any difference between the imitation powerloom and the original handloom ones. Thus, there was a decline in demand, leading to loss of jobs and income for the indigenous weavers. Another outcome of this venture is the migration of a new generation to urban areas thereby posing a threat to its survival.

There was a time, when the town's weavers were completely dependent on the exploitative

⁵³ Basu, supra note 44.

⁵⁴ Malini Nair, Cloning the Chanderi, Times of India (June 21, 2015).
<https://timesofindia.indiatimes.com/topic/Cloning-the-Chanderi/news>

⁵⁵ Dr.Ruppel W Sharma & Ms. Shraddha Kulhari, Marketing of GI Products: Unlocking their Commercial Potential, Centre for WTO Studies IIFT 10, 52 (October, 2015).

⁵⁶ Id.at 54.

traders, to bring their products to the market, earning a meagre amount of Rs 100 per saree, a fraction of its sale price.⁵⁷ The big traders and the Master Weavers would have a profitable trade and as per some estimates; they could make up to 200% profit on certain sarees. The small weavers, in spite of their high skill base however, continued to remain poor and ill-paid and were largely living at the bare subsistence level. There was no association representing the weavers' interests, which made them even more vulnerable.⁵⁸

SOCIAL UPLIFTMENT LEADING TO LEGAL EMPOWERMENT

In 2003, the United Nations Industrial Development Organization (UNIDO), in collaboration with the state government of Madhya Pradesh, launched a three-year-long Cluster Development Programme in Chanderi with poverty alleviation as the prime objective. A major issue was the lack of voice and control by the poor weavers; thus a strategy was formulated to create a collective forum owned and controlled by them and to empower it economically and socially to address poverty. Hence, the initial focus was on organizing small, homogeneous networks of relatively independent weavers in the form of Self-Help Groups (SHG). In the initial phase, 60 SHGs were formed. Major SHGs include Bunkar Vikas Sangh and Tana Bana.⁵⁹

The Chanderi Development Foundation (CDF) was created as the representative body for the whole Chanderi cluster and as a platform for the overall development of the cluster. Chanderi was registered as a GI in 2005 by the Chanderi Development Foundation.⁶⁰

LEGAL VIGILANCE AND GI AWARENESS

The enforcement strategies adopted by "Chanderi Fabric", another famous textiles GI of India, include a survey of selling points and supply chains of duplicate "Chanderi" in Indian metros; intimating dealers regarding legal implications of such misuses and the potential penalties that may ensue; and filing of cases against infringement, among others.⁶¹

PRODUCT PROMOTION AND MARKETING TAKEN UP POST GI REGISTRATION

A GI logo was developed and will be registered soon. GI tagged labels were distributed freely

⁵⁷ Nair, *supra* note 53.

⁵⁸ Kasturi Das, Prospects and Challenges of Geographical Indications in India, *The Journal of World Intellectual Property* 13, 148 – 201 (2010).

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

to master weavers, traders and were encouraged to use this logo in their bill books, communication, etc. Letters were sent to retailers and buyers informing them about the GI. Financial support was provided to Chanderi weavers for participation in national and international exhibitions. Sensitization workshops for GI were conducted.⁶²

A website was set up for awareness of Chanderi products and the GI (www.Chanderigi.com). An E-commerce portal, chanderiyaan.chanderi.org, was launched in 2013, as a joint project of Digital Empowerment Foundation (DEF) in collaboration with Media Labs Asia. It also has a strong presence on social media websites like Facebook and Twitter.⁶³

In the Commonwealth Games, 2010 held at Delhi, winners were gifted with an 'angavastram'. The angavastram had been crafted from Chanderi fabric. The CWG Organising Committee ordered 1,375 stoles of Chanderi Fabric for athletes and another 10,000 as merchandise on the initiative of the Textiles Ministry resulting in an order value worth Rs. 50 lakhs. This resulted in big volumes and revenue for the weavers and more importantly gave significant publicity for the Chanderi handlooms.⁶⁴ In addition, Chanderi has seen visits from celebrities coming there to shoot, promote their films that has produced widespread publicity and endorsement of the Chanderi Saree.⁶⁵

The Chanderi fabric has also been promoted through rural tourism, especially in the case of resorts located in the village of Pranpur, which won the National award for rural tourism (Outlook Traveller June 2012). The buildings display the skill of Pranpur craftsmen depicted in the Chanderi fabric and visitors even have the option of visiting the weavers.⁶⁶

TECHNOLOGICAL, ECONOMICAL & SOCIAL BENEFITS REAPED

An increased technological support has led to upgradation of looms, apart from traditional designs, new contemporary designs too are being made. The Chanderi Weavers' ICT resource centre was inaugurated to train the weavers and assist those who operate without looms. Training has been provided by major institutions like NIFT, NID, and IIT. Other facilities being provided include a digital library, digitization of designs, museum, handloom

⁶² Sharma &Kulhari, supra note 54, at 54-55.

⁶³ Id at 56.

⁶⁴ Id at 57.

⁶⁵ Id.

⁶⁶ Id at 58.

park, Wi-Fi facilities etc. Increased interaction with customers have made the weavers market savvy.⁶⁷

The economic benefits include the rapid increase in the turnover which has increased from an estimated Rs 15-20 crore in 2003 to Rs 60+ crore in 2012. There was an increase in the number of looms and the weaver wages, who now managed to get a salary between Rs 12,000 to 16,000 per month. The overall standard of living amongst the weavers' families have improved, now pucca houses are being built, and an increasing number of children are being sent to school.⁶⁸

KEY TAKEAWAYS AND FURTHER RECOMMENDATIONS

As observed in the case of Venkatagiri Saree, the government needs to enforce post production control even after the product gets GI registered. Another viable solution could be attaching a microchip to the authentic product; an idea conceived in the case of the Pashmina silk, but with little implementation to be seen.

Adulteration, poor value-based pricing, consumers getting deceived from counterfeit products would've led to massive damage to the reputation of Darjeeling Tea. An important observation which is quite laudable is that much before the advent of GI in a country like India, where Intellectual Property Rights remained a shrouded concept in the 1980s, Tea Board of India acted way ahead of its time by creating a logo, registering the same in various parts of the world. Needless to say, this was a step in the right direction and has paid off really well.

A successful implementation of GI tag has resulted in successful protection of the producer's commercial and legal interests, thus encouraging the consumers to perceive Darjeeling Tea as a luxury tea, which would justifiably derive a premium and ensure economic prosperity for all stakeholders.

If other producers of GI Tagged products also employ the services of modern technology (like Compumark) it will enable them to keep a strict legal vigilance for counterfeit products and prevent them from flooding the market. The producers should also take the efforts like the producers of Darjeeling Tea to get their IPR Tags registered in other countries as well to

⁶⁷ *Id* at 62.

⁶⁸ *Id* at 69.

ensure an effective protection.

In the case of Chanderi fabric, it is seen that in the initial stages; effective intervention by the government, with the support received from UNIDO, played a major role in establishing SHGs, and in later stages, a more formal association. What initially began as a task of poverty alleviation, resulted in a successful endeavour, with the weavers now having a more organized representative body. An important point to be noted is that the efforts of the Chanderi Development Foundation (CDF), led to the GI Registration. Thus, it can be easily inferred that once the workers got together and formed a structured collective, they themselves took the appropriate legal step in the right direction.

Moreover, the costs involved in the design, control and supervision of brands are immense. The inspection and supervision system for quality control and infringement is either non-existent or non-functioning in the case of most GI Tagged products. Most producers of GI tagged products are in the unorganised sector and some levels of hand holding in terms of funding for awareness, brand building and involvement of stakeholders will go a long way in strengthening the market networks in the initial phases.⁶⁹

Aside from providing infrastructural support at the initial level, the Government should also facilitate the creation of independent statutory bodies, responsible for inspections and quality control. As observed in the unsuccessful case studies, there exist multiple Governmental inspection bodies which furthers the confusion leading to lack of accountability and dereliction of duties. It is suggested that a single independent statutory body appointed by a body of eminent persons be created, which would be responsible for balancing the interests of the authentic GI tagged product producers (mostly belonging to the unorganised sector), and the quality conscious consumers ranging from the domestic to international level.

Another remarkably interesting point in the Chanderi Case Study, is that even after the GI Registration, the CDF continued playing an active role in the marketing and promotion of their product. Initiatives, like establishing e-commerce website, being active on social media platforms, collaborating with digital platforms have all led to the product being noticed globally, so much so that they were used widely as mementos in the Commonwealth Games.

It is said that fortune favours the bold, and fortune did smile upon Chanderi with the

⁶⁹ Vinayan, *supra* note 22, at 128-129.

widespread publicity it received from the 2010 Commonwealth Games as well as celebrity visits to the town. This led to skyrocketing demands, making Chanderi known domestically as one of India's reputable heritage handlooms, and building an exotic, exquisite brand for itself on the global front.

Rural tourism of Pranpur has been used in an effective manner to showcase the Chanderi fabric, thereby resulting in its promotion. The Chanderi GI success story is quite a wholesome one, as it has not only led to development of the economy but has led to betterment of the society as a whole. With an increase in the standards of living, and the weavers earning a much higher amount than before, the society has progressed. While the Case Study of Chanderi Fabric is one of the few cases, which has turned out to be really well, post GI registration, it can serve as a galvanizer for other GI Registered products, and the societies behind them.

CONCLUSION

The journey of GI in India has been an asymmetrical one. Two broad ends of the spectrum are seen where on one hand; pan India popular GI tagged products including the likes of Banarasi Saree, Venkatagiri Saree and the exquisite Pashmina Silk fail to compete with their fake counterparts flooding the market as a result of which the indigenous producers, skilled weavers and traditional artisans behind these much sought after products continue to get exploited and denied of their due recognition and economic prosperity. Various other factors too have acted as substantial hindrances. On the other end of the spectrum GI tagged products like Darjeeling Tea and Chanderi Saree have proven to be breakthrough success stories, boosting the local economy to new levels, ushering in global recognition, an exotic reputation as well as economic prosperity. The importance of GI in India is extremely high, with a treasure trove of GIs in agricultural and non-agricultural sectors. The Act is at an initial stage as its awareness among producers and traders is really low in terms of their social and economic benefits and significance.⁷⁰

⁷⁰ Vinayan, supra note 22, at 128-129.