

SIGNIFICANCE OF GI TAG FOR TRIBES IN INDIA

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Chapter ID: NSP/ICAAR-2023/A-37

ABSTRACT

Geographical Indication (GI) tag is a unique type of intellectual property where a legal recognition is given to products originating in a specific geographical region. A GI tag refers to the quality and speciality of the product with respect to its place of origin. Producers of geographical regions can apply for a GI tag for food products, agricultural products, wine and spirit drinks, handicrafts, textiles, etc.

Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property and Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement specify about Geographical Indication as a part of Intellectual Property. There are guidelines issued by the Department for Promotion of Industry and Internal Trade regarding the requirement and process of registration of a Geographical Indication.

The importance and current status of Geographical Indication (GI) for tribes in India has been emphasised in this research paper. Furthermore, this research paper also looks into challenges faced by the tribes in getting the GI tags registered. This is to highlight the importance of registering the products with their Geographical Identification tags to preserve their authenticity and originality.

Keywords: Intellectual Property, Geographical Indication

I. INTRODUCTION

India is one of the oldest civilisations having rich tradition and culture. It is also known for its variety of spices, foods and handicrafts. The uniqueness and the authenticity of the products related to their geographical identity plays a very important role in trade and business. As India is progressing, the role of the tribal people in the GI related trade is getting more prominent. The producers are realising the value and importance of protecting the originality and uniqueness of their products. The Geographical Indication provides legal protection to the products and upholds its value.

II. GI IN INDIA

Art. 22.1 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement defines GI as "indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".²

The Geographical Indications (GI) of Goods (Regulation and Protection) Act³ was passed in the 1999 in India. Section 2 (e) of the act defines GI as "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.

Presently there are 370 registered GI tags in India. Among them, the popular GI tags registered for non-agricultural are Mysore Silk (Karnataka), Solapur Chaddar (Maharashtra), Kancheepuram Silk (Tamil Nadu), Warli painting (Maharashtra), Blue Pottery (Rajasthan), Basmati (India), etc. Some of the popular agricultural and food GI tags are Nashik Valley Wine (Maharashtra), Kashmir Saffron (Kashmir), Mahabaleshwar Strawberry (Maharashtra), Darjeeling Tea (West Bengal), etc. The first product to get a GI tag in India was Darjeeling Tea in 2004-05.

III. PROCESS OF GI TAGGING IN INDIA

Section 11 of the Act lays down the procedure of filing an application for registration of a GI. The process of same has been specified by the Department for Promotion of Industry and Internal Trade (Office of the Controller General of Patents, Design and Trademarks).⁴

1. The application for registering a GI product needs to be made by the applicant or a registered agent. The application should specify the details of the special characteristics and how those standards are maintained. Three certified copies of the map indicating the region relating to the GI need to be attached. The application is to be mailed to the Geographical Indications Registry.
2. The application will be scrutinized by the examiner. The applicant should provide a remedy to the same within one month of communication. Subsequently, an examination report will be issued.
3. If the registrar finds any issues, he shall communicate the same to the applicant which must be responded by the applicant within two months. The applicant can request to make an appeal within a month.
4. Every application will be registered in the Geographical Indications Journal⁵ within three months of acceptance.
5. Any person having an objection can file a notice of opposition within three months of publication. The registrar shall send a copy of notice to the appellant to which the appellant has to present a counter statement within two months. Failure to reply by the applicant will result in abandonment of the application. Once the applicant has submitted a counter statement, the registrar shall serve the copy of same to the person having an objection. Thereafter, both sides will, by the way of affidavit and supporting documents, furnish their evidence. After that, a date of hearing will be fixed.
6. Once the application has been accepted by the registrar, the geographical indication will be registered and a certificate with a seal of Geographical indications registry will be issued to the applicant.

²Art. 22.1 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS)

https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#geographical

³ <https://legislative.gov.in/sites/default/files/A1999-48.pdf>

⁴ <https://ipindia.gov.in/the-registration-process-gi.htm>

IV. ADVANTAGES OF GI TAGGING

A controversy arose in 1997 when an American company 'RiceTec' applied for a patent of its rice varieties, 'Texmati' and 'Kasmati'. Soon after that, Indian NGOs, through the Indian Government, began filing appeals to the TRIPS, accusing RiceTec of 'Biopiracy'.⁶ The company had to eventually withdraw and hence, Indian producers got to know about GI and its significance in the world of trade in intellectual property.

Thus, the advantages of GI tagging are-

- A legal status and protection to the products.
- To avoid the misrepresentation of the products by other manufacturers.
- Indicates the origin, special features, and nature of the product.
- For marketing and branding of the products.
- Legal status from WTO and its nations.
- Provides protection and recognition of economic livelihoods.

V. SIGNIFICANCE OF GI TAGGING FOR TRIBES

The Tribal Population in India make around 8.6% of India's total population. 57% of the Tribal people are self-employed artisans or cultivators. Hence, GI tags play a critical role in preserving as well as boosting the small-scale businesses of the tribes and rural agriculturists. Among the 370 registered GI products, 50 are tribal products.⁷

The empowerment of Scheduled Tribes (ST), who are largely economically and socially backward, has assumed special significance in the economic growth of the country. GI tagging can help them advertise their originality and special features and promote rural commercial ventures. However, there are several hindrances which can come in their way of exploitation of potential benefits.

VI. CHALLENGES

- The 1991 Census shows that only around 30% of tribes are literate. The literacy rate according to Census 2011 is 73% but for STs is 59% only. Its effects can show up during the process of GI tagging. They lack the knowledge to understand the significance and need of GI tagging and face problems throughout the process.
- After the rapid industrialisation in India, the lands and natural resources of the tribal were legally transferred to and occupied by outsiders and state. The tribes lost control over the land and resources, making their occupations even more challenging.⁸
- It is also seen that the GI products are priced on a higher side and at times they don't live up to their expectations due to several reasons. The substandard quality of the products may affect the reputation of the brand-building exercise in GIs. Taking into consideration the factors and collective action problems, arriving at an agreement for the quality standards can be a difficult task in itself.
- The invention and popularisation of machines and industries have affected the tribal producers negatively. Identical products can be imitated at a fraction of cost with the use of machines.⁹

⁵ <https://search.ipindia.gov.in/DynamicUtility/Journal/GIR>

⁶ 4 (2) IJLMH Page 2453 - 2461 (2021) <http://doi.org/10.1732/IJLMH.26536>

⁷ <https://ipindia.gov.in/registered-gis.htm>

⁸ International Journal of Current Research Vol. 9, Issue, 07, pp.53719-53723, July, 2017

⁹ <https://in.apparelresources.com/business-news/sourcing/counterfeit-gi-registered-handloom-products-play-spoilsport-on-textile-industry/>

- Also, the producers are dependent on intermediaries for access to markets. The actual benefits arising from increased brand visibility may be exploited by the intermediaries rather than the actual producers. This further includes lack of access to internet and technology for promotion of products on e-marketplace. The traditional institutions of the tribes are coming into conflict with the modern institutions which impacts their cultural identity. It can cause erosion of their identity in certain areas.
- Lack of legal aid is available before and after the registration of the GI to the tribes. Once the GI tag is registered, the legal rights over it have to be enforced and defended. This entails daunting task of monitoring of the markets to keep a check and determine whether there has been an infringement of rights. There can also emerge disputes with other producers proving if their products are infringing the GI or not. Often the cases may end up being filed in the courts involving huge expenses.
- The rural and tribal areas lack adequate banking facilities. It often leaves them handicapped in terms of their business. In addition to this, the tribes often rely on moneylenders which buries them further in debts.

VII. CASE STUDY

Tea is one of the most popular products in Indian as well as international markets. India produces around 31 % of the world's tea. Among the most popular varieties of tea is Darjeeling tea. The tea was grown in Darjeeling forest by Lepcha tribe. A system of certifying the authenticity was incorporated in Tea Act, 1953¹⁰ on February, 2000 which made it compulsory for all the dealers of Darjeeling tea to enter into a license agreement to protect its quality. The Tea Board¹¹ played a role to establish Darjeeling Tea as a Geographical Indication in the international arena.¹² It works with the Darjeeling Planters' Association¹³ to monitor and defend the word and logo 'Darjeeling'.

(A) Certification Trademark Registration

The Tea Board of India registered the 'Darjeeling logo' and also the word 'Darjeeling' as certification trade marks (CTMs) under the Trade and Merchandise Marks Act, 1958 (now the Trade Marks Act, 1999)¹⁴ to provide legal protection in India.



(B) GI registration

The Tea Board of India has applied to the registrar for the registration of the words 'Darjeeling' and 'Darjeeling logo' under the Geographical Indications of Goods (Registration and Protection) Act, 1999.¹⁵ In the past few years, the Tea Board has fought more than 15 cases against infringement of 'Darjeeling' in the last four years including Sri Lanka, Nepal and Kenya.

(C) Republic of Tea, USA (2000 - 2006)¹⁶

ROT failed to prove in the court that consumers view DARJEELING tea as a generic type, as opposed to tea from the region of Darjeeling in India.

Tea Board was successful in seeking rejection of trademark application for 'DARJEELING NOUVEAU' in the name of Republic of Tea on the basis of its geographical certification marks for the world and logo 'DARJEELING'.

¹⁰ http://www.teaboard.gov.in/pdf/Tea_Act_Rules_and_By_Laws_Updated_010919_1.pdf

¹¹ <http://www.teaboard.gov.in/>

¹² TRIPS Agreement of 1994

¹³ <https://www.thedollarbusiness.com/news/tag/darjeeling-planters-association>

¹⁴ https://legislative.gov.in/sites/default/files/A1999-47_0.pdf

¹⁵ <https://legislative.gov.in/sites/default/files/A1999-48.pdf>

VIII. SUGGESTIONS AND SCOPE FOR IMPROVEMENT

- There needs to be introduced new innovative methods for the GI tagged products need to be promoted in order to fully utilise the economic potential of GI. The promotional efforts should be taken for development and maintenance of favourable consumer perceptions about the speciality of the product.
- In the absence of an effective post-GI mechanism, counterfeiting and other malpractices may undermine the purpose of GI tagging. This is a serious concern, which needs to be solved to achieve the intended purpose of the GI Act.
- The GI tags need to be held up by a strong enforcement mechanism in domestic as well as international markets. Hence, there is a need to protect the GI stakeholders from unfair competition.
- Tribes are demanding for the Agricultural Indebtedness Relief Act¹⁷ to be enforced to recover back their fraudulently mortgaged land. This needs to be taken into consideration by the Tribal Cooperative Marketing Federation of India (TRIFED)¹⁸ and other NGOs as well.
- As notified by the Ministry of Tribal Affairs¹⁹, the TRIFED plans to work in collaboration with various Government Departments like Ministry of Culture, Ministry of Commerce, Department of Promotion of Industry and Internal Trade (DPIIT) and Lal Bahadur Shastri National Institute of Academy (LBSNAA). The TRIFED is also working to promote Tribal commerce under the vision of 'Aatmanirbhar Bharat'²⁰ and 'Vocal for Local'.
- Duplicating and any other infringement must be dealt severely. The provisions of GI must not only be strictly implemented, but the rights also need to be enforced effectively.
- Furthermore, the GI Act, 1999 needs to be upgraded to make it more responsive to ground realities and make them more producer friendly by providing them assistance so that more GI products are registered.
- The Government can help in promoting the products and provide assistance to the producers. For example, 'Kadakhath' chicken was promoted by the state government of Madhya Pradesh which boosted their business and helped them progress.
- The role NGOs will be important in assisting and supporting the branding and marketing of GI products. For example, NGOs took phenomenal efforts in promoting and marketing of 'Araku Valley' Coffee which transformed the lives of producer tribes.
- A body or an organisation must be constituted to help the producer connect with the buyer directly to reduce the exploitation by the middlemen in the GI ecosystem.
- Under the schemes of 'Aatmanirbhar Bharat' and 'Make in India', the government is looking to boost GI products on e-commerce platforms such as Amazon, Flipkart and Reliance. However, it lacks regulatory aspect which needs to be taken into consideration seriously.
- The consideration of GI in the government's scheme of 'One District, One Product'²¹ can be very vital where the experiences of the tribes could be utilised.

IX. CONCLUSION

India is a diverse country in terms of culture and traditions and every region has its own unique range of products. As a result, it can be seen that it has a large number of products which could be qualified to be registered as GI. The concept of GI is fairly new in India. GI is important in protecting the intellectual property rights associated with the unique products originating in specific regions. Granting of GI tag may not be sufficient to economically uplift the tribes. The collective efforts of the government and the NGOs are very much necessary. Along with this, proper marketing and research can be done to exploit the full potential of GI which will economically and socially uplift the tribal producers.