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# **A CRITICAL ANALYSIS OF THE REGULATORY REGIME GOVERNING GEOGRAPHICAL INDICATIONS**

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## **Abstract**

Geographical Indications (GIs) are now powerful tools in the global intellectual property system, safeguarding local products while maintaining “cultural heritage and promoting economic development”. This research examines the concept, significance, and historical development of GI law, tracing their development from ancient customs to modern international agreements, notably the TRIPS Agreement. Special attention is paid to the legal system of GIs in India, assessing its strengths and limitations against systems in the European Union and elsewhere.

The article critically analyzes the existing regulatory framework in India, the gaps in enforcement, awareness, and benefit sharing among the stakeholders. Misuse, poor protection overseas, and limited commercialization opportunities are analyzed in minute detail. The effect of GIs on trade, indigenous peoples, and local economies is also evaluated, portraying both the potential and the dangers of GI protection.

Based on in-depth case studies, the study identifies actual successes and continuing challenges in GI enforcement. On this basis, the paper makes suggestions for the strengthening of the Indian GI system, such as enhancing institutional support, encouraging international cooperation, and ensuring inclusive economic benefits to producers.

Lastly, this study emphasizes the utmost significance of a more holistic approach towards GI protection that harmonizes legal potency with socio-economic empowerment, wherein GIs can effectively contribute towards sustainable development and cultural preservation in India and beyond.

## Introduction

It is impossible to overestimate “the economic, social, and cultural significance of GIs”. GIs play a crucial role in the preservation of traditional knowledge, fostering sustainable production, and rural development<sup>1</sup>. GIs further support biodiversity and the maintenance of traditional handicrafts, enhancing the rich cultural heritage of local communities around the world<sup>2</sup>. The law “for the protection of geographical indications (GIs)” is founded internationally by treaties like the “WTO TRIPS Agreement and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration”, overseen by the “World Intellectual Property Organization (WIPO)”. These treaties form the basis for harmonizing practice between disparate legal systems and provide the framework for protecting, registering, and enforcing GIs.

GI promotion and protection are not without challenges, however. Difficult issues to be studied with great care include the impact of GIs on e-commerce, reconciling the interests of producers and consumers, and disputes on competing claims to the same or similar GIs.<sup>3</sup> In addition, the authenticity of GIs is also likely to experience opportunities as well as challenges owing to the dynamic nature of international trade deals and the application of new technology and trends.<sup>4</sup> The future for GIs in international trade is looking bright amidst these challenges. GIs stand to become increasingly significant and influential as the international community focuses on more sustainability, ethical consumption, and cultural heritage protection.

A more equitable, sustainable, and just international marketplace can be realized by stakeholders striving to promote and protect these unique products on an ongoing basis through a better understanding of GIs and their implications on global trade.

This paper will explore the complex world of GIs in international trade in an effort to explain “their historical roots, legal foundations, economic and cultural value, and future and emerging issues”. Through this research, we hope to better understand GIs and their role in international trade, which will allow us to better protect and market these precious assets more wisely and diplomatically.

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<sup>1</sup> Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 12

<sup>2</sup> Justin Hughes, 'Coffee and Chocolate - Can We Help Developing Country Farmers Through Geographical Indications?' (2009) 9(3) *Chicago Journal of International Law* 71.

<sup>3</sup> Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* (4th edn, Sweet & Maxwell 2012) 355.

<sup>4</sup> Bernard O'Connor, 'Geographical Indications and the Challenges for the Global Marketplace' (2015) 9 *WIPO Journal* 16.

## Concept of IPR

As opposed to property rights, intellectual property rights are known as IPR. The rights one acquires due to a work accomplished from "creation of mind" are those concerning a logo, song, trademark, design, or film, among others. IPR legislation protects an individual's or a company's intangible properties, such as copyright or trademark, while property law protects tangible rights, which are material assets such as capital, lands, infrastructure, machinery, securities, etc. The term "intellectual property" defines the product of human brainpower, or better still, the products of human ingenuity. It encompasses a product, work done, or industrial design that possesses certain attributes, including goodwill and novelty.

Copyright, trademark, patent, design, and geographic indication are some of the vocabulary and rights enjoyed by the intellectual property owner under IPR. Specific laws have been implemented by states to protect the rights of intellectual property owners. For example, according to the provisions of the Copyright Act of 1957, a film production company can sue a party if their movie is pirated and leaked before release, incurring any type of financial loss.

Intellectual property rights work in this way. When an individual or business has intellectual property, they can use it as they please. Without authorization from the owner, though, the property may not be used or another product can be made that would infringe on the owner's IP rights. He will be liable under IPR regulations if he does this (and can be sued depending on the nature of the infringement).

### ***The Economic Aspects of "Intellectual Property Rights"***

In short, the logic behind the connection between exclusive rights and economic gain is that the author is rewarded for the effort, time, risk, and imagination that are involved in the creative process. "There is no characteristic more peculiarly a Man's own than that which is generated by the Labor of his Mind," says the Commonwealth of Massachusetts's 1782 Copyright Law.<sup>5</sup> There are economic benefits to recognizing the need for a universal intellectual property right. Nevertheless, as IP evolved, states started to recognize IP rights but only to protect their own nationals, not foreigners.

While protection was subsequently granted to foreign IP owners too, even the United States,

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<sup>5</sup> Commonwealth of Massachusetts, *An Act for the Encouragement of Literature and Genius*, 1782.

which boasts of being a keen IP supporter, did not acknowledge foreigners' intellectual property rights.<sup>6</sup> Intellectual property rights were recognized globally due to a chain of similar occurrences. Although the United States could easily replicate their works, the argument that extremely weak IP protections can enable short-term gains from publicly available knowledge while keeping authors from investing in developing IP can be used to justify recognizing foreign nations' intellectual property.

In addition, the market will also be affected by the presence of lower-quality products, which would likely be less efficient than the original product and hence will affect economic growth adversely. The concept that very weak IP rights can offer temporary gains from knowledge available to everyone while deterring innovators from investing in the creation of IP can be used as the basis for the enforcement of foreign intellectual property (IP) even if the US would be able to easily copy their work. Also, the market will be affected by the availability of lower-quality products, which will probably be less efficient than the original product. As a result, economic growth will be negatively impacted.

On the other hand, an overly restrictive intellectual property legislation would restrict the dissemination of knowledge, which would again distort the market.

Both scenarios are thus extreme in nature and would ultimately not be beneficial to a state. Instead, the state would benefit by constructing a well-considered intellectual property system that finds a middle ground between the interests of the two parties. Underpinning effective "market-based incentives" for IP creation, e.g., offering R&D firms rebates to reduce research costs and a temporary period of IP protection to facilitate knowledge spillovers to satisfy societal needs, would be instrumental in achieving this. An IP system within a country and its complementary economic and regulatory policies would provide an attractive climate for industries and enhance the nation's chances of development.

To appreciate how IP rights have been enhanced, one needs to look at how various international conventions and treaties, and the domestic legal systems for IP enforcement in the US and India, have shaped the evolution of IP as an asset.

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<sup>6</sup> . Peter Drahos, *A Philosophy of Intellectual Property* (1996), discussing the global economic rationale for IP protection.

## What is Geographical Indications?

GIs are distinct from all other forms of intellectual property. GI registration is provided for already existing inventions and not for new inventions. It usually covers pre-existing traditional-based products and simple ideas. Thus, it is of immense public importance (Downes 1999). European countries have been at the forefront of GI registrations from the very start. Europe, and specifically France, Italy, and Portugal, is where the whole premise of "product labeling" originated. During the 1800s, the idea of "product labeling" initially emerged.

Cognac (French brandy), Roquefort cheese (South France), Tequila (Mexican drink), Pilsen (Czech beer), Napa Valley wines (California), Scotch whisky (Scotland), Sherry wine (Spain), Parmigiano Reggiano cheese (Italian), Parma hams (Italian), Tuscany olives (Italian), etc. are all instances of the most famous and profitable GIs of today. Wine and spirits make up the largest proportion of GIs in Europe. The EU is the strongest supporter of GI protection in the world. because they are the largest beneficiaries of GI protection. The United States enjoys GI, yet to a lesser extent than Europe. Moreover, GIs enjoy much weaker protection in the US than they do in the EU.

TRIPS is the primary global legal instrument that regulates GIs.<sup>7</sup> Whereas the U.S. and others favor limited protection, the EU favors increased international GI protection and recognition. There is some disagreement in the negotiations due to this positional ambiguity. Other producers sometimes use or replicate the same products. Either on purpose or by mistake, it happens. EU producers of GIs goods claim that GI products are being utilized by their US counterparts. Large financial losses by EU producers, it is asserted, have occurred due to the misuse of their GIs. For the realization of their maximum potential, GI systems should be standardized so that producers get its maximum usage (Zou, 2005).<sup>9</sup>

It should be noted that the significance of GIs in Asia-Pacific countries. These countries, with some of the oldest settlements of humans globally, create products that are surprisingly close to their tradition and culture. The saddest part, however, is that very few individuals know about these products. Hence, there is a very good possibility that these products will be popular both locally and internationally.

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<sup>7</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, Part II, Section 3.

It is notable to mention the significance of GIs in the Asia-Pacific region. These countries, with some of the earliest human settlements globally, make goods that are astonishingly close to their culture and heritage. The most unfortunate part, however, is that fewer individuals know about these products. Hence, there is a strong possibility that such products will end up being popular domestically as well as internationally.

The three overall objectives of GIR are as given below. Exclusionary Rights: By disallowing other people from utilizing the indicator, it ensures safeguarding of valid GI holders. Premium Benefits: Through proper advice and effective marketing, you can assure a premium price for specialty products.

Consumer and Producer Protection: The customer should be protected from misleading or false representations about the product's origin and reputation. Producers should be rewarded with a better price for their unique products.

## **GI & India**

Customer With its wealth of natural and agricultural endowments, India needs to give priority to the gradual protection of unique products. There already existed some established geographical names in India, such as Basmati (rice)<sup>8</sup>, Alphonso (mango)<sup>9</sup>, and Darjeeling (tea)<sup>10</sup>. "The Geographical Indications of Goods (Registration and Protection) Act", the first GI Registration Act of India, came into force in 1999. Basmati Rice controversy and Darjeeling Tea case were the primary reasons behind the formation of GI in India. Across the globe, tea from Kenya and Sri Lanka is often promoted as "Darjeeling Tea" (North Bengal).

In fact, basmati rice originated in India. Nonetheless, the United States has been producing rice on the basis of "Basmati" varieties. Moreover, a patent of "Basmati Rice Lines and Grains" was illegally acquired by an American company known as Rice Tec Inc. Recently, it also attracted a lot of criticism and is a gross example of the unjust use of a popular Indian GI. India was forced by this event to join the TRIPS Agreement (Thomas, W. & Kurian, V. M, 2015).

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<sup>8</sup> Controversy over GI protection and misappropriation by foreign producers.

<sup>9</sup> GI protection due to its unique characteristics from the Ratnagiri region.

<sup>10</sup> GI protection to preserve the authenticity of Darjeeling tea against global misuse.

## Significance of the Study

This research offers key insights to diverse stakeholders through critically examining the governance framework of Geographical Indications (GIs). The research is significant on several grounds.

By systematically considering the strengths and weaknesses of existing GI rules nationally and globally, it first makes a contribution to intellectual property literature. The research contributes to theory regarding how GIs are functioning as legal tools for protecting traditional knowledge, cultural heritage, and regional identities by highlighting gaps, contradictions, and areas of convergence within existing models.

Second, policymakers and regulatory institutions stand to gain from the study's applied implications. Its conclusions can inform the development of stronger, more equitable, and more effective GI regimes that further safeguard producers' interests, prevent GI misuse or exploitation, and enhance consumer trust in the authenticity of goods. The study also underlines how important it is to harmonize GI legislation in order to facilitate equitable international trade and promote economic development in rural and indigenous communities.

Thirdly, by outlining how GIs can be used to increase product value, win market access, and drive sustainable livelihoods, the research aids producers, farmers, and community members. Research provides stakeholders with the resources that enable them to maximize the socioeconomic benefits of GIs by managing enforcement problems as well as suggesting solutions.

Finally, by providing an in-depth, comparative analysis of GI regulatory regimes that is the synthesis of legal, economic, and cultural perspectives, this research fills a considerable gap in the literature. Its findings are relevant to authors, practitioners, and lawmakers who wish to enhance the effectiveness of GI protection and ensure that legal systems evolve to match new global problems.

Geographical Indication is applied to signify a product. The GI<sup>11</sup> label notifies the buyer of the distinct characteristics of the product from the producer. A Geographical Indication can be an

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<sup>11</sup> Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999 (India).

extremely useful marketing tool for producers if utilized appropriately. Geographical indications can also be a useful tool in protecting traditional knowledge, which many developing countries are extremely interested in. The requirement to ensure Geographical Indications are sufficiently protected is the result of all such inherent properties. Consumers and producers both suffer the same way when GI is exploited offensively by an illegal entity. As per Karl Polanyi<sup>12</sup>, the objective of property in general is to achieve a high standard of living and provide communities with authentic products. Penalver<sup>13</sup> says that the goal of property protection is to enhance and motivates human dignity (Saporita, Christopher, 2003).

Economists characterize property in capital terms, or the income it produces. Property of another economic kind is formed when capital is used to produce new commodities and services. Property has a standard value rather than its real value and can be exchanged. Thus, owning property provides you with a range of options regarding what to do with both conspicuous and visible items. Thus, legal relations among individuals with regard to property constitute the subject matter of property law. In this view, the term "right" assumes a special meaning and implications irrespective of whether it is used to refer to property, all of mankind, or a person (John C. Becker and Timothy W. Kelsey). The most basic argument in favor of protection of Geographical Indications in the EU lies in the potential of Origin Labelled Products in rural development. Both European policy and literature indicate the relevance of support for Origin Labelled Products in order to achieve rural development goals.

Because the product draws its unique character from the region's climate, people, and technology, an origin-labeled product by definition exhibits a direct correlation between product and region. Consequently, Origin Labeled products are among the most striking instances of localization and are commonly regarded as beneficial instruments for fostering rural development, especially in disadvantaged regions, and maintaining local tradition and customs (Pacciani et al, 2001)<sup>14</sup>. In addition, local culture, which constitutes the "historical memory" of the population and acts as an identity stimulus, is also a determiner that leads to the connection between an Origin Labeled Product and its territory, together with climatic specifics and a strong identification with localized specific production assets (Bérard and

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<sup>12</sup> Polanyi, K., *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 2001)

<sup>13</sup> Penalver, E., *The Moral Case for Property Rights*, 19 *Harvard Journal of Law & Public Policy* 4 (2003).

<sup>14</sup> Pacciani, A., Belletti, G., Marescotti, A., & Sorrentino, A., *The Role of Geographical Indications in the Development of Rural Areas: The Case of the Italian Wine Sector*, 55 *Rural Sociology* 1 (2001).

Marchenay, 1995)<sup>15</sup>.

Thus, Geographical Indications encourage all the components of the rural economy by tapping into the natural and human resources available in the area. The capacity of local actors to institutionalize marketing is directly related to the potential for capturing this rent. In addition, the extent to which the product and the local community are linked decides the chances of applying rural development approaches based on Origin Labeled Products. A multifunctional strategy should be employed to analyze the impact of Origin Labeled Products on rural development, including secondary development objectives such as biodiversity and the protection of traditional knowledge.

Historical evidence suggests that some areas began using seals and marks to determine the origin of commodities, “such as wines and groceries”, as far back as the 18th century. By creating the first legally designated “wine region” in history in the 18th century, “the Chianti wine region of Tuscany, Italy”, for example, created a regime of regional branding in the European context. Similarly, one of the earliest systems of product certification was developed in the 19th century by the French makers of Roquefort cheese, marking the beginning of official protection for local products.

Since they create “the risk of illegal use and counterfeiting of GI-protected products”, globalization and development of e-commerce are challenges to GI protection.

“Future developments may focus on addressing these challenges through improved enforcement measures” such as increased border control and cooperation among law enforcement agencies Agencies.

All in all, a mix of worldwide economic trends, legislative reforms, changing consumer habits, and advances in technology will most likely leave their mark on the future of geographical indications. Enhancing protection for geographical indications (GIs) and placing greater emphasis on their contribution to sustainable development and cultural heritage will continue to be at the forefront of governments', international organizations', and stakeholders' agendas in the future.

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<sup>15</sup> Bérard, L., & Marchenay, P., *Local Development and Local Products: Geographical Indications as a Tool for Sustainability*, in *Geographical Indications and Local Development* (Harvard University Press, 1995).

## Research Problem

Goods that possess specific characteristics, reputations, or features that are associated with their origin are safeguarded by Geographical Indications (GIs), which have emerged as important intellectual property instruments. GIs are crucial to sustaining rural economies, safeguarding cultural heritage, and ensuring the authenticity of goods. The regulatory schemes governing GIs, however, are often marked by complexity, fragmentation, and inconsistency in numerous countries and territories even as they assume greater significance.

Many existing legal frameworks suffer from severe weaknesses, including ambiguous definitions, a limited scope of protection, and inadequate enforcement mechanisms. As a result of these weaknesses, GI products are prone to abuse, theft, and counterfeiting, which ultimately threatens producer rights and consumer trust. In addition, the successful recognition and protection of GIs in foreign markets is hindered by the lack of harmonization among national legislation and international agreements, including the World Trade Organization's TRIPS Agreement<sup>16</sup>.

This patchwork of legislation restricts consumers' access to authentic, high-quality products and hinders producers' ability to take full advantage of the economic and social benefits of GIs, notably small-scale farmers and indigenous communities. In addition, GI regulatory regimes need to adapt to accommodate new opportunities and issues created by the evolving character of global trade, technological advances, and increased consumer consciousness.

A comprehensive and critical analysis of the existing legislative regime governing Geographical Indications is starkly necessary against these complexities. The aim of this research is to assess the pros and cons of existing laws and regulations, consider problems with enforcement, and explore potential modifications that may enhance the effectiveness, fairness, and sustainability of GI protection. In doing so, the research aims to contribute to the development of a more rational and well-balanced regulatory system that fosters economic development, facilitates cultural heritage protection, and facilitates equitable international trade.

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<sup>16</sup> World Trade Organization, *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, 15 April 1994, 1869 U.N.T.S. 299.

## LEGAL FRAMEWORK FOR GI

Under the “TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement”, GI received legal protection and global recognition as an intellectual property. The Lisbon Agreement, which allows international protection of an appellation of origin by a registration procedure with WIPO's International Bureau<sup>1</sup>, and the Madrid System, which facilitates protection of GI in many countries as collective and certificate marks, were some of the agreements, treaties, and conventions that governed GI protection before TRIPS was established. WTO members are required to comply with the minimum standard of “GI protection established in the TRIPS Agreement” and pass legislation regulating GI in accordance with that requirement. Preventing unfair and illegal use of GI is the central objective of this agreement. It bypasses the nuances of cultural heritage and preservation of traditional knowledge, however. A gap between protection of GI and its broader cultural context could result from this absence of cultural specificity. In addition, there is also scope for member countries to interpret the TRIPS Agreement<sup>17</sup>, which could lead to variations in the level of GI protection and enforcement from place to place. For producers who want to export their GI-protected products to countries having varying levels of GI recognition, this could become problematic. By raising awareness and stressing the value of a legal framework for preserving GI among WTO-affiliated nations, international organizations such as “the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO)” have attempted to further define and promote the notion of GI.

## SUI GENERIS AND GI PROTECTION MECHANISMS IN DIFFERENT NATIONS

Within the GI context, "Sui generis" is used to describe a distinct and independent system of protection for specific categories of products which possess a specific geographical origin along with attributes, reputations, and characteristics peculiar to that origin. The concept of sui generis has been accepted by various international treaties and agreements.

Thus, a number of countries have established some regulations and laws which are appropriate for the specific characteristics of these signs in an attempt to safeguard GIs. These are examples of "sui generis" intellectual property solutions that various countries have employed in creating

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<sup>17</sup> World Trade Organization, *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, 15 April 1994, 1869 U.N.T.S. 299.

special GI protection systems. All nations are free to recognize their own concepts and set of rules in order to maintain the spirit of GI and ensure that they receive a right legal protection, given their unique character and nature.

Both a national and an EU-level GI protection regime are in place in France<sup>18</sup>. “Appellation d'Origine Contrôlée (AOC) and Appellation d'Origine Protégée (AOP)” are the French names for GI, which denotes that a product must meet certain production requirements and be influenced by its geographical origin in order to be eligible for GI protection. Tradition and innovation are balanced in Italy's GI protection system, which comprises "Denominazione di Origine Protetta" (DOP) and "Indicazione Geografica Protetta" (IGP). Its ability to adjust to shifting market demands and remain flexible is what makes it strong.

The EU's system<sup>19</sup> of Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) provides harmonized protection, improving consumer confidence; it facilitates regional development and retains traditional know-how; and is distinctive insofar as it applies to agricultural and non-agricultural products.

- The United States applies a certification mark regime to GIs, concentrating on the place of origin of goods. Strength of its is that it has a robust legal basis for trademark protection; however, the absence of a dedicated GI-specific law may result in incoherent protection and confusion with trademarks. Due to varying national interpretations, it may be difficult to navigate the EU system. Tighter controls may impede innovation, and the territoriality focus may cover goods with other special characteristics.

This analysis of GI protection schemes shows that the various approaches do have their particular strengths and shortcomings. Sui generis regimes offer flexibility and openness but could be problematic on issues of awareness and enforcement. The EU's PDO & PGI regime<sup>20</sup> guarantees harmonization and high consumer acknowledgement but can prove to be overly complicated and restricting. An understanding of these differences can facilitate in the creation of effective GI protection schemes that blend tradition, creativity and market pressure.

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<sup>18</sup> *Appellation d'Origine Contrôlée (AOC) and Appellation d'Origine Protégée (AOP)*

<sup>19</sup> *Regulation (EU) No. 1151/2012*: This regulation establishes EU-wide rules for the protection of geographical indications, ensuring consistency across member states in how GIs are recognized and protected.

<sup>20</sup> *Denominazione di Origine Protetta (DOP) and Indicazione Geografica Protetta (IGP)*

The importance of GIs in India comes through when we reflect on the conversations that we engage in on a daily basis. We hear mentions of "Kolhapuri Chap-pals"<sup>21</sup>, "Mysore Sandal soap"<sup>22</sup>, and "Darjeeling Tea"<sup>23</sup> very often in our day-to-day conversations, but we often forget that these are all GIs. In fact, nearly all of what we make, cultivate, or raise in India has a local tie. Since the strong connections between the populace and their soil are present, every area has created art and traditional products that bear heavily the characteristic of the particular climate and landscape of the region.

This means that every territory produces things that are inherently connected to their place of origin; in other words, each region produces goods that can be identified as geographical indications.

The primary economic justification for GI protection is that a product's place of origin might serve as a gauge of its quality. A region's resources can be advantageously used as quality attributes in a product bearing the origin label. According to studies, customers around the world are starting to appreciate goods that are connected to a particular location or method of production more and more. On this account, Gi's are significant in that they confer "producers" that produce and export goods linked to their origin a power and credibility so "institutionalizing the reputation" of the protected goods. GIs also offer local producers an opportunity to compete in a niche product market of specialization based on product "differentiation" in an effort to boost earnings as well as utilize the geographic origin of the products to enhance sales. In a country such as India, this prevents traditional businesses from becoming extinct and resuscitates dormant markets for them. In addition, since GIs are a brand name by definition, they are an effective marketing strategy.

"GIs are best suited to protect the interests of communities that have developed unique goods" because they are collective rights. They reward the actual owners and makers of these entities and stop companies from plagiarizing them. They also aid the growth of culture and tradition. They may be employed by small, local manufacturers to enhance their images and better

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<sup>21</sup> "Kolhapuri Chappals" have been granted the Geographical Indication (GI) tag, recognizing their unique craftsmanship and regional identity tied to specific districts in Maharashtra and Karnataka

<sup>22</sup> "Mysore Sandal Soap" is a GI-tagged product, manufactured by Karnataka Soaps and Detergents Limited, and is the only soap in the world made from 100% pure sandalwood oil, with its GI status ensuring authenticity and protection

<sup>23</sup> "Darjeeling Tea" was the first Indian product to receive the GI tag in 2004, highlighting its distinctiveness and reputation tied to the Darjeeling region in West Bengal.

compete with large business enterprises.

GIs can also be effective tools for rural development. Villages are the origin of the majority, if not all, of the products that are eligible for GI protection. Due to the interaction between local knowledge, environmental heritage, and traditional skills, small villages and rural communities often produce distinctive and characteristic products based on their culture and environment.

As already stated, GIs can be used to enable small, “local producers” to compete with larger companies. The place that GIs employ for the names may also be marketed by them. By keeping it in “the public domain and granting producers” permanent rights, GIs also assist in protecting indigenous knowledge. This assists in ensuring that traditional knowledge is not lost with time. Apart from empowering one producer, a functioning GI mechanism has the potential to empower communities that produce goods specific to a particular geographic region. In other locations, GIs generate employment and enhance local production.

The GI can also benefit the consumer in a big way. By misleading customers into believing that the goods come from a particular region, vendors often get away with selling pirated products. These “piggyback riders”<sup>24</sup> have two undesirable impacts: first, they cheat innocent customers; secondly, they devalue authentic products by selling poor copies as authentic ones. Only “producers” who are based in the geographical area where the “distinctive good” is produced will be able to utilize the specific name to market the goods due to GI protection, protecting consumers from fraudulent sellers. Moreover, this would ensure that the original product's value would not be damaged.

### **THE PROBLEMS PLAGUING THE GI FRAMEWORK IN INDIA**

Thus, it is clear that an effective “GI mechanism fosters a range of goals, such as consumer protection, fair competition, international trade, rural development, and producer protection, to name a few. In an emerging country like India, each of these goals is extremely important”.

“GIs have emerged as an essential instrument for protecting the market for “quality, reputation, and other character of goods essentially attributable to their geographical origin,” as the above debate clearly establishes. While the GI Act and the TRIPS Agreement have sought to do so,

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<sup>24</sup> GI protection acts as a legal safeguard against “piggyback riders” who would otherwise sell imitations, thereby preventing customer deception and preserving the value of genuine products

several problems have impeded their progress and kept them from fulfilling their desired purpose.

### ***Problems with Foreign Registration***

Since GI recognition under the “GI Act does not provide global protection”, an Indian GI needs to pass through the entire legal system of the destination country to get protected there. So, prior to seeking GI recognition in a foreign nation, one needs to study and fulfill all technical as well as legal requirements in the destination country. It's a tremendously challenging endeavor to acquire legal protection in various countries based on the legal and technical framework of their respective environments. This is even better highlighted by significant differences in GI protection approaches across countries.

In addition, registering locally is not the end of the difficulties involved in safeguarding GIs overseas. The expense of engaging a monitoring service in every country to gather data on misappropriation is exorbitant once the GI is registered there. Legal disputes in foreign nations also need huge amounts of money. As it is the responsibility of the member states “to determine how to implement the terms of the Agreement in their domestic legal system”, the TRIPS Agreement does not help much in such a situation. This makes registering and protecting an Indian GI overseas a highly challenging, time-consuming, and costly affair.

### ***Lack of Awareness***

While there are many products in India eligible for GI protection, surprisingly few are actually registered. Applications for registrations from these producers are futile as knowledge of GIs' existence has not reached the many rural territories in which the makers of these products reside and work. The Assistant Registrar of Trade Marks & GI Registry, Chinnaraja G. Naidu<sup>25</sup>, has complained that local producers don't understand the benefits of GIs, and therefore there are not sufficient numbers of registrations. Therefore, Punjab boasts a woefully small number of registered GIs: although the region is full of products which can secure GI protection, there is just one registered GI.

### ***Excessive Reliance on Documentary Proof for Registration***

The law presently is based primarily on documentary evidence to award GIs; considerable

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<sup>25</sup> Chinnaraja G. Naidu's observation: The Assistant Registrar of Trade Marks & GI Registry has emphasized that lack of producer awareness about GI benefits and procedures is a primary barrier to registration.

documentary evidence needs to be presented in order to receive and get registered a GI. Its primary intention is to discourage unnecessary applications. With the best intentions, registration of a GI might face practical problems if it rests heavily on documentary evidence. It is not easy to procure documentary proof at times, especially where history has been transmitted from generation to generation by word of mouth. Case in point: Assam's Judima wine<sup>26</sup>. The generations-old existing Dima tribe has been kept without a GI tag because they have no papers to support their existence.

### *The 'Nationalisation' of GIs*

Consequently, the rigorous documentation requirements are problematic in the case of a number of tribal communities and where traditional knowledge is being transmitted, where it is nearly impossible to find recorded history or documentation. In order for such things to be properly protected, this needs to be altered. The authors will discuss potential solutions to the problem in a later section of this work. By way of a number of authorities, the Central or State governments are observed to avoid a considerable number of GI applications. Different government departments enrolled 64% of the first 100 GIs who were enrolled as fugitives. The GI for Basmati rice is retained "by the Agricultural & Processed Food Products Export Development Authority (APEDA)", and "universities have also been awarded GI rights as in the case of 'Wayanad Jeerakasala Rice, and Tangaliya Shawl'".

Insofar as whether a government is eligible to be the registered GI-holder, the Act remains silent. The sole requirement of the Act is an "association of persons or producers or any organization or authority formed by or under any law" representing the interests of the producers. This leaves it uncertain "as to whether a government department is indeed allowed to own a GI right".

The other question that arises is "whether or not a government agency is entitled to own a GI right". "The governments" response in this respect is also indefensible. Though "the government" might argue that it speaks on behalf "of all producers", that is not necessarily so; particularly in situations where the government has its hand in the production and marketing process. Prejudice against producers who are not associated with the government is likely to occur. Furthermore, the system's issues are brought on by the bureaucracy's involvement;

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<sup>26</sup> Assam's Judima wine, a traditional rice wine made by the Dimasa tribe, became the first traditional brew from Northeast India to receive a Geographical Indication (GI) tag in 2021

corruption in the Indian system is well known. In such a scenario, the producer's benefits—the primary reason the GI is granted—would be undermined. It is impossible to say for sure if the government will fulfill its promise to safeguard the interests of all producers.

## HISTORICAL OVERVIEW

“The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions.”

In his February 27, 1999, budget speech, the Union Finance Minister declared that a new law on competition policy will be passed. A high-level committee of experts led by “Shri S.V.S. Raghavan was then established to review the provisions of the Monopolies and Restrictive Trade Practices Act”, 1969 (the "MRTP Act")<sup>27</sup> and suggest a contemporary “competition law” in light of the “liberalization of the Indian economy”. After gaining independence, India's economy developed according to a planned model.

The government's policy framework was heavily influenced by the legacy of British rule; as a result, the system of regulations limited industry entry and concentrated economic power in the hands of a small number of people and commercial organizations. It is important to remember that the guidelines for controlling this concentration of economic power were previously established by “Articles 38 and 39 of the Constitution”.

“The Hazari Committee conducted the first investigation in this field in 1951”. “The industries (Development and Regulation) Act of 1951's industrial licensing process was examined”.

In 1964, the Monopolies Inquiry Commission (or "MIC")<sup>28</sup> was established, seventeen years after independence. It stated that over 85% of India's industries at the time had a strong concentration of economic power. As a result, the MIC drafted a measure that forbade monopolistic and restrictive commercial practices that were detrimental to the public interest and allowed for the management of monopolies.

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<sup>27</sup> India constituted a high-level committee under the chairmanship of Shri S.V.S. Raghavan in October 1999 to review the MRTP Act and recommend a modern competition law suited to the liberalized Indian economy

<sup>28</sup> The Hazari Committee conducted the first investigation in this field in 1951, examining the industrial licensing process under the Industries (Development and Regulation) Act of 1951

The first study in this area was carried out in 1951 by “the Hazari Committee”. “The industrial licensing procedure under the industries (Development and Regulation) Act” of 1951 was investigated. Up to 40% of income was concentrated in the top 10% of the population, according “to the Mahalanobis Committee on the Distribution of Income and Levels of Living”, which was “established by the government in October 1960”. “Seventeen years after independence, the Monopolies Inquiry Commission (or "MIC") was founded in 1964”. It claimed that there was a significant “concentration of economic power in more than 85%” of India's industries at the time. As a result, the MIC drafted a bill that forbade “monopolistic and restrictive trade practices” that were detrimental to the “public interest” and allowed for the regulation of monopolies.

The “new MRTP Act” was heavily influenced by “the Sherman and Clayton Acts of the United States, the Resale Prices Act” of 1964 and “the Restrictive Trade Practices Act of 1964” of the “United Kingdom, the Monopolies and Restrictive Trade Practices” (Inquiry and Control) Act of 1948, and legislation from Canada, Germany, Japan, and other countries. “The US Federal Trade Commission Act of 1914” as “amended in 1938 and the Canadian Combines Investigation Act of 1910” also had an influence on the “MRTP Act's drafting”.

### **Measures to Strengthen GIs: An Examination of Other Nations**

The European Union (EU) is in charge of the current global recognition of GIs since it was the main proponent of GI inclusion during “the Uruguay Round for Trade Related Aspects of Intellectual Property Rights (Trips) negotiations”. With the “introduction of travel, nations” had to offer GIs, or other identifiable indicators of origin, a bare minimum of security. Here, two well-known models for GI-nominated product regulation arose: (i) the certification mark-based system, which was spearheaded by the USA, and (ii) the sui generis system, which was led by Europe. Both models have a quality control system in spite of their differences.

The EU has approved several regulations to regulate grants and GI operations in order to create a uniform framework across the Union. Food and agricultural products are covered by the most recent Regulation 1151/2012<sup>29</sup>. Furthermore, different laws apply to wines and spirits. Twelve Member states are responsible for designating competent officials to provide official control and enforce the standards. The relevant authorities carry out verifications to ensure that

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<sup>29</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

the registered items' quality meets the legal requirements. Reports on the overall control operations of these bodies are also included in the annual and multiannual “national control plans” that each member state submits to “the EU”. The applicant group must name “one or more certification bodies” to “ensure that the product specifications associated with the GI registered goods are met before the goods are placed on the market” when “registering a protected geographical indication (PGI) or protected designation of origin (PDO)”. The functioning of certifying bodies is then examined by the authorized “competent authorities”. Thus, “the EU” has put in place a “systematic system of checks and balances to ensure the GI mechanism runs smoothly”.

The “USA” does not have a sui generis protection scheme and has a different position on GIs. To protect GIs, it makes use of trade marks, particularly certification marks provided by the Lanham Act. The justification for using this approach can wait for a later piece. Therefore, even in the absence of specific legislation for GIs, the US government actively works to maintain the value of quality associated with certified items. Each category of agricultural food and beverage has its own inspectors who are in charge of post-registration control and quality maintenance.

Many lessons can be learned from the “systematic implementation of GI regulatory mechanisms” in “the USA and the EU”, where the “government” and relevant legal agencies “collaborate to ensure that products are quality-checked before being placed on the market”. This governance system ensures that “what is placed for the end-user” leaves “a mark” in terms of “authenticity, reputation, and quality” through official or informal communication channels. This creates automatic goodwill, which in turn helps the producer financially when a happy customer comes back and invests money and trust over time.

The obligations of signatory nations with respect to geographical indications under the WTO framework are “covered” in “Articles 22 and 23” of the “Agreement on Trade Related Aspects of Intellectual Property Rights (Trips)”. While “Article 22 deals with the general norm of protection”, “Article 23 provides additional protection for wines and spirits”. The European Union countries have specifically negotiated Article 23 as geographical indications to protect their economic interests in wines and spirits because most of the world's most well-known wines and alcoholic beverages, including Scotch (Scotland), Bordeaux Wine (France), Cognac (France), Burgundy (France), etc., are of European geographical origin and named after their

respective cities/towns/regions of origin. Furthermore, the desire to preserve this traditional knowledge and its provenance extends beyond simple economic reasoning because these wines and spirits have a sense of prestige, pride, and heritage in the countries from which they originate. The law that protects geographical registrations in India is “the Geographical Indications of Goods (Registration and Protection) Act, 1999, which went into effect on September 15, 2003”. With relation to “geographical agreements”, this Act satisfies India's responsibilities under the Trips Agreement. Foodstuffs are classified as goods under the Act, and "geographical indication" is defined in “ 2(1)(e) “geographical indication”<sup>30</sup>, 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.” “The geographical indication's registration” period lasts for ten years, but it can be repeatedly extended for “an additional ten years” upon the proprietor's application in the required format. The same rules apply to authorized users.

Numerous geographical indications have been registered in India since the Geographical Indications Act went into effect, primarily in the textile and handicraft industries. To yet, the geographical indicators register has not adequately represented India's rich culinary legacy.

The case for promoting the rich Indian culinary heritage through geographical indications is very strong because the registration of geographical indications has several inherent benefits, including the legal protection of the geographical indication within India and the potential for protection in all 160 WTO member countries that have also ratified the Trips agreement. One could argue that India's strength is its rich culinary legacy, which is popular not only in developed nations overseas but also in nations like the UK, where it has become a national favorite. This is comparable to how the wines and spirits of Europe are advantages in terms of promoting and exporting their cultural legacy.

India's foods are easier to identify outside, and boosting their registration and marketing will

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<sup>30</sup> |Geographical Indications of Goods (Registration and Protection) Act, 1999|

help build Brand India in the vibrant and profitable global markets for prepared, processed, and ready-to-eat foods.

In addition, protecting geographical indications will contribute to the economic development of Indian regions in a more comprehensive and integrated way. It will also increase the region's residents' confidence in their own culinary and cultural heritage, which will lead to a rise in self-esteem and confidence—two intangible factors that support a region's continued growth.

### **India's current institutional and legal frameworks**

Due to the numerous communities and indigenous people who inhabit different regions of the country, India has a rich and varied cultural legacy. The second portion of the paper discusses the discussions that have taken place regarding the implementation of distinct laws to safeguard traditional cultural expressions. The author discusses the current Indian legal system that oversees TCEs<sup>31</sup> in this section.

#### **“Constitution of India”**

“Article 29 of Part III of the Constitution states that minorities' interests” will be protected. According to Article 29(1) of the Indian Constitution, "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script, or culture of their own shall have the right to conserve the same." Even if they practice different religions, the clause protects the rights of minorities who have a distinctive language, script, or culture. It doesn't mention any specific religion.<sup>18</sup> Furthermore, all Indian citizens are required by Article 51A (f)<sup>19</sup> “to value and preserve the rich heritage of our composite culture”.

Therefore, even though minorities are granted the right to protect and preserve their customs under the Indian Constitution, these rights cannot be properly upheld unless the necessary laws are in place to ensure that their cultures and traditions are safeguarded.

An overview of the key components of India's GI legislation. “The Geographical Indications of Goods Act of 1999”: The Act permits the registration and protection of GIs related to commodities. It establishes the Geographical Indications Registry, defines geographical

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<sup>31</sup> TCE (Traditional Cultural Expressions) refers to the artistic and cultural manifestations that embody the traditions and practices of a community, often associated with a specific geographical area.

indications, and lists the rights that come with registering a geographical indicator.

The Act defines a “geographical indication as a label that identifies products as originating from a specific region” where a particular attribute of the products—like their quality or reputation—is primarily due to their place of origin. It also outlines the requirements for registration. For a geographical indication to be eligible for registration, it must be specific to the commodities in question, able to be used to identify the items, and indicative of their place of origin.

**How to Put Yourself Forward:** The Act outlines the procedure for submitting applications to register geographical indications. It lists the details of the applicant, the goods, the geographical indication, and evidence that the goods are related to the area as required by the application.

**Examination and Registration Process:** After receiving applications, the Geographical Indications Registry verifies that they comply with legal requirements. If the application meets the requirements, the geographical indication is registered and the data is added to the Register of Geographical Indications. **Rights Acquired through Registration:** The Act gives the registered owner of a geographical indication several rights, including “the exclusive right to use the indication in connection” with the goods, the ability to file a lawsuit for unauthorized use, and the authority to authorize others to use the indication. **Protection and Enforcement:** The Act provides for the protection and enforcement of registered geographical indications.

It outlines the civil and criminal remedies for infringement, establishes the jurisdiction of courts, and outlines the power of the Registrar of Geographical Indications to administer and enforce the Act. **Worldwide Perspective:** The Act also addresses the protection of foreign geographical indicators in India and India's obligations under international treaties and accords relating to GIs. The goal of India's geographical indications regulations is to protect consumer interests while promoting the social and economic development of producers associated with particular areas. In addition to promoting high-end, distinctive products from across the country, it provides a robust framework for GI registration, enforcement, and protection.

The concept of geographical indications (GIs) and their legal protection in India have a significant historical background. Due to international agreements and legal developments, India's GI protection has evolved over time.

Barriers to international protection of Indian GIs:

One disadvantage of “the Geographical Indications of Goods (Registration and Protection) Act, 1999” is “that it does not provide a mechanism for the protection of GIs registered in India” on a global scale. The TRIPS agreement does not, in fact, contain any provisions, including Section 3 of Part II thereof, that require “Member States” to provide “adequate protections to GIs registered in foreign countries”, “since it permits member nations to establish efficient mechanisms for the protection of various intellectual properties in accordance with their own legal frameworks”.

Because other countries' legal systems differ and are complex, it is challenging to ensure the protection of Indian GIs abroad. The primary reasons for this are the high expenses of pursuing legal disputes in other nations and the absence of organizations to keep an eye out for GI violations overseas and take appropriate legal action to address them. The pervasive biopiracy of GI-related Traditional Knowledge (TK) is further exacerbated by the absence of international protection for Indian GIs.

Together, these elements deprive the original Indian producers of goods with GIs of their legitimate claim to profit from “the sales of the products that are the result of their years of experience”, their labor, their “efforts to preserve their cultural or traditional heritages”, and, often, their sole source of income. They are forced to compete unfairly in international markets. India, a nation renowned for its diversity, loses a great deal of its unique cultural and geographic identity due to the inadequate international protection of GIs.

This is where “the Geneva Act of 2015 comes” in handy, “as it establishes a uniform legal framework for GI registrations and protections in its member countries via the World Intellectual Property Organization (WIPO)”. Despite not being “a party to the Lisbon Agreement” or the “Geneva Act, India is qualified to be a party to the latter, especially” since it is a signatory to “the Paris Convention. Some of the biggest advantages of the Geneva Act are as follows”:

- By allowing “different countries to register GIs” internationally “at a single platform in foreign countries that are members of the Act”, it seeks to eliminate the challenges related to “obtaining registrations in other countries”; however, “the same GIs must already be registered and protected under the domestic laws”.

- It not only streamlines “the complex and time-consuming process” of GI registration in other “countries”, but it also offers applicants from underdeveloped countries a reduced registration fee, making the process more accessible.
- It protects GIs (and AOs) from infringement in foreign countries through actions that mislead consumers about “the origins and unique” characteristics “of products” that are “already recognized as GIs of another country”. It also makes it possible for various international organizations to promote GI protection globally.
- Any member country may choose not to register its GIs and notify WIPO of this choice within a year of a foreign country's registration by WIPO. Until the GI is protected by domestic laws in the country of origin, their registration will remain in effect indefinitely, so there is no need to renew it.

Given the aforementioned benefits, India ought to give the Geneva Act serious consideration in order to guarantee the proper safety of Indian GIs abroad.

### **Registration of geographic indications**

“The registrar of geographical indications” may receive an application for “the registration of a geographical indicator” from any association of people or producers, as well as from any organization or body “that represents the interests of the producers of the relevant goods”. The application needs to contain the following:

- (I) an explanation of the type of goods to which the geographical indication will apply;
- (II) an explanation of how “the geographical indication” is used to identify “the goods as coming from the territory” in question in terms of a particular “quality, reputation, or other attributes” that are solely or primarily attributable “to the geographical environment, with its inherent natural and human factors”; and of which “the production, processing, or preparation takes place in such a territory, region”,
- (III) a geographical map of the country, region, or locality where the goods are made or originate;
- (IV) information about the geographical indication's appearance, including whether it consists of words, figurative elements, or both;
- (V) a statement with “the producers” details of the “relevant goods”, if any, who are “proposed to be initially registered with the registration of the geographical indication” as may be prescribed; and

(VI) any additional information “as may be prescribed”.

Upon approval, this application will be made public by the registrar of geographical indications. Anyone may object within three months of the date of the advertisement, or for a maximum of one month after that date.

The registrar will decide whether the registration is permitted and, if so, under what conditions after a hearing with the parties, if required. Consequently, the registrar will register the geographical indication in question along with any authorized users listed in the application if the application has not been opposed and the notice period for opposition has passed, or if the application was opposed and the decision was in the applicant's favor. Any manufacturer of the goods in question may apply “to the registrar” to be “registered as an approved user of the geographical indicator after it has been registered”.

The Act prohibits the registration of the following geographical indications.

- I. which, if used, would probably be misleading or confusing;
- II. which, if used, would violate any currently enacted laws;
- III. that includes or contains scandalous or obscene material;
- IV. that includes or contains any material that could harm the “religious sensibilities” of any group or segment of Indian citizens;
- V. that would not otherwise be eligible for legal protection;

### **Infringement of the registered geographical indication**

To assert any rights regarding a geographical indicator under the Act, it is necessary to register the indication. Nevertheless, the remedies available to those who pass off products as belonging to another person or the right to sue them for doing so will not be impacted. When a geographical indicator is registered, it will provide;

- (i) the right to seek redress for infringement of such a geographical indication “to the registered proprietor and the authorized user or users”;
- (ii) “The only right to use the geographical indicator” in connection with the products for which it is “registered” belongs to the approved user.

An individual “who is not authorized” to use “a registered geographical indication” violates it when they:

- (I) use the indication in any way to describe or present goods that suggests or indicates that they originate in a different region than their “true place of origin” in a way that misleads people about their origin, or
- (II) use any indication in a way that is considered a "act of unfair competition," which includes passing off in relation to a registered geographical indication.
- (III) applies a different geographic indication to the goods that, while accurately describing the territory,” region, or locality where the goods originate”, deceives people into believing “that the goods originate in the area”, region, or locality that is the subject of the registered geographical indication.

“Using a geographical indication” for goods that do not originate in the location “indicated by the indication” is also illegal, even “if the true origin of the goods is also indicated”. This is especially true if the geographical indication is used in conjunction with terms like "kind," "style," "imitation," or similar terms.

### **Remedies for infringement of a geographical indication**

There are two kinds of remedies available for infringement of a geographical indication- “Civil remedies”; and “Criminal penalties”.

“Civil remedies”

“The law provides the following civil penalties<sup>32</sup> for the violation of a registered geographical indication”.

- (i) “Injunction”
- (ii) Payment or determination of profits
- (iii) “Delivery-up of the offending labels and indications”.

These remedies are not exhaustive but inclusive and the court can grant some other remedies other than the above, i.e., Anton Filler order.

- (i) Injunction

Injunction is of two types-permanent injunction and temporary injunction<sup>33</sup>. Also, the court

<sup>32</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999, s 21.

<sup>33</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999, s 21.

may grant “an ex parte injunction” for-

- (a) “discovery of documents”;
- (b) the retention of infringing articles, documents, or other material relating to the subject matter of the case in question in the suit;
- (c) “restraining the defendant from transferring” or “disposing of his property” in a manner which would prejudice the plaintiff's right to receive damages, costs, or other orders for money which may eventually be ordered against the defendant.

The injunction remedy discussed above is stronger and can avoid a larger harm to the plaintiff.

#### (ii) Damages or account of profits

The damages or account of profits remedy is alternative, not cumulative. The plaintiff must choose one of the two remedies at an earlier point in the suit. The remedy of damages (other than nominal damages) or account of profits can be withheld where defendant shows to the court that he was unaware and had no reasonable grounds for believing that the plaintiff's geographical indication was registered when he began to use it; and that upon becoming aware of the existence and character of the plaintiff's right in the geographical indication<sup>34</sup>, he ceased to use it forthwith.

#### (iii) Surrender of infringing labels and identifiers

The court may direct the defendant to hand over the offending labels and indications for destruction or removal. In accordance with pertinent considerations, the court may grant or deny such a relief.

All the above remedies are also available in passing off cases.<sup>29</sup> Proceedings for passing off are brought against passing off of unregistered geographical indications.

#### Penalty sanctions

“Criminal remedies” are better than civil remedies because the former can be easily “disposed off”. “Pendency of a civil suit does not justify the stay of criminal proceedings” where the same issue is involved. Because “criminal proceedings” directly attack “the honor and social prestige” of an infringer, in some instances he comes for a settlement out of court to save his

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<sup>34</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999, ss 67–68; B.L. Wadhwa, *Law Relating to Intellectual Property* (5th edn, Universal Law Publishing 2021) 315.

prestige. “Chapter VIII of the Act provides for offences and penalty for such offences”. “It is an offence to falsely make and falsely use geographical indication and to sell goods with false geographical indication”. “The punishment is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 2 lacs”<sup>35</sup>. “The punishment may be relaxed for sufficient and special reasons which shall be mentioned in the judgement”.

On second and further conviction, the penalty has been increased to one year's imprisonment extendable to three years and fine of Rs. 1 lac extendable to Rs. 2 lacs.<sup>31</sup> The mens rea component shall be required for conviction. In the absence of mens rea, the accused can be acquitted. The court shall, however, where an individual is convicted or acquitted by reason of want of mens rea, order the government to forfeit all goods and things by means of, or in relation to which the offence has been committed.

Following the analysis of the salient features of the “Geographical Indications of Goods (Registration and Protection) Act, 1999”, we now turn to the analysis of the international legal regime on the subject.

### **International Legal Framework**

The global legal regime governing the protection of geographical indications is comprised of four global treaties.

#### **Paris Convention**

“The Paris Convention for the Protection of Industrial Property, founded in 1883, requires seizure of all the products” that bear false information regarding their country of origin or their manufacturer's, producer's, or merchant's name, upon importation into the member states. Seizure shall also be carried out in the state where illegal affixation is present. Importation of the same shall be prohibited in states where importation seizure is banned.

The above provisions would also apply to a nation which is not a signatory to “Paris Convention but to TRIPs Agreement”.

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<sup>35</sup> **Primary Law Source (GI Act, 1999):**

The Geographical Indications of Goods (Registration and Protection) Act, 1999, ss 67–68.

### **The Madrid Agreement**

“The Madrid Agreement” Relating to “the Repression of False Indications of Origin”, in force from 1891, was introduced to implement an efficient system of addressing misleading practices pertaining to the misuse of indications of origin by parties not entitled to make use of such indications. Under the Madrid Agreement, any products which bear a false or misleading description, which declares that “one of the countries to which this Agreement applies”, or a region thereof, is directly or indirectly indicated as the country or region of origin, shall be confiscated upon importation in to any afore-mentioned countries.

Even though, like “the Paris Convention”, “the Madrid Agreement”<sup>36</sup> is mainly concerned with border measures, its scope of application is wider than that of the Paris Convention. While the Paris Convention is only concerned with the matter of false indications of source, the Madrid Agreement deals with both false indications and misleading indications. Misleading indications of source are those that are accurate in fact as to the source but are still misleading. “The scope of Article 1 of the Madrid Agreement” is limited by the provision of generic designation as provided under Article 4, which states as follows:

The courts of each nation will decide which designations, by reason of their generality, are reserved from the operation of the provisions of the Agreement; however, geographical indications specifying the region of origin of vine products are outside the reserve under this Article.

Therefore, Article 4 authorizes the courts of each state to decide which designations, due to their generic nature, are excluded from the provisions of the Madrid Agreement. Moreover, regional

Designations having a connection with the area of origin of products derived from vine, i.e., 'Champagne,' 'Cognac,' 'Madeira,' and 'Porto,' are excluded from the reservations contained in the provision. Thus, geographical indications of vine products cannot be placed in the public domain or become generic or descriptive terms. Because of this, more protection is afforded to indications of origin covering vine products under the Madrid Agreement, thus placing other products at a disadvantage.

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<sup>36</sup> Paris Convention for the Protection of Industrial Property, 1883, art 10; Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891, arts 1 and 4.

### **Lisbon Accord**

“Lisbon Agreement<sup>37</sup>” on “the protection of Appellations of Origin and their International Registration” came into force in 1958 with a perspective of “providing effective protection for appellations of origin”. It was feared “that the Paris Convention and the Madrid Agreement” failed to provide adequate protection to the appellations of origin. Hence, “the Lisbon Agreement” establishes a “procedure of registration” of appellations of origin by “the International Bureau” at “the request of the country of origin” and member states of the agreement, proclaiming such an “appellation of origin as recognized and protected in the said country”.

The member states are authorized to refuse acceptance of the appellation of origin by providing reasons for refusal within a specified period. The inhabitants of other states are also given the right, within a specified period, to file objections. In case no objection or refusal is filed against a proposed international registration of an appellation of origin, it will then be considered protected in contracting states, and therefore any subsequent claim that the appellation has become generic shall be prevented except where the appellation has been taken off protection in the home country.

The contracting states are obligated to safeguard the designations of origin of products of other contracting states which are registered and protected as such in the country of origin and registered with the International Bureau.

The Lisbon Agreement provides protection against all simulation or usurpation, whether where the “actual origin of a product is indicated, or where the appellation” appears in foreign language or accompanied by words like "kind", "type", "make", "imitation", or the like.

### **TRIPs Agreement**

“The Trade-Related Aspects of Intellectual Property Rights Agreement”, which contains provisions on the trade in counterfeit goods, treats the law on geographical indications in a separate section. This was brought about by the inclusion of certain issues raised by wine producers in the "European Community" in negotiations under the Uruguay Round. “Section

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<sup>37</sup> Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, as revised in Stockholm, 1967, and amended in 1979.

3 of Part II of the TRIPs Agreement” treats “geographical indications” and consists of three articles. Article 22 treats general protection of geographical indications. Article 23 contains more protective provisions particularly for geographical indications of wines and spirits. Article 24 treats exceptions and enumerates obligations to enter into future international negotiations on the protection of geographical indications. “Article 22 of the TRIPs Agreement” obliges members to provide legal redress for interested persons to stop (a) employing any means in labelling or description of a good which suggests or leads to the conclusion that the good is of a geographical region when it is not really of such geographical origin, thus deceiving” the public as to the geographical origin of the good”; and (b) any act “which constitutes an act of unfair competition under Article 10 of the Paris Convention”.

The above sentence shall have effect where a geographical indication, being true in relation to the place, region, or locality of production of the goods, makes false indication to the public that the goods are being made in some other region.

## **Geographical Indications Protection-A Comparative Overview**

### **2.1 United States of America**

The US is a member of the World Intellectual Property Organization from 25 August 1970, a signatory to the “Paris Convention for the Protection of Industrial Property” on 30 May 1887, and to “the Madrid Protocol Concerning the International Registration of Marks” from 2 November 2003. The “US is also WTO Member” “from 1st January 1995”. An agreement between “the European Community” and “the United States of America” has been made in respect of mutual recognition of certain distilled spirits/spirit drinks as of 25th March 1994. “The United States of America and the European Community” also signed another agreement with respect to “Trade in Wine dated 10th March, 2006”. The United States has been affording protection to foreign and domestic GIs at least since 1946, decades prior to “the TRIPs Agreement” entering into force when the term of art "geographical indication" caught on in mainstream. Geographical indications are conceived in the US as a subset of trademarks. Thus, the GIs have been afforded protection as trademarks, collective or certification marks availing themselves of the existing trademark scheme. Applications to register collective or certification trademarks shall be made to the “US Patent and Trademark Office (USPTO)”, which is also the office to which all trademarks are to be registered. “The United States” realized that by protecting geographical indications through the trademark scheme, in general, as certification and collective marks, it achieves “the TRIPs plus level of protection to the GIs of domestic or

foreign origin". The United States provides protection to the geographical indications of the following multiple ways:

### **“United States Certification Marks”**

Under “United States Intellectual Property Rights Law”, geographical indications are protected under the system of certification marks protection. The “US Trademark Act” of 1946 treats geographical indications as certification marks. The central role of a certification mark is to inform consumers that the goods or services of the authorized user have certain characteristics or meet specified qualifications or standards. It does not serve to indicate the origin of the goods. In the case of “geographical indications”, the “United States certification mark” certifies everything related to the origin of the goods or services to which it is applied. One mark may certify multiple goods or services characteristics in different certification categories; for instance, “the mark ROQUEFORT21” certifies that the cheese has been made from sheep's milk and aged in the caves of the Community of Roquefort (France) according to traditional methods and processes. The specimens of use and supporting evidence in the record are considered to determine whether the geographical sign is serving as a certification mark specifying the geographical origin of the goods or services with which it is used. If the record or other available evidence indicates that a sign is used primarily as a generic term specifying “a class of goods or services”, registration will be refused. Under other general principles of trademarks, “Title 15 USC Section 1052(e)(2) prohibits the registration of marks that”, when applied on or in connection with an applicant's goods, are determined to be 'primarily geographically descriptive' of the goods. A descriptive term containing a “geographical term therefore cannot be registered as a trademark”.

However, this is expressly excepting 'indications of regional origin.' An indication of regional origin, or geographical indication, can be registered as a certification mark under title 15 USC Section 1054. Also, if an applicant can demonstrate that a geographic term has become identified with its goods (or services), and therefore acquired distinctiveness with respect to those goods or services, registration is permissible under title 15 USC Section 1052(f). (b) Collective Marks in the United States Furthermore, geographical indications (GIs) can be protected under US law through “Collective Marks”.

“A collective mark is a special form of trademark which does not indicate the origin of a good but indicates association with a certain organization”. A holder of a collective mark, unlike the

certification mark holder, can utilize the mark for the production and sale of its own goods while, at the same time, advertising the goods of its members. There are two types of collective marks in the United States:

- (i) “Collective trademarks or collective service marks”;
- (ii) “Collective membership marks”.

The difference between these forms of collective marks is described by “the Trademark Trial and Appeal Board (TTAB)”, an administrative court of the USPTO, as follows: A collective trademark or collective service mark is a designation adopted by a "collective" (which may be an association, a union, a cooperative, a fraternal society, or other organized collective) for use by members exclusively, who in turn use the mark to signify their products or services and to distinguish them from those of nonmembers. The "collective" itself does not sell goods or provide services under a collective trademark or collective service mark, although it may participate in advertising or other promotions of the goods or services provided by its members under the mark. A “collective membership mark” signifies a designation used to signify membership in an organized collective entity, such as an association, a union, or other organizations. “Collective trademarks” and “collective service marks” signify “the commercial origin of goods or services” in a manner similar to "standard" trademarks and service marks, but as collective marks, they refer to the origin from the members of a group rather than any one member or entity.

According to laws of trademark registration, collective marks, such as indications of regional origin, may be registered similarly to trademarks. This procedure is applicable to individuals as well as states, municipalities, nations, and other entities that exercise legitimate control over the use of marks to be registered.

### **Opposition and Cancellation**

As far as protection of geographical indication is concerned, affected parties can oppose registration or seek cancellation of registrations, all under “the current trademark regime” in the United States. If a party would be harmed by the registration of a trademark, service mark, certification mark or collective mark or would be damaged by the continued validity of a US registration, the party may file a proceeding before the TTAB<sup>38</sup>, an administrative tribunal at the USPTO. The “TTAB has jurisdiction over opposition and cancellation proceedings” and

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<sup>38</sup> Lanham Act, 15 U.S.C. §§ 1063–1064 (sections on opposition and cancellation proceedings).

over appeals from an examining “attorney's final refusal to register a mark in an application”. The losing party at the TTAB level may appeal the TTAB's decision to “the Court of Appeals for the Federal Circuit, a court of jurisdiction”, inter alia, over intellectual property cases. From that court, the losing party may “appeal to the US Supreme Court”.

### **Analytical Analysis**

From the foregoing discussion we can infer that

- (i) The “US certification mark can provide legal protection of geographical indication” very strong as that of the specialized ones since the protection of US certification mark also requires a relation between the products and the place of origin of the products. Such a relation should be incorporated in “all grounds of certification”. Once the “relation is established and the certification is granted”, “the certification marks could protect one or more products”, including one or “more producers” in the said area.
- (ii) In the majority of the cases “the authority which exercises control over the use of a geographical term as a certification mark” in the “US is a public authority or a body acting on governmental authority”. When a “geographical term is used as a certification mark”, two things are of importance i.e., to preserve “the freedom of all individuals in the area to use the term and to prevent abuses or illegal uses of the mark” which would be detrimental to all those who are entitled to use the mark. Hence a private individual is not in “the best position to achieve these objectives satisfactorily”. “The government of an area” is often “the logical authority to control the use of the area's name”. “The government”, either directly or through “a body to which it has delegated authority”, would have power to preserve “the right of all individuals and to prevent abuse or illegal use of the mark”.

#### **China's Dual Approach to Geographical Indication Protection**

China signed the Paris Convention for the “Protection of Industrial Property on March 19, 1985”, and the “Madrid Agreement concerning the International Registration of Marks on October 4, 1989”. It also became a member of the World Intellectual Property Organization on June 3, 1980.<sup>38</sup> China was required to include TRIPS safeguards in its national legislation after being accepted to the WTO on December 11, 2001.

China has two separate and parallel systems in place to safeguard geographical indications.

“The Special Label program” for the “Protection of Geographical Indications or Marks of Origin” is the second, while the first is a trademark registration system.

Trademarks for goods and services that have geographical designations are covered by the trademark regime. “The Special Label system”, which deals specifically with GIs and differentiates them with “a special label identifying a registered” "geographic indication product," is theoretically comparable to the EU's sui generis PGI/PDO system. Both agricultural and handcraft items' geographic indications are protected. The regulating bodies in charge of overseeing China's two GI systems are distinct and run separately. A GI may later be registered as a certification or collective mark after first being filed under the Special Label scheme.

### **The "Special Label" System in China**

The “State Administration of Quality Supervision”, “Inspection and Quarantine (SAQSIQ)”, which established “the special Protection of (National) Geographical Indication Products (PGIP) in 2005”, is responsible for overseeing China's "Special Label" system for safeguarding GIs. According to the system, a “GIP in China” is a product that is approved by “the regulations” to be named after its “place of origin” and that is made using traditional techniques in a specific geographical area using raw materials from that region. The product's quality, unique features, and “reputation” are primarily determined by the geographical “features of the region”. The system makes no particular allowances for wines or spirits. SAQSIQ System GI registration requires full government participation.

### **Critical Analysis**

It is not only superfluous but also detrimental to protect GIs under both trademark law and GI-specific laws. Confusion and dispute have resulted from the Trademark System's and the SAQSIQ System's extensive overlap. In addition to causing instability, the requirement that the same geographic “indication be” examined and “approved by two agencies” using two distinct “administrative” processes places a significant operational expense burden on market participants. Conflict arises among the right holders as well, and some of them lose the protection they are entitled to while their interests are being reconciled.

## Challenges Faced By India In GI

- (i) India undoubtedly created legislation in the form of the 1999 Act, but it has not yet been firmly established and has a weak base. The following are some of the difficulties in administering the “Indian GI” system under “the Geographical Indications of Goods (Registration and Protection) Act, 1999”, as is the case with the majority of GI systems:
  - (i) “Section 2(1)(f) of the GI Act defines” "goods" to include any handicraft, industrial, or food items, even if the definition of GIs in the GI Act implies agricultural, natural, or manufactured goods. The Indian politicians might have prevented this disparity.
- (ii) Although a large number of GIs are registered in India, authorized users are not always registered. People “who trade in or deal in” the manufacture, “exploitation”, making, or “manufacturing of GI goods” are considered "producers" under the Act. Since dealers and middlemen benefit from this definition, true producers are neglected. By restricting the “geographic area” and “identifying producers” in whom they have an interest but who might not be actual “producers”, they may abuse “the law” by registering GIs that have the potential to be exploited commercially.
- (iii) No rural producer is interested in registering as an authorized user or bothering to contest GI violation.
- (iv) The local government must sometimes notify producers of their rights and possibilities after the fact because most of them are not actively participating in the application and are not aware that a “GI has been registered”.
- (v) In addition, producers who belong to the group that owns the “registered GI” do not have the “right” to use the “GI by default”; instead, they need to be “registered” as "Authorized Users," which requires completing a registration process, paying any necessary fees, and receiving permission from the GI's registered proprietor.
- (vi) Lawful manufacturers of the GI product may not be able to register because to a lack of knowledge, ability, or finances.
- (vii) The Act has no safeguards to guarantee that the qualities, reputation, and characteristics that are necessary for the initial registration under the Act are preserved after registration.
- (viii) GIs that are found to be generic cannot be registered under Section 9(f). In a nation like India, where many “traditional agricultural” goods get their own features and “characteristics” from the specific “geographical region” where they are grown, this generic exemption, which is more expansive than necessary, is a severe blow to the producers.

- (ix) The “artisans like weavers”, “goldsmiths” and other “craftsmen” “may not be affluent or literate” in English language, so the “publication” must be in the local language. Protecting those directly involved in the exploitation, creation, manufacturing, or manufacturing of goods is the primary goal of the Act. They have first-hand knowledge of GI products. The registration should be canceled when these makers or creators claim that the application was submitted without their consent.
- (x) The advertisement in the Trade Journal under Section 13 of the Act is useless and will not accomplish the same goal as a public notice similar to the notice in “Section 4 of the Land Acquisition Act of 1894”.

The TRIPS Agreement gives the country of origin the sole authority to determine whether or not a given geographical name has become generic. India should have permitted its “courts” to decide which terms are “generic” and which are not based solely on the circumstances in “India” (the country of origin), rather than on the status in the “areas of consumption”. This would have kept the scope of genericide as limited as possible. According to the overall analysis, delegations genuinely and sincerely want to proceed with resolving the remaining issues with the Act.

Geographical Indications (GIs) have always been thought to be a possible vehicle of 'protecting traditional knowledge'. It is so, because the specificity of GIs as IP protection instruments gives them a more accommodating attitude towards the indigenous groups' traditional ways than with other types of intellectual property rights (IPRs). These features are:

- GIs are a collective right, • GI-related knowledge is in the public domain,
- The rights can arguably be owned permanently (though, in a few instances, registration becomes obligatory, e.g., “in India”),
- The ambit of “protection is relatively circumscribed” in the sense that
  - (i) “right holders” have no right to transfer the rights and
  - (ii) to benefit from their rights in a GI, they have to use a specified place.

In addition, GIs have been seen to be relatively shielded from the several negative socioeconomic implications which have been found to emanate from corporate governance and the concentration of IPRs. Notwithstanding these, however, the application of GIs as a vehicle of protecting TK is not free of problems. The biggest drawback stems from “the fact” that although GIs can “protect products” from the “misappropriation of reputation” because of geographic origin, they fail to safeguard the knowledge inherent in the techniques of production

that are usually a part of the TK of the concerned groups. Notwithstanding all these factors, it can still be argued that to the extent that the products utilize distinctive traditional methods of production, which have evolved and been nurtured over periods of time, by region-specific communities, GIs can become a legal device for developing, promoting, and protecting a brand (Downes and Laird, 1999). It is generally assumed that a good “protection of a GI-product”, i.e., “preventing” depreciation of value due to “copying”, “free riding or usurpation”, would help in “increasing” the stream of “cash income” to the rural “community engaged in its production”. Therefore, “GI” is generally known “as a tool” that can help, albeit indirectly, in rural development by alleviating “income poverty of the rural poor”.

As most of the Indian “GIs” are associated with “artisanal” goods and “agriculture” and as these are some of the “sectors” that generate livelihood for a significant segment of the “rural poor” of this nation – “the rural development implications of GIs in India” is a subject worth consideration. As regards “TK”, while GI may not be able to safeguard the knowledge itself, if managed properly, it can certainly prove to be a useful “tool for brand-building” and anti-counterfeiting of the TK-based goods of India. GI becomes even more important for India in consideration of the fact that in the wake of “competition” from cheap imitations or other competing goods that are increasingly making their way into the fast-shifting markets in the age of “globalization”, most of these “traditional” goods and the people engaged therein are fighting tooth and nail to remain in the trade. The worst sufferers in the entire process are “the actual producers or artisans” at the lower rung of the “supply chain”, who are the most vulnerable ones. “Poor working conditions”, “low wage” and “insecurity” tend to compel these artisans to search for “alternative means of livelihood” leaving their “traditional occupation” behind, as seen in the case of “Baranasi”. What is more dangerous is a “general lack of interest” on the part of the new generations of these “communities” to pursue their “ancestral” pursuits. The reasons are not hard to find when one considers the piteous state of these communities. If such a trend is left to continue, much of the “rich artistic heritage” of India and the accompanying TK may become extinct in the course of time. It is worth noting that traditional arts and crafts, and their resulting products, not only provide a source of livelihood for the communities which practice them but are also a vital part of their cultural identity, the reason why these arts and crafts need to be preserved. In our view, legal protection as “Geographical Indications” (GIs), provided that it is supplemented by effective enforcement mechanisms, can go a considerable way in helping legitimate rights holders in their struggle to resist attempts at “free-riding and counterfeiting”. Aside from the possibility of commanding a “premium price”,

the greater chance of re-capturing lost “market share”—partly or completely—through imitations can also be translated into greater monetary rewards for true rights holders. GIs thus have the “potential” to improve the “socio-economic” well-being of true “producers and artisans”, provided that they “receive a fair” proportion of the benefits accruing. There is, however, no “guarantee that benefits accruing” from “GI designation” will be equitably distributed among the different levels of the supply chain which are involved in the product under consideration. This is mainly due to the observation that different levels within a supply chain, and the players thereof, have varying degrees of economic bargaining power and bargaining influence; generally, true producers and artisans, who are at the lowest rungs, are usually the most vulnerable and have little bargaining influence. It is, therefore, likely that more powerful players in the supply chain may appropriate an unequal proportion of the benefits, possibly nullifying the developmental potential of GIs to a great extent. In the wake of such negative possibilities that can emerge, there is a good case for “strategic intervention” by public or quasi-public agencies in this direction. With this background, the subsequent section examines the present status of the “handloom industry” in India, as a case study, to analyze the potential and “challenges of GIs” in enhancing “the socio-economic” well-being of the concerned “communities” therewith.

### **CASESTUDY**

The State of Uttar Pradesh Economic and GI Profile: A case for Awadhi cuisine Uttar Pradesh is the most populated State of India. It boasts a population of more than 170 million, and the population of “Uttar Pradesh” accounts for 16% of India's population. The GDP of Uttar Pradesh accounts for merely 6% of the overall GDP of India and the State's growth rate has been less than the all-India average since 19607. Based on latest data available regarding the geographical indications registered in the geographical indications registry, four geographical indications have been registered from the State of Uttar Pradesh, i.e., Allahabad Surkha, Banaras Brocades and Sarees, Mango Malihabadi Dussehri, and Lucknow Chikan Craft. Out of these four, Malihabadi Dussehri and Lucknow Chikan Craft belong to the Awadh region of Uttar Pradesh forming the larger part of the modern Central Uttar Pradesh including the capital city of Lucknow.

Geographical indications can specifically be used for the upliftment of the regions which though rich in heritage but are economically underdeveloped. “Uttar Pradesh”, for instance, is one of the economically most “backward States” of India but rich in “cultural heritage” of

which food is an important component. Awadh region of Uttar Pradesh including the capital division of Lucknow along with the currently existing districts of Barabanki, Gonda, Balrampur, Rae Bareli, Hardoi, Sitapur, Faizabad, Lakhimpur, Unnao, Pratapgarh, Sultanpur, Ambedkar Nagar, Bahraich and Shravasti, has had a glorious past. Imperial gazetteer of India of 1909 traces the history of political unity of the region back to the ancient kingdom of Kosala of King Dasaratha<sup>9</sup>.

The Awadh territory is characterized by a distinctive Indo-Persian culture that evolved during the 18th and 19th centuries under Shi'ite Muslim dynasties, who held sway from Lucknow, their adopted capital; the city is today the capital of Uttar Pradesh. Situated in the enormous Great Indo-Gangetic Plain, Awadh has ever remained a hub of cultural, spiritual, religious, and intellectual life for Indian civilization, with old cities such as Ayodhya, Allahabad (Prayag), Shravasti, and the Sitapur District forest (Naimisharanya) being recognized as great hubs of Hindu mythological history. The syncretic fusion of Persian and Indian sensibilities gave rise to a culture that was distinctive and multi-faceted, with few parallels elsewhere on the planet. Not only is the culture mixed but also indisputably Indian, with an overriding emphasis on etiquette and elegance in every social activity.

Human labor is renowned not just in India but also worldwide. The magnificence of the Royal Court of Awadh in Lucknow and the excesses indulged in by the Nawabs of Awadh have been recorded extensively in the pages of history by successive generations of tourists, writers, historians, romantics, diplomats, and treasure hunters until the present times.

Nawab Jafar Mir Abdullah, Nawabi Lucknow and Lucknow culture and sophistication in the view of many and an invited regular speaker on Lucknowi culture topics in the print media and the electronic media, was interviewed by this author on 28-12-2009 and gave many insights in the uniqueness of Awadhi culture and cuisine as shall be discussed in as and when in this article. He informed this author that salutation style of Lucknow, a secular Aadaab, has been included in the intangible heritage list of the world by the Unesco. As Ebrahim Alkazi has noted:

There are numerous families of chefs residing in the Lucknow city since Nawabi times who have followed their family professions. Such chefs like Master Chef Abdul Salam Quraishi<sup>26</sup> and Master Chef Imtiaz Quraishi <sup>27,28,29</sup>, are world-renowned and famous chefs of the Awadhi school of thought who have proved their culinary expertise throughout the world<sup>30</sup>.

The fact remains that there is sufficient material available at hand and also, sufficient living experts at hand, to differentiate the Awadhi cuisine from other regions of India. This wealth of already available material is sufficient to meet the requirements of Sections 9(f), 9(g) and 10 of the “Geographical Indications of Goods (Registration and Protection) Act, 1999” in regard to generic names, false or misleading names and homonymous geographical indications respectively. The registration under the geographical indication for certain products can be undertaken by an association of such chefs and cooks or any government department like the Tourism Department which can state that it acts on their behalf.

Since geographical indications are a collective right, it is beneficial to any representative non-governmental organization (NGO) to have the support of a government department while filing jointly for registration of the geographical indication. This has been seen with the request for registration of the handicraft chikan embroidery, where the Directorate of Handloom and Textiles of the Uttar Pradesh Government was accompanied by NGOs Shilp Sadhana, NEED, and the Lucknow Chikan Handicraft Association as applicants for the GI registration. Corporate houses and individual businesses can also file applications for registration as approved users of the geographical indication. In fact, famous hotel chains like the Taj Group, ITC Welcome Group, and Ashoka Group have contributed immensely to the popularization of Awadhi cuisine beyond the Awadh region; therefore, their inclusion in this project is essential for the implementation of the project. As approved users of the geographical indications, these corporations will not only assist in building the reputation of the Awadh region but will also stimulate more investment within the region, ultimately leading to employment generation in the relatively eco-friendly tourism sector.

### **Basmati controversy**

It was in 1997 that India seriously took to safeguarding its geographical indications. It was because on September 2, 1997 “United States Patent and Trademark Office” granted patent no. 5663484 to Ricetec<sup>39</sup> Inc., an Alvin, Texas-based U.S. multinational company for new "lines and grains" of 'Basmati' rice. “Ricetec” claimed that the “new varieties” are superior in characteristics to the traditional “Basmati rice” and can be grown successfully in specific geographical areas in North America. Further, it had used the “trademarks 'Texmati' 'Kasmati', and 'Jasmati’” to sell its variant of 'Basmati' rice<sup>40</sup> for quite a few years. The controversy, thus,

<sup>39</sup> US Patent No. 5663484, granted to RiceTec Inc. on 2 September 1997.

<sup>40</sup> WIPO article: *Basmati Rice and Geographical Indications* (WIPO Magazine, 2001).

was on two counts: first, the grant of the “patent was invalid”, said India; and secondly, sale of “rice by Ricetec Inc”. under the name of 'Basmati' which, in India's view, was a “geographical indication” in India, had to be prohibited.

As is widely known throughout the world, the long-grained scented rice variety called 'Basmati' is an old crop that is cultivated extensively in sub-Himalayan regions. It is cultivated in India for centuries and the farmers have cultivated different varieties based on traditional methods and practices. One of the points of India was that 'Basmati' is a “geographical indication” and since it is cultivated in India for centuries, no other nation can permit its citizens to use this indication.

It is interesting to note that ever since the “World Trade Organization (WTO)” was formed, there is an impressive cut in duty on Indian 'Basmati' rice in Europe, which has the highest demand for quality rice in the world. Thus, Indian 'Basmati' competitiveness has grown to a tremendous extent. Indian 'Basmati' exports to Europe increased from 30,000 tonnes to 1,30,000 tonnes. If, therefore, Ricetec Inc. is permitted to sell its rice variety in the name of 'Basmati', India could lose a huge market.

With respect to the grant of the patent, Ricetec Inc. contended that its patent was for new 'Basmati' "lines and grains," which were an improvement upon previous varieties. With respect to the use of the geographical indication 'Basmati,' Ricetec Inc. contended that it was used as a generic name for different types of “aromatic rice” and not a particular rice variety native to India. The company contended that such terminology had been used for decades in a generic sense to distinguish this variety from other origins like “American Basmati”,’ “Uruguayan Basmati”,’ and “Thai Basmati”

The issue now is: whether 'Basmati' comes under the definition of a geographical indication as provided under the “TRIPs Agreement” 'Basmati' is not the geographical name but the image of the product is indelibly connected with the area of origin, viz. the Indian sub-continent. 'Basmati', thus, is a prospective candidate for protection under “TRIPs Agreement”. The Ricetec, however, argued that even if one were to presume the name had fallen within the TRIPs definition at some point of time, it has entered the public domain and has become generic due to failure to protect the name internationally. It was also argued that Ricetec distinctly marks its products as 'American type basmati rice'. This is a practice, which is not permitted under TRIPs Agreement for geographical indications for wines and spirits alone.

After a hectic two and a half years of work, India assembled the data and challenged Ricetec Inc.'s patents in April 2000. The United States Patent and Trademark Office (USPTO) accorded patents to only three varieties of hybrid 'Basmati' grain out of 20 claims developed by the Ricetec against a larger claim by the company. Protection was granted to the three varieties of 'Basmati' that were patently and clearly different. So far as the use of geographical indication 'Basmati' by Ricetec Inc. was concerned, patent office mandarins opined that Ricetec might use the 'Basmati' appellation since it was neither a trademarked word nor a geographic indicator, such as 'Champagne' or 'Port' identifying a region. Additionally, it was argued that 'Basmati' was not a geographic indicator even in India. It was cultivated everywhere in India, Pakistan and even in Thailand. It was also claimed that the 'Basmati' saga was a chequered one right from the time of the perceived infringement in the mid-1990s when 'Texmati' and 'Jasmati' appeared on the shelves of grocery chain stores.<sup>10</sup> USPTO's this ruling goes against Indian interest so far as the geographical indication 'Basmati' is concerned.

### **GI registration**

The "India Tea Board" has also applied for registration of the words "Darjeeling and 'Darjeeling logo" under the "Geographical Indications of Goods (Registration and Protection) Act, 1999" (the Act), which "came into force on 15 September 2003", as well as the aforementioned "Community Trademarks".

Under the Act:

No one shall be liable for instituting any proceedings for preventing or for recovery of damages for infringement of "unregistered geographical indications".

The "registration of geographical indications" gives to the registered owner, as well as to all the authorized users whose identities are registered, the right to claim remedies in relation to infringements of the "geographical indications". But only the authorized users have the exclusive right to use the geographical indications in relation to the specific products for which the "geographical indications" are registered.

A "registered geographical indication" is infringed by a person who, being neither an authorized user thereof, employs such "geographical indications" in whatever way in the description or designation of goods which purports or suggests that such goods come from some other geographical area other than the actual "place of origin of the goods" in a way that causes confusion among the public; or employs any clue relating to geographical origin in a

manner that “constitutes an act of unfair competition”, e.g., to the misrepresentation associated with “registered geographical indications” such as uses another “geographical indication” for goods that, although true in fact with respect to the region, territory, or locality of origin, deceptively gives the impression to “the public” that such goods are manufactured in the particular region, territory, or locality to which the corresponding registered geographical indications point.

The GI Act is meant to create a public register, and

The GI Act grants public rights.

Present situation of Geographical Indication registration.

The desired trademarks of the “Tea Board of India” have not yet been registered. The Registrar, nonetheless, on considering the “application for registration” submitted by the Tea Board of India, has issued a notice of opposition to be filed. The Registrar will determine the registration of the geographical indication of the Tea Board only after hearing any objections that may be raised.

“Advantages of GI protection” in home market and overseas markets

The rationale for the necessity of special “protection for GI” above the CTM has been set by the chairman of the “Tea Board of India” as follows.

Where “CTM registration” is not recognized in a “jurisdiction” where protection is being sought, for instance, “France for Darjeeling”;

Registration of geographical indications is required for the protection of a trademark reciprocally as under EU Regulation<sup>41</sup> 2081/92;

Registration gives a GI a certain status, i.e., an instant connection with geographical origin.(1)

Apart from the above, the Indian Geographical Indications Act has been enacted to meet its obligation under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to bring WTO member nations to enact appropriate legislative provisions for geographical indications.

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<sup>41</sup> Council Regulation (EEC) No 2081/92 of 14 July 1992; The Geographical Indications of Goods (Registration and Protection) Act, 1999 (India); TRIPS Agreement, 1994

Steps taken at the global level back to top

Darjeeling tea and logo registration

For the protection of the geographical indications of 'Darjeeling' and the 'Darjeeling logo,' the Tea Board of India has registered these trademarks in many other nations, such as the United States, Canada, Japan, Egypt, and the United Kingdom, and other European countries as well. To that end, we have necessarily to take into account that on 3 August 2001 the UK Trade Registry granted the retroactive registration of the term 'Darjeeling' of 30 March 1998 under the UK Trade Marks Act of 1994. Furthermore, the United States has recognized the application made by the Tea Board for the registration of 'Darjeeling' as a Community Trade Mark during October 2002.

The name of the International Watch Agency

To mitigate the potential abuse of the term 'Darjeeling' as well as the associated logo, the Tea Board has engaged the services of Compumark, an agency specializing in global monitoring, since 1998. Compumark is tasked with overseeing and providing the Tea Board with reports concerning any instances of unauthorized usage and efforts to register such terms. Following the engagement of Compumark, multiple incidents of unauthorized use and attempts at registration of 'Darjeeling' and the Darjeeling Logo have been documented.

The assistance offered to foreign purchasers

In order to ensure the genuineness of Darjeeling tea, the Tea Board has sought the co-operation of foreign buyers, foreign sellers, and the Tea Council and other Associations, stressing that these parties seek the certificates of origin from the Tea Board for each export consignment of Darjeeling tea.

II. Roles of Domestic and Foreign Stakeholders The Tea Board of India<sup>42</sup> is the sole representative association of tea growers in India and is responsible for the implementation of government rules and policies. The board is authorized to oversee each stage of tea growing, processing, and selling, including the portion used in Darjeeling tea, mandated by a series of governmental orders. It cooperates closely with the Darjeeling Planter's Association, described as the single producers' forum for Darjeeling tea. Both the Tea Board and the Darjeeling Planter's Association (DPA) have been involved at various levels in activities aimed at

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<sup>42</sup> Tea Board of India, *Protection and Promotion of Darjeeling Tea* (Official Report, 2004).

protecting and maintaining the integrity of the 'Darjeeling tea' description and the 'Darjeeling logo' identifying it. The main goals are: (i) stopping misuse of the term 'Darjeeling' to denote tea marketed overseas; (ii) assuring that the proper product arrives in the hands of the consumer; (iii) enabling that the commercial benefit of the equity built up by the brand falls to the Indian tea industry and, in due course, to the plantation labor; and (iv) gaining an international recognition similar to that of champagne or Scotch whisky for branding and regulation.

The Tea Board of India took on the role of the complainant by filing and filing oppositions or other legal proceedings whenever cases of unauthorized use or attempts at the registration of the Darjeeling name and logo came to its notice. Such legal proceedings are generally taken where negotiations have been unsuccessful. For instance, in February 2000, in Japan, the Tea Board of India filed an opposition against Yutaka Sang yo Kabushiki Kaisa in respect of the registration of the trademark 'Darjeeling Tea' with a map of India, the International Tea KK in respect of the registration of the Darjeeling Women device in Japan under classes 30/42 (which cover tea, coffee, and cocoa), and against Mitsui Norin KK for the promotional use of the 'Divine Darjeeling' logo. The opposing parties challenged the invalidation claims against them.

Some of the controversies about Darjeeling tea have been sorted out through negotiations conducted by the Tea Board of India with the foreign companies in the case with the support of their respective governments. Consistent with this, the Tea Board with the support of the Indian government is continuing to negotiate with France at various levels with regard to the actions of the French trademark authorities. Besides, BULGARI, Switzerland consented to cease the legend 'Darjeeling Tea fragrance for men' on legal notice and negotiations.(2) In a specific French case, the Tea Board of India made the applicant Comptoir des Parfums, who had been operating advertising business in March 1999, aware of the rights that were already existing and goodwill that was associated with the name Darjeeling as a geographical indication for tea, thereby necessitating voluntary withdrawal of its application. According to the correspondence received, the applicant agreed to change all the specifications of the goods by inserting the phrase 'all those goods being made of Darjeeling tea or recalling the scent of Darjeeling tea'. The proposed change was subsequently held by the examiner to be descriptive of the goods involved. The India Tea Board claims that cooperation with buyers in major consuming countries, such as Germany, Japan, and the United Kingdom, is the only feasible solution to the problem of possible misrepresentation. However, it firmly rejects any attempt

at individual registration in the case of private labels or their misuse in specific international markets.

## STORY OF MANGOES

The Geographical Indication (GI) registration of mangoes in India is an official recognition for some mango varieties that possess an inherent connection to specific areas due to their superior characteristics, including flavor, aroma, and cultural identity. GI registration not only safeguards the nomenclature and reputation of these mangoes but also facilitates local producers in getting a better market price and international recognition.

### **Alphonso Mango (Hapus) – Maharashtra**

Alphonso mango, otherwise known as the "King of Mangoes," has its roots in the Konkan belt of Maharashtra, that is, Ratnagiri, Devgad, and Sindhudurg districts. Its distinct climate and laterite soil on the Arabian Sea coast are the secrets behind its unparalleled sweetness, saffron pulp, and powerful aroma. The colonial Portuguese have a history connected with Alphonso, as the variety was developed and popularized during their reign, and the name of this variety is attributed to Afonso de Albuquerque, a Portuguese nobleman. The GI tag for Alphonso guarantees only those mangoes produced in this particular coastal region can sell under this elite name.

### **Gir Kesar Mango – Gujarat**

The Gir Kesar mango, a highly sought after GI labeled variety, is primarily grown in the Girnar foothills of Gujarat's Junagadh district, more specifically in the Talala Gir area. The particular variety is renowned for its orange pulp and characteristic fragrance. The mango has its origins in the 1930s, when the Junagadh Laal Dori farm began growing it. The Nawab of Junagadh was said to have named it "Kesar," or saffron, because of its unorthodox color. The area's unique microclimate and soil texture imbue the mango with its characteristic taste and aroma, making it a highly desired export.

### **Banganapalle Mango – Andhra Pradesh**

Banganapalle, or Benishan, is Andhra Pradesh's most popular mango and covers almost 70% of the state's mango cultivation area. It is grown primarily in Banganapalle area of the Nandyal district but with significant production from Kurnool and Rayalaseema and the coastal belt as well. The mango fruit is oval and oblong with smooth, golden yellow skin and firm fiberless

pulp. Late maturity and canning utilization further add to its commercial value. The Banganapalle mango was GI-tagged in 2017 so that mangoes grown in only this area will be sold under this name.

**Malihabadi Dashehari Mango – Uttar Pradesh.** Malihabadi Dashehari is a popular mango variety from Malihabad region of the Lucknow district of Uttar Pradesh, which runs along the Gomti River. Malihabad, Mal, and Kakori tehsils together form the state's largest mango belt. The Dashehari mango was discovered as a chance seedling in the village of Dusher (now Dusseheri) and gained popularity through the initiatives of local nawabs. The soil condition and climatic pattern of Malihabad are accountable for a peculiar flavor, aroma, and texture of the fruit, which distinguishes it from Dashehari mangoes grown elsewhere. The Geographical Indication (GI) tag ensures the protection of this local identity and the economic prosperity of local agricultural producers.

#### **Bhagalpuri Zardalu Mango – Bihar**

Zardalu, or Jardalu, is a mid-season, aromatic mango that belongs to the Bhagalpur district of Bihar. Its cultivation is predominantly carried out in Bhagalpur and surrounding districts of Banka and Munger, as the presence of loamy soil and a temperate climate (20-25°C) favors its cultivation. The first sapling of Zardalu mango was planted by Maharaja Rahmat Ali Khan Bahadur in the early 19th century, and the original "mother tree" is still retained in Tagepur village. It is prized for its creamy-yellow color, powerful aroma, thin skin, and golden yellow pulp. Approximately 1,500 hectares in Bhagalpur is devoted to this specific variety, producing an annual yield of around 10,000 metric tonnes. The Geographic Indication (GI) tag, which it received in 2018, has promoted this mango in foreign markets, even though it has been suffering from problems of its preservation and transportability due to its thin skin.

#### **Himsagar Mango – West Bengal**

Himsagar is a much-valued mango variety cultivated mainly in Nadia, Murshidabad, Malda, and Hooghly districts of West Bengal. It is also found in some areas of Bihar and Odisha, where it is referred to as 'maldahi.' The fertile alluvial soil and humid subtropical climate of the area are required to yield Himsagar's fiberless, pulpy flesh and pungent aroma. Himsagar is particularly valued in Bengali sweets and is said to be even better than Alphonso in taste. The GI tag ensures the protection of the distinct features of Himsagar and the traditional mango-cultivating communities of West Bengal. Regional and Cultural Significance Each GI-tagged

type of mango is deeply ingrained in the cultural and horticultural heritage of its origin. GI tagging not only ensures the genetic purity and uniqueness of these mangoes but also upholds traditional cultivation practices and local economy. The recognition has given rise to efforts to improve infrastructure, marketing, and export so that these regional treasures find markets beyond without sacrificing their authenticity. In summary, GI registration of mango in India is a viable way to preserve the unique heritage of local mango varieties, support local producers, and allow consumers worldwide to enjoy the true flavors credited to their origin.

## Conclusion

Protection and promotion of Geographical Indications (GIs) have become the focal point in the contemporary world economic environment, where the worth of goods is inextricably bound to its origin, quality, and reputation. The research depicts that GIs are not only effective tools of culture and traditional knowledge preservation but also engines of economic development, rural development, and fair-trade practices.

Historically, evolution of geographical indication (GI) law is a reflection of growing international awareness of the need for protection of regional identity against abuse and misappropriation. International legal framework, in mechanisms like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), has provided the platform for countries to create sophisticated frameworks of GI protection with significant autonomy in local application. In India, the 1999 Geographical Indications of Goods (Registration and Protection) Act was a significant step towards recognition of commercial and cultural value of geographical indications. Although the Indian system is to be hailed for procedure and emphasis on local producers, it remains behind several developed systems like the European Union with numerous application and enforcement issues.

The comparative examination was centered on significant gaps in India's GI regime, including poor awareness among stakeholders, poor marketing support, and weak enforcement mechanisms. These gaps affect not only the legal protection of the GIs but also their economic impact. The study also confirmed that even though the role of GIs in trade and economy is immense, particularly for local communities, their benefits are disproportionately skewed, and primary producers remain exposed to exploitation. These case studies also serve to underscore the achievements and the limitations of GI protection, calling for an enhanced participatory and inclusive policymaking and enforcement process. Institutional support, stakeholder

sensitization, and strengthened market linkages are key steps towards unleashing the full potential of GIs.

In conclusion, while India has made significant strides in building a GI protection regime, there is still plenty of scope for reform. The future of GI protection lies in achieving a balance between robust legal protection and practical support mechanisms that offer equitable benefit-sharing to all parties. With greater international cooperation, the implementation of best practices from jurisdictions like the EU, and the enhancement of the link between GIs, sustainable development, and cultural heritage protection, India can make its GI regime a model for economic empowerment and heritage protection around the world.

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