



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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A CRITIQUE ON PROTECTION GRANTED TO TRADITIONAL HANDICRAFTS BY GEOGRAPHICAL INDICATION OF GOODS ACT, 1999

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INTRODUCTION:

Indian handicrafts are renowned for their aesthetic and functional value. They are a harmonious blend of design expertise and technical skills. This industry plays a significant role in India's economic growth, contributing over Rs.15,000 crore annually to foreign exchange earnings and employing approximately seven million people.¹ However, the process of globalization has introduced substantial challenges to this sector, including competition from similar crafts in countries like Pakistan, Bangladesh, Sri Lanka, Indonesia, and China, as well as counterfeit products. One of the most affected groups is the producers of distinctive craft items, who often lose their market share due to widespread infringement of their products. With the implementation of Intellectual Property Rights (IPR) in India following the TRIPS agreement, a framework has emerged for safeguarding these unique national products. The utilization of IPR mechanisms, particularly "Geographical Indications" (GIs), is playing an important role in protecting these distinct craft items associated with specific regions. GIs prevent the unauthorized use and exploitation of regional brand names while providing a unified branding approach for these products. Beyond brand building and marketing, IPR protection offers various advantages to artisans and craft producers. It elevates the value of their products, shields them from piracy, and ultimately enhances the socioeconomic status of artisans by increasing sales and profitability.

METHODOLOGY:

The study is exploratory in nature to provide clear guidance. The doctrinal methodology of research has been followed. Books, research journals, government reports and websites were used as sources of data.

¹Indian handicrafts industry and export, Indian trade portal, (Sept 30, 2023, 7:00 AM) <https://www.indiantradeportal.in/vs.jsp?lang=0&id=0,31,24100,24111#:~:text=Handicraft%20is%20one%20of%20the,%20attars%20agarbattis%20etc.>

TRADITIONAL HANDICRAFTS AND INTELLECTUAL

PROPERTY:

From an intellectual property (IP) standpoint, handicrafts can be divided into three separate elements:

1. Reputation: This aspect is linked to their style, origin, or quality.
2. External Appearance: This pertains to their overall shape and design.
3. Know-how: This involves the skills and knowledge utilized in their creation.

Each of these elements has the potential to be safeguarded through different forms of IP protection. For instance, know-how might be safeguarded through patents or kept as a trade secret. External appearance could be protected by copyright or industrial design rights. Reputation, on the other hand, may find protection through trademarks, collective or certification marks, geographical indications, or legal measures against unfair competition.

In this project, the study is limited only to the Geographical Indication and how far it is able to protect the traditional handicrafts and its artisans.

GEOGRAPHICAL INDICATIONS:

Article 22.1 of the TRIPS Agreement defines GI as follows:

‘Geographical indications are, for the purpose of this agreement, indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin’

The general standards of protection against unfair and deceptive business practises that must be offered to all GIs are outlined in Article 22.2. Article 23 offers special protection to GI of wines and spirit. It provides that GI for wine and spirit must be protected even if there is no risk for deception and unfair practice. The Article further requires the member nations to pass legislation to avoid labelling wines or spirits with GIs that don't come from the location specified.

TRIPS agreement required the members to protect their traditional handicrafts by providing GI under national laws. India realized its need to protect the unique products of its geographical

territory after the U.S patent office offered patent to RiceTec company in 1997 for its two unique rice varieties i.e., “Texmati” and “kasmati”. India was forced to file a lawsuit against the patent in the US court of law, which was a costly process. Fortunately, India prevailed, and Rice Tec was given a more limited patent covering just a few Basmati types.² Finally, India enacted Geographical Indications of Goods (Registration & Protection) Act in 1999. Subsequently, Geographical Indications of Goods (Registration and Protection) Rules of 2002 also came into force.

Section 2(1) (e) of the Geographical Indications of Goods(Registration and Protection) Act, 1999 states “Geographical Indication” as follows: “Geographical Indication, in relation to goods, means “An indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of county, 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 preparations of the goods concerned takes place in such territory, region or locality, as the case may be.”

BENEFITS OF GI FOR HANDICRAFT SECTOR:

GI is a place- based IP right. It provides a collective right to all the authorized users in the defined GI territory. The knowledge of the indigenous people must be protected as these people are easily subject to be riding off by other dominant people. India is diverse country. It is popularly known for its handicrafts and handloom products since ancient days. The people engaged in making these works are mostly located in the rural areas. These handcrafted items represent our culture and long-standing tradition that has been observed since ages. Section 2(1)(f) of GI allows GI registration for handicrafts (including handlooms) which is as follows: "goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff

There exists a difference between handicrafts and traditional handicrafts. Before the introduction of GI act, 1999 India followed the definition of the term “traditional handicrafts” as provided by the Task force on handicrafts, which is as follows: “Handicrafts are item made by hand, often with the use of simple tools, and are generally artistic and/ or traditional in nature. The include

²Thirumagal Jayaram, GI tags protecting the tradition and cultural heritage of Indian products, Caeidoscope, (Sept 30, 2023, 8:15 AM) <https://www.caeidoscope.in/art-culture/geographical-indication-tags-indian-traditional-crafts>

objects of utility and objects of decoration”. It is widely accepted that what distinguishes traditional from industrial handicrafts is the symbolic relationship between the handicrafts and a particular culture. Only traditional handicrafts are protected in the GI Act.

The benefit of GI act for artisans are summarised as follows:

- The registered producers and authorized users can seek civil and criminal remedies in case of infringement of the GI. The authorized users will get an exclusive right to use the GI.
- GIs aid in the maintenance and preservation of the knowledge related to the production of a GI product.
- It helps in creating a national and international brand name for those traditional handicrafts. This in turn increases the prices for these good in national and international market, as the consumers prefer to purchase exotic items from the place of origin. This ultimately increases the income of artisans.

For example: Rajasthan is home to an enormous range of handicrafts, many of which became well known after receiving G.I. tags. A few examples of handicrafts with GI status include the Kota Doria, Blue pottery from Jaipur, Sanganeri hand block printing, Thewa art, and Kathputlis. These items not only have benefited the concerned artisans in Rajasthan economically and socially, but have also helped the state's tourism and cultural development.³

WILL GI SAVE TRADITIONAL INDIAN ART?

1.PROBLEMS IN REGISTRATION OF AUTHORIZED USERS.

Section 2 (1) (k) of the Act defines Authorized user “.....if such goods are handicrafts or industrial goods makes or manufactures the goods and includes any person who trades or deals in such production, exploitation, making or manufacturing as the case may be of the goods”. This definition is very broad. In case of producers, they must be in the same geographical location as that of the product but this is not possible in case of traders. For example, a producer must be a person who is producing Kancheepuram silk saree in Kancheepuram. A trader who is residing and trading in any place other than Kancheepuram can also apply for Authorized user. It is

³ Dr. Krishna Kishor Trivedi, Impact Of Geographical Indication Tags On Handicraft Industry Of Rajasthan, JCREVIEW, (Sept 30, 2023, 10:40 AM) <https://www.jcreview.com/admin/Uploads/Files/623d27c6f118d4.22003146.pdf>

difficult to assure that he will be trading only with GI tagged Kancheepuram silk saree. He may also trade with other handloom sarees in the name of Kancheepuram silk sarees. Unless he attempts to maintain the identity of origin of the product, the regional identity of the product is will be lost.

Even if a producer fails to register himself as an authorized user, he will not be treated as an unauthorized user. But the problem is he cannot accrue the benefits offered by law in case of infringement. The major reason for negligence to register as authorized user is that the indigenous groups does not have adequate awareness about GI. In many cases especially in textile industry the application for registration of GI and Authorized user is mainly done by the co-operative societies and exporters association. So, they are the persons who ultimately benefit from GI and not the actual artisans and weavers who are the major contributors for the uniqueness of the product.

The capital of Uttar Pradesh, renowned for its exquisite Chikankari embroidery, has a significant craft industry employing around 250,000 artisans, mostly women in rural areas. Chikankari contributes to the livelihood of approximately one million non-artisans and brings in an annual export revenue of about \$12.5 million for the state. Despite being the first craft in UP to obtain Geographical Indication (GI) certification, many artisans are yet to fully benefit from it due to the state's slow efforts in organizing and educating them about the GI Indications Act. Artisans are unaware that they themselves should register as authorized GI users to access the advantages provided by the GI status for the craft.⁴

2.LACK OF POST PRODUCTION CONTROL:

It is important to note that Indian law has some provision to regulate the quality of GI tagged product. Section 11(2) requires the application for registration of GI to include how the product relates to a certain territory in terms of the natural and human components that are present in the good and how it is produced, its reputation, characteristics which are due exclusively or essentially to the geographical environment, the relevant class of goods, the geographical map of the territory, the particulars of appearance of the good.

⁴ Sunil Sudhakar Varnekar and Dr. Upankar Chutia, Geographical indication and handicrafts: A critique, International Journal of Civil Law and Legal Research, (Sept 30, 2023, 6:40 PM), <https://www.civillawjournal.com/article/37/2-2-8-463.pdf>

The applicant group should choose an "Inspection Body" to oversee the quality of the goods included in the GI. As per Rule 32 (1)(6)(g) of the Geographical Indications of Goods (Registration and Protection) Rules, 2002, the applicant must provide the particulars of inspection body which will regulate the use of GI in a specified territory. But the absence of an inspection body is not a barrier for granting registration. The Act does not impose any sort of liability on an inspection body and they are not obliged to make any periodic verification to ensure that product specifications associated with GI are complied.

According to section 27 of the Act, an authorized user who has failed to comply with quality standards of the product will be removed from the list of authorized users. The registration of a geographical indication (GI) can be cancelled or modified if there is a violation of registered conditions by the tribunal. According to Section 2(1)(p) of the Act the "tribunal" refers to either the Registrar or the Appellate Board. Before taking such action, they must notify and allow the involved parties to present their case. If the Appellate Board orders a correction, it instructs the Registrar to update the register accordingly. But, these mechanisms are inadequate.

The inefficient quality control serves as motivation for "free riders" in that community. Free-riders in a collective group are members who reduce product quality to compete with other GI producers or similar producers outside the GI market, particularly when consumers are unaware of the differences.

The following three situations would illustrate problems faced due to lack of post-production control:

Around 70% of weavers expressed enthusiasm in incorporating the Kota Doria GI logo in their products, recognizing the benefits of having GI registration. However, sellers of counterfeit Doria have resorted to using alternative names like "Kota Cotton." Unfortunately, the weavers lack knowledge on how to report GI violations, resulting in only a single case filed against dealers involved in selling fake Kota Dorias. This limited action is due to the weavers' unfamiliarity with the complaint process.⁵

The traditional weaver community faces widespread poverty and malnutrition, leading to suicides

⁵ Dr. Krishna Kishor Trivedi, Impact Of Geographical Indication Tags On Handicraft Industry Of Rajasthan, JCREVIEW, (Oct 1, 2023, 6.30 AM) <https://www.jcreview.com/admin/Uploads/Files/623d27c6f118d4.22003146.pdf>

and a shift towards less skilled employment, notably seen through MGNREGA participation. Five inspection bodies were identified in the GI registry application for Banarasi sarees. Despite multiple certification marks like Silk mark and Handloom mark, efforts such as the high-security nano particle-embedded fusion label haven't restored the Banarasi saree's reputation. Inferior quality products posing as Banarasi sarees, particularly Surat-made synthetic and Chinese-made sarees, dominate Indian markets. Weavers, fearing the economic burden of legal action, choose to compete by reducing quality rather than enforcing their rights in court. This has led to a decline in the Banarasi saree's overall reputation, rendering the GI tag ineffective.⁶

In 2006, Channapattana, a village near Bangalore, received Geographical Indication (GI) status for its finely crafted wooden toys. These toys faced threat from cheap machine-made copies from China and sold at lower prices. The GI designation aimed to revive the struggling industry by boosting exports, curbing counterfeits. However, the GI status fell short of expectations, particularly in supporting local artisans. Inadequate enforcement measures have hindered its effectiveness. Despite gaining recognition in India, Channapattana toys continue to be plagued by counterfeit products flooding the market, with insufficient action from the legal system and relevant authorities.

3. GI ACT IS NOT AN STANDALONE SOLUTION:

In the given context, Geographical Indications (GIs) can play a role within a comprehensive industrial policy but are not a standalone solution. They cannot replace the crucial efforts needed, such as providing sufficient credit and infrastructure, formalizing informal agreements, and establishing unions and collective organizations that represent the interests of both ordinary artisans and master-merchants.

Without robust local collective institutions, it becomes challenging to develop appropriate standards, achieve fair value distribution, and implement favourable industrial policies. If inadequate industrial and trade policies, along with exploitative conditions, persist and continue to harm the livelihoods of ordinary artisans, GIs alone will not be sufficient to safeguard traditional crafts.

⁶ N.Lalitha and Sowmya Vijayan, Infringement in GI protected products: How do we protect the producers and consumers, (Oct 1, 2023, 7.30 AM) <https://gidr.ac.in/pdf/wp-256-3248.pdf>

The following two situations would illustrate that mere granting of GI is not sufficient to protect the artisans and handicrafts:

In 2007 GI tag was granted to “Thanjavur Paintings” made in the district of Thanjavur. Many local artisans have not yet been registered as authorized users. Paintings made elsewhere, like in Chennai, Madurai, Trichy and Pudukkottai, are also marketed as “Thanjavur paintings”⁷

The registration of Kullu Shawls as a geographical indication (GI) in 2006 was expected to preserve this traditional craft, but the implementation process has been slow. The registration is valid for 10 years, with three years already elapsed in the efforts to establish it properly. Delays have arisen due to misunderstandings between the Department of Science and Technology and the Kullu Shawls Weavers Association (KSWA), leading to an incomplete GI logo. Furthermore, the KSWA has requested funding but faces obstacles in establishing a functional office in the valley due to government bureaucracy and red tape.

Toda embroidery was granted GI in 2013. Toda people considered ‘toda embroidery’ as sacred and wore it during ceremonies and occasions. But these are used in shoe fabric and sold online by the counterfeiters.⁸

4. CANNOT SOLVE ISSUES ARISING FROM SOCIAL AND ECONOMIC FACTORS:

A properly executed Geographical Indication (GI) system cannot fully address the underlying issues in the artisanal sector. At most, GIs can provide increased profits to merchants or master-manufacturers who successfully go through the GI registration process. The extent to which these benefits reach the artisan-workers, who are often paid on a piece-wage basis, relies on the power dynamics between merchants/masters and artisans and an effective socio-economic policy.

In the case of Bidriware products, there is a lack of organization or mechanisms to achieve a consensus among artisans relating to marketing strategies and pricing for their products. Artisans who obtain raw materials from Karnataka State Handicraft Development Corporation (KSHDC) are obliged to sell their finished items exclusively to KSHDC, giving the organization significant control over pricing and payments to the artisans. During discussions, artisans expressed concerns about receiving inadequate compensation for their products compared to the prices at which they

⁷ N. Ramesh, GI tag hasn't worked for real Thanjavur paintings, The New Indian Express, (Oct 1, 2023, 7.30 AM), <https://www.newindianexpress.com/states/tamil-nadu/2014/aug/25/GI-Tag-hasnt-Worked-for-Real-Thanjavur-Paintings-651982.html>

⁸ Shantha Thiagarajan, A stitch in time, Times of India, (Oct 1, 2023, 10.30 AM), <https://timesofindia.indiatimes.com/city/chennai/a-stitch-in-time-/articleshow/103125726.cms?from=mdr>

are sold in KSHDC's Cauvery Emporium showrooms. However, artisans find it challenging to negotiate for better returns due to their dependence on KSHDC for workspace and raw materials. Bidar, being a tourist destination, sees a notable number of local sales for Bidriware products. Due to a lack of agreement among artisans regarding final product prices, some artisans rely on the local market. Additionally, concerning online sales, middlemen and online sales platform owners purchase products in bulk at lower prices from artisans and sell them at higher margins on various online platforms.⁹

SUGGESTIONS:

1. GI must be developed through a participatory process.

Everyday artisans, who are the creators of this knowledge, should play an active role in determining which products and production methods should receive protection. In theory, this participatory process is established. But in practice, they are excluded. For example: In case of Banaras saree, trader organizations, a local NGO, producer cooperative societies and governmental agencies strived to obtain GI. Except few weavers, ordinary weavers who actually contribute to the knowledge was excluded. This exclusion occurred because of more influential master-weavers and traders, who held control over the local organizations representing artisans. Officials, dealers, and wealthy master weavers led the consultations, which were held in hotels away from the weaver communities. The GI application as a whole was drawn up in English and copies of it were not served to the ordinary artisans.

2. GIs must be sensitive to the dynamic nature of artisanal knowledge.

GI unintentionally stops the flow of knowledge by claiming that only some approaches and concepts are "authentic." But like all businesses, artisanal industries are dynamic and constantly adapt their processes and products to match shifting market demands, governmental changes, and technological advancements.

3. Regulate inspection bodies

The Act must mandate the setting up of inspection bodies. They must act as a watchdog that producers do not lower the quality of the goods produced. The functioning of these bodies must be regulated and the Act must also include provisions relating to how often inspection must be

⁹ An exploratory study into the problems and prospects of bidriware, Ramaih Intellectual Property Law, (Oct 1, 2023, 6.30 PM), <https://vtpc.karnataka.gov.in/storage/pdf-files/BIDRIWARE%20STUDY%20REPORT.pdf>

carried on. There must be responsibility upon inspection body. There must not be discrimination whether the inspection body of GI is by the government or not.

4. Role of government

There is minimal awareness about GI registration and legislation not only among the consumers but also among the producers. The efforts taken by the Government was not sufficient. So, Government must take active measures to achieve the purpose of providing GI.

In case of absence of infrastructure and other necessities, or to streamline the sales or to protect the authenticity of GI tagged handicrafts the government can directly participate. For example: the GI on Mysore silk is fiercely protected by the Karnataka state government, where the Mysore Silk products are sold only through the government sales emporiums and no other person is given the franchise.

CONCLUSION:

Geographical Indication (GI) tags are modern tools aimed at safeguarding indigenous knowledge, including that within the handicrafts sector, without disturbing the free trade process. While the Geographical Indications of Goods Act in India offers protection for its geographical indications, it is crucial for artists or their associations to adopt practical measures for effective utilization and enforcement of their GI rights. Additionally, there's a necessity to identify various geographical indications and register them under the Act to attain international protection. On the global stage, India stands as a proponent for extending higher protection to geographical indications, aiming to prevent scenarios similar to the Basmati controversy. Though protection provided through GIs can drive local economies, preserve traditional arts, foster rural socio-economic development, and secure higher economic returns, the true extent of how these claims genuinely benefit artisans in the developing world is yet to be fully realized.