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PROPOSED FRAMEWORK FOR ECONOMIC DEVELOPMENT THROUGH GEOGRAPHICAL INDICATION PRODUCT

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Abstract

Geographical Indication established a product-place link based on reputation, quality, or another characteristic of the good¹. Food means processed food, partially processed or unprocessed that is intended for human consumption². India is a country with diversified culture and tradition. Food habits can be linked with culture and tradition and the same varies from place to place. As per Geographical Indication Act, 1999, Good includes foodstuffs³. Foodstuff has not been defined in the Act. Food definition can be taken from the Food safety Standard Act 2006⁴. Considering that definition of food, it is possible to register foodstuff under the Geographical Indication Act 1999 in classes 5, 29, 30, and 31⁵. Further, packaging

¹ TRIPS Article 22 Protection of Geographical Indications: “Geographical indications are, for the purposes 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”.

² As per Food safety Standard Act 2006—Section 2 (j) -- “Food” means any “substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances”.

³ As per Geographical Indication Act 1999, Section 2 (f) - “goods” means any “agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff”.

⁴ Food Safety Standard Act 2006

⁵ Class 5. “Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides”. Class 29. “Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats. Class 30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice”. Class 31. “Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt”.

used for special food products and utensils used for the preparation and processing of food products can be registered under GI Act. Food habits and its recipe are attached to culture, tradition, and origin. Product –Place linkage can be established with food recipes and their processing. Hence, it can be possible to promote foodstuff using GI as a tool. But there are several challenges to tagging GI with foodstuff. One of the important aspects of the promotion of GI is branding, supply chain integrity and quality control. The challenge lies with cross-culture migration, quality control, and food safety regulation. Will it be possible to prevent the preparation of GI tag foodstuff outside the place of origin? Will it be to maintain the recipe and provide tagging if the product is produced outside the place of origin? Will it be possible to keep the quality and recipe intact? How will it be possible to promote GI tag foodstuff along with cross-culture migration? How the quality control can be maintained? There is no quality control clause in GI Act. The definition suggests that a given quality, reputation or another characteristic of goods is essentially attributable to its geographical origin. The generic name is prohibited from registration of GI⁶. Application of GI requires a statement of respect for reputation, specific quality, or other characteristics and a geographical map⁷. There is a requirement for the formation of an inspection body. The inspection structure's specifics govern how geographical indications are used in relation to the items for which applications are made in the specific area, region, or locale specified in the applications. But, the role of the inspection authority is not further elaborated. Whether the Inspection body can administer the use of that GI? If yes, how. The process has not been defined in the act. There is no judicial pronouncement regarding the same. Is the inspection body having any role in quality control? In order to issues related to quality control, migration and dilution, it is required to formulate an appropriate framework. On the one hand, Foodstuff should be tagged through GI, but quality control and territory are a challenge due to cross-territory migration. There is a need for separate regulations. In Europe, Regulation (EU) No. 1151/2012, deals with quality schemes for agricultural products and foodstuff, for “traditional specialties guaranteed”

⁶ Section 9 of The GI Act 1999, Prohibition of registration of certain geographical indications

⁷ Section 11 of The GI Act, Application for registration.. “a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

.....the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured”.

(TSG)⁸. Do we need separate regulations for quality control or keep it open under Consumer Protection Act? In order to register Good under the Geographical Indication of Goods Act⁹. The uniqueness with reference to food products may be taste, aroma, nature, shape, feel, colour, texture, raw materials or recipe, and method of preparation that include process parameters. Further taste or aroma can be linked to raw materials produced in that region or place such as “Darjeeling Tea” GI is related to aroma and aroma is linked to tea leaves characteristics that are produced in specific agro-climatic conditions on the other hand “Odisha rasgulla is with a characteristic that includes juicy, soft to feel, and non-chewy in consistency, and can be swallowed without teeth pressure¹⁰. Whereas, the “Bengal Rosogolla” is having different texture and taste. It will be possible to distinguish Darjeeling Tea from Nilgiri Tea because of uniqueness is linked to the agro-climatic condition. It may be difficult to apply a similar linkage in respect of food products like rosogolla. Now, the question arises, whether Odisha Rosogolla will dilute the branding of Bengal Rosogolla or both will compete and grow. Further, according to some researchers, the origin of rosogolla traced back to Bangladesh¹¹. Hence, the issue lies with community migration, branding, quality control, unfair trade practices, and dilution. The authors propose a separate framework for the promotion of GI-tagged foodstuff. The framework may consist of the followings;

1. Identification of specific uniqueness of the product that can be linked with the place of the origin e.g., raw material and environmental factor.
2. Selection of Geographical Map including producers¹² and place of origin that include historical background. The same should be chosen judiciously. It may prevent the migration of art and skill.
3. Protect it using various means that include certification mark, and collective mark. The lesson can be learnt from Darjeeling Tea GI – (Annexure-A)

⁸ 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.

⁹ FORM GI-1

¹⁰ After Kolkata, Odisha gets GI tag for its own variety of rasgulla | Times of India Travel (2019). Available at: <https://timesofindia.indiatimes.com/travel/destinations/after-kolkata-odisha-gets-gi-tag-for-its-own-variety-of-rasgulla/articleshow/70451535.cms> (Accessed: 27 July 2022).

¹¹ ‘West Bengal and Odisha Battle Over the Invention of “Rasgulla”’ (2015). Available at: <http://food.ndtv.com/food-drinks/west-bengal-and-odisha-battle-over-the-invention-of-rasgulla-1211128> (Accessed: 27 July 2022).

¹² 2(k) “producer”, in relation to goods, means any person who,— (i) if such “goods are agricultural goods, produces the goods and includes the person who processes or packages such goods; (ii) if such goods are natural goods, exploits the goods; (iii) if such goods are handicraft 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”.

4. Design an appropriate logo and registered it under Trademark. The lesson can be learnt from Darjeeling Tea GI- (Annexure-A)
5. Create an appropriate Governance Framework. The lesson can be learnt from Colombian Coffee GI- (Annexure-A)
6. Develop an appropriate supply chain management framework. The lesson can be learnt from **Colombian Coffee-** (Annexure-A)
7. Accelerate registration of authorized users from the region as indicated in the Map after apocopate due diligence
8. Enforcement and preventing genericide. The lesson can be learnt from Darjeeling Tea GI- (Annexure-A).
9. Standardization as per Food Safety Regulation/s
 1. Enhancing food GIs – Domestic and International market
 - a) Well-established identity in local as well as global markets
 - b) GI awareness among all the stakeholders
 - c) Counterfeiting in the markets
 - d) Socio-economic impact – also related to foreseeing the future of the GI.
 - e) A comparison can be taken among two different classes of GI (maybe food and agriculture or food and handicrafts / manufactured goods) on the impact of registration.
 - f) Cross-regulation issues

I. Introduction

Geographical Indication links people (producers)- product-place. The product is having specific characteristics that may be due to agro-climatic condition, soil condition, skill, reputation, and historical background. Geographical Indication can be used as an important tool to protect and promote an agro-food product. It helps producers to differentiate their products from competing products in the market. It is possible to build a reputation and goodwill around the product. The same can provide price premium and competitive advantage to the producers.

According to a survey, geographical factors like soils do have an impact on the flavor and

quality of food. The major purchase motivator for 37% of respondents in EU research of 20,000 consumers on the purchase of Geographical Indication products was the guarantee of origin, followed by expectations of quality for 35%, the specific location and production method for 31%, and tradition for 16% of the respondents¹³. It is reflected that around 72% of respondents are interested in quality and origin. Research indicates that quality product with cultural linkage helps the producer to enter into more lucrative niche markets through product differentiation¹⁴. It also prevents information asymmetry. Hence GI can be used as a strategic tool for product differential in the international market that may lead to stimulating the rural economy and socio-economic development of developing countries. But, the nature and scope of GI protection vary across countries. The scope of protection for GI is still under strong debate¹⁵. Wine and spirits are protected to a greater extent under TRIPS¹⁶. The debate has been persisting on high-level protection for GIs for all products¹⁷. The EU nations are ardent supporters of extending the high degree of protection¹⁸. Developing countries are also interested to protect traditional knowledge and skill through GI.¹⁹ Geographical Indication has a strong linkage with the economy. It provides consumer welfare and producer incentive. Geographical Indication will prevent a “free ride” over reputation and can be used as a marketing tool for producers. It is reported that the estimated trade value of registered GI is around USD 50 billion²⁰. Let us analyze the various economic theories that are applicable to it.

¹³ UNCTAD (2015) ‘Why Geographical indications for least developed countries?’, p. 77. Available at: <https://www.tralac.org/images/docs/10483/why-geographical-indications-for-least-developed-countries-unctad-september-2016.pdf> (Accessed: 27 July 2022).

¹⁴ Bramley, C., Biénabe, E. and Kirsten, J. (no date) THE ECONOMICS OF GEOGRAPHICAL INDICATIONS: TOWARDS A CONCEPTUAL FRAMEWORK FOR GEOGRAPHICAL INDICATION RESEARCH IN DEVELOPING COUNTRIES. Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1012-chapter4.pdf (Accessed: 27 July 2022).

¹⁵ Frantz, F. (2016) ‘Twenty Years of Trips, Twenty Years of Debate: The Extension of High Level Protection of Geographical Indications-Arguments, State of Negotiations and Prospects’, Annual Survey of International & Comparative Law, 21(1), pp. 93–117. Available at: <http://digitalcommons.law.ggu.edu/annlsurveyhttp://digitalcommons.law.ggu.edu/annlsurvey/vol21/iss1/7> (Accessed: 27 July 2022).

¹⁶ Article 23 TRIPS: Additional Protection for Geographical Indications for Wines and Spirits

¹⁷ Frantz, F. supra note 15

¹⁸ ibid

¹⁹ ibid

²⁰ Benavente, D. (2016) ‘Chapter 1 – Introduction to Geographical Indications: Origin and Characteristics’, in The Economics of Geographical Indications. Graduate Institute Publications. doi: 10.4000/books.iheid.652.

II. Geographical Indication and Economics

Evidence suggests that Geographical Indication can be used for the upliftment of rural economy. There are various theories applicable to the economics of Geographical Indication such as; information theory, reputation theory, and club good theory.

- Information theory- It is based on market distortion and information asymmetry. Market distortion may happen due to information asymmetry. Geographical Indication prevents information asymmetry between producers and consumers. It justifies the need for strict regulation to avoid asymmetry of information and market distortion²¹.
- Reputation Theory-Shapiro's Model is based on reputation. Reputation is an indication of quality that provides symmetry of information. According to Shapiro, reputation represents expected quality²². It indicates past behavior that can be extrapolated to make inferences about future behavior²³.
- Club Good Theory—Club good can be considered as an impure public good. It is a subset of the public good. Geographical Indication provides benefit to the community, and producers. It can be considered club goods²⁴. It is a community right as compared to a private right.

Above economic theories justify the protection of Geographical Indication for benefit of producers, beyond the private body. For several developing nations, the product sold under geographical indication is a significant source of income. It is reported that Geographical Indication as a tool may be utilized for a sustainable food system²⁵. Reputation theory and information theory specify economic justification of protection origin linked product through Geographical Indication. In order to keep its reputation intact, quality control measure should

²¹Policies, A. and Countries, O. (2004) 'Agricultural Policies in OECD Countries 2004 (Summary in Slovak)', in. doi: 10.1787/agr_oecd-2004-sum-sk.

²² Bramley, C., Biénabe, E. and Kirsten, J. (no date) THE ECONOMICS OF GEOGRAPHICAL INDICATIONS: TOWARDS A CONCEPTUAL FRAMEWORK FOR GEOGRAPHICAL INDICATION RESEARCH IN DEVELOPING COUNTRIES. Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1012-chapter4.pdf (Accessed: 27 July 2022).

²³ ibid

²⁴ ibid

²⁵ Vandecandelaere, E. et al. (2018) 'Economic Impacts of Geographical Indications: Worldwide Evidences from 9 Case Studies', 13th European IFSA Symposium, (July), pp. 1–17. Available at: https://www.researchgate.net/publication/334315797_Economic_Impacts_of_Geographical_Indications_Worldwide_Evidences_from_9_Case_Studies (Accessed: 27 July 2022).

be taken through supply chain integration, Case study of Darjeeling Tea (Annexure-A) indicate the same.

III. Geographical Indication Awareness Among Stakeholders

In order to protect and promote Foodstuff as GI, it is required to build awareness among stakeholders. The awareness should include the economic implication of GI, and supply chain integration to provide an un-changed quality product. Under the Geographical Indication of Goods Act of 1999, a producer or a group of people can register a geographical indication²⁶. The producers include persons who produce the goods and may include any person who trades or deals in such production, exploitation, making, or manufacturing. The stakeholder involves in the value chain of the product is producers. Awareness among producers on reputation and quality control is an essential step in the process of generation of Geographical Indication assets. There is a requirement for the formulation of a proper governance structure to prevent genericide and dilution. There is a strong need for capacity building among producers regarding awareness about their rights. Further, the apocopate framework is required to constantly vigil, and monitor their right against possible infringement. Infringement and or piracy leads to dilution of reputation. However, the challenge lies with “community migration”, and the selection of producers.

IV. Counterfeiting in the markets

Counterfeiting leads to the loss of reputation that is the backbone of Geographical Indication and its economics. A counterfeit good is referred to as infringed/passing off good. Counterfeiters free ride on the reputation of Geographical Indication that provides price premium. Geographical Indication right is a community right as compared to Trademark right which is a private right. Hence to prevent counterfeiting, there is a need for administrative protection. The public authority of the state plays an important role in administrative

²⁶ Section 11. Application for registration.—(1) Any “association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication”.

protection. As per Article 36 of EU regulation No. 1151/2012, a member state is required to designate competent authority to monitor the use of GI in the market²⁷. Hence, there is a need to define the role, responsibility, and duty of the Inspection Body that is required to be formed during the registration of Geographical Indication in India, Litigation, and court-referred remedies require higher transaction costs. This demands a formulation of an alternative enforcement mechanism of Geographical Indication related to IPR, and community right as it has a huge socio-economic implication.

V. Socio-economic impact – is also related to foreseeing the future of the GI

It is already referred that Geographical Indication is considered a community right. It protects the origin-linked product and connects people-product-place (P-P-P). This signifies that it has a positive socio-economic impact that is reflected in various case studies. Giang Hoang et al.²⁸ has studied the relationship between the geographical indicator and sustainable rural development in Vietnam and came to the conclusion that GIs had a beneficial impact on the country's rural sustainability. Further case studies (**Annexure- II**) indicate a positive impact of GI on rural economic development. A successful GI is said to be able to provide safe, varied, and healthy diets, avoid the delocalization of production, create jobs, and stimulate local development²⁹. The economic implication of GI on socio-economic development can be influenced by various factors such as;

1. Market and Market Size
2. Consumer Nature
3. Price Premium
4. Value Chain
5. Supply Chain and its integrity

²⁷ REGULATION (EU) No 1151/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 November 2012

²⁸ Hoang, G. et al. (2020) 'The impact of geographical indications on sustainable rural development: A case study of the Vietnamese Cao Phong orange', Sustainability (Switzerland), 12(11), p. 4711. doi: 10.3390/su12114711.

²⁹ Food and Agriculture Organization of the United Nations-FAO (2019) Geographical Indications for sustainable food systems Preserving and promoting agricultural and food heritage GI s contribution to sustainability, FAO Directrices. Available at: www.fao.org (Accessed: 27 July 2022).

There is not ample empirical study on the socio-economic impact of food staff GI in India. Association of persons or producers can apply for registration of GI in India. Will GI registration increase net producer income in India? This is required to be studied. Further, Whether Indian consumers are ready to pay a price premium and procure GI products? The same is required to be addressed. International market survey, registration, and regulation regarding food safety are required to be addressed to obtain the positive benefit of food staff GI. There is a requirement for sector-specific and or product-specific policy formulation. Further, the regulatory aspects need to be considered. Figure-1 shows the framework that has been postulated by authors for effective utilization of skill/reputation/traditional knowledge using GI as one of the important tools.

VI. Cross Regulation Issues:

Community migration and foodstuff-related GI regulations as well as Food safety regulations come into the picture for efficient utilization of food staff GI for sustainable rural development. The standard with reference to food safety, quality, or safety needs to be addressed. There are various issues for the trading of GI-indicated goods beyond the jurisdiction such as

- WTO Agreements on the Application of Sanitary and Phytosanitary Standards (SPS Agreement)
- International Standards for Food Safety considering fair trade practice and consumer health³⁰
- International Standard for labelling of food³¹

Hence, the above issues are required to be considered for cross-country trading of GI-labelled foodstuff. There is a requirement for international harmonization as well as a treaty for the trading of GI-labelled foodstuff.

³⁰ Wirth, D. (2016) 'Geographical Indications, Food Safety, and Sustainability: Challenges and Synergies', *Bio-based and Applied Economics*, 5(2). Available at: <https://lawdigitalcommons.bc.edu/lisfp/1082> (Accessed: 27 July 2022).

³¹ *ibid*

ANNEXURE-1

Colombian Coffee-case study
Characteristics: <ul style="list-style-type: none"> – Rich taste and aroma – Handpicked berries – Soaked in cold mountain water for 24 hours – Carefully washed in long concrete troughs – Dried on great open terraces
<ul style="list-style-type: none"> • Governance • Colombian Coffee Federation <ul style="list-style-type: none"> ✓ Owned and controlled by 50,000 Columbia’s Coffee farmers
<ul style="list-style-type: none"> • Supply Chain Management • Lays down rigorous quality control standards • Certifies 100% Colombian Coffee with no other origins blended in
Darjeeling Tea-case study
Characteristics <ul style="list-style-type: none"> • Wiry tippy leaves to small tippy leaves. • Handpicked speciality teas. • Teas have attractive bloom and have a round, mellow flavour. • Cultivated only in 87 designated gardens in the Darjeeling district
Governance <p style="text-align: center;">Govern by Tea Board</p>
International Protection <ul style="list-style-type: none"> • Canada

- USA
- UK
- Japan
- EU

Protected word, logo; Collective mark, Certification Mark, Trademark

Supply Chain Management

- Maintain of Supply Chain Integrity at all level
- Mechanism of record keeping
- The certification agency is to conducting onsite checking and verification of all the data submitted by all entities in the trade chain
- Onsite Auditing and Spot check

Enforcement and Prevent Genericide

- Notice
- Independent Agency for enforcement and constant vigil

ANNEXURE-11

Colombian Coffee-case study

Impact

- ✓ Standard of living of Colombians has been improved
- ✓ Thousands of miles of access roads has been built along the production area
- ✓ Development of Health Centre, School, Coffee Tourism
- ✓ Employment opportunity

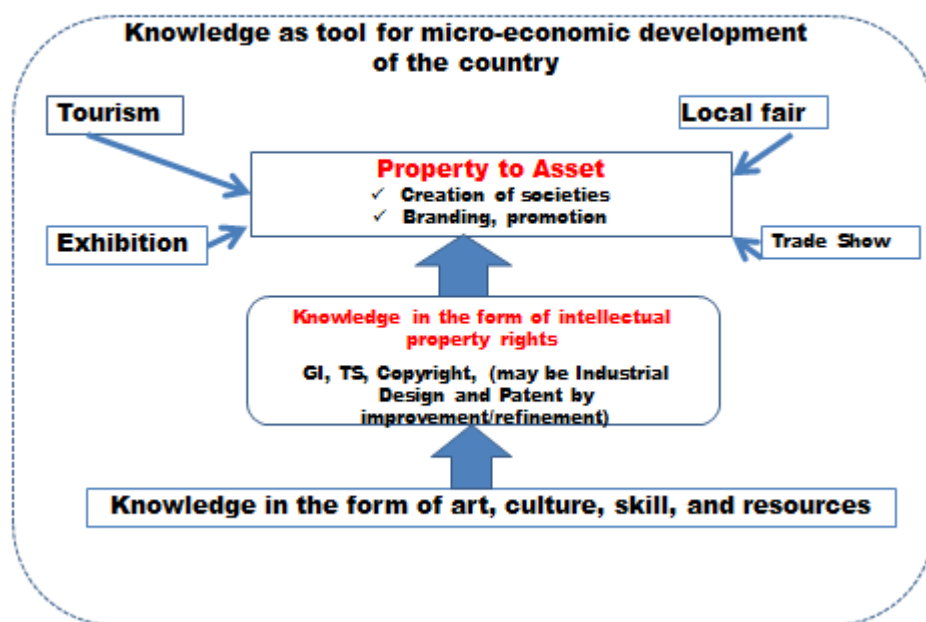


Figure 1: Proposed Framework for Economic Development

