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Geographical Indications In India And The Missing Regulatory Framework On Post Registration Quality Control Measures

Authored By-Shraddha Kamatagi

Abstract

A Geographical Indication is a mark which is used on products that have a specific geographical origin and possess different qualities or a reputation that are because of that origin. Currently all the awareness programs focusing only on registration process of Indian Geographical Indications. At present promotion of geographical products has been addressing all of the attention both in the domestic and international market. Until now the introduction of the concept of post registration quality control measures for the products which are produced under the GI tag, has been completely forgotten or ignored in the legal framework. The present paper focuses more onto the need for the introduction of post registration quality control measures. The problems involving the boundary between the geographical indication as a collective right and its connection with the quality and product and processing ethics has been discussed in the paper. The legal framework of the US and Europe relating to geographical indications, and the quality control measures adopted by the countries, has been explained. The paper includes some of the case studies have been highlighted to show the statutory mechanism connected with the GI holding products in our country.

The paper concludes with the recommendations for the decentralized instruments for different geographical indications which are yet to be administered by an even legal framework is the path towards advancement.

Key words *Geographical Indications, quality control measures, sui generis system, GI tag products, United States, European Union.*

Introduction

Intellectual Property Rights are generally the exclusive rights given to a person for the innovations or the creations which are results of his intellect. Geographical Indications is one among the Intellectual Property Rights. This act provides for the process of registration and the protection geographical indications. The definition of term Geographical Indications is covered under the Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999¹, which defines- ‘geographical indications’ 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 characteristics 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.” In general, geographical indications are the identification of goods which originate from a locality of a particular region and they represent the quality, reputation and the geographical origin of the goods.

Currently there are about 370 products which are registered under the GI Act in India. Among which Karnataka is state which is having the highest GI tags. It is having 42 products which have GI tags. In the current times all the programs relating to GI appears to be given importance only to the registration of products, but the quality control measures are the least bothered or least discussed concept by the law-making authorities. Quality has a direct connection with the economy of the country, Indian GI law is to be modified and come up with the new measures for quality stability.

Statement Of Problem

Currently under the Indian Geographical Indications regime, the regulations regarding the quality control measures after registration of the GI products is not given importance. Due to these missing regulations consumer is into trouble while choosing the products. GI tag products are presumed to be of good quality but the same quality is not maintained after registration, then the core objective of the Act cannot be met.

¹ Geographical Indications Goods (Registration and Protection) Act, 1999, Sec 2(e), No 48, Acts of Parliament, 1999 (India).

Research Objectives

- To determine the missing regulations regarding the quality control under Indian GI Act,1999.
- To study the European Union's sui generis system of protection of GI.
- To study the American system of quality maintenance schemes relating to GI.
- To recommend some of the regulations regarding quality control by analysing EU and US's regulatory framework.

Research Questions

1. Whether Indian GI Act has regulations with regard to quality control?
2. What method is adopted by the European Union to maintain quality of GI products?
3. What are the regulations that are followed by the United States to keep watch on the quality of the product after registration?

Hypothesis

Regulations on post registration quality control measures are inadequate under Geographical Indications Act, 1999.

Research Methodology

The researcher has made an attempt in using doctrinal method of research. The doctrinal approach is typical legal research which includes referring to legal articles, books, legal research papers and also commentaries. It focuses on case laws, statutes and other legal resources. The doctrinal method is always descriptive, explanatory in nature and sometimes critical and comparative analysis. The present paper is to study the missing regulation on quality in India and the regulatory framework adopted by the EU and US in maintaining the quality of the GI products.

Scope And Limitation Of Study

The scope of the study encompasses the absence of post registration quality control measures of Geographical Indications in India.

The study is limited to Indian Geographical Indications Act 1999, and encompasses with other legislations such as American and European Union's adoption of post registration quality control measures.

Review Of Literature

1. *Neetha Rose C. D and K. B. Umesh* in their work, **Expectation towards Geographical Indications- Empirical Evidence from India** has taken empirical research on the whether the consumers accept the GI agricultural products as good quality products and are they ready to pay some extra amount to buy such products. The GI product for the empirical research was Palakkadan Matta Rice of Kerala. They come out with conclusion that, registration of GI has been increased in current times and it is an indication of origin so that it ensures the quality of the product. It can be used as an instrument for guaranteeing the quality. They have also written at the knowledge regarding the GI registration is very low among the consumers. But they failed to come out with the solutions or by ways which the consumers can be made aware regarding the GI products and how the producers have to maintain quality for ensuring faith of the consumers.
2. *Yogesh Pai and Tania Singla* in a paper, **"Vanity GIs": India's Legislation on Geographical Indications and the Missing Regulatory Framework**, have done a very beautiful work by recognising the missing regulations regarding the quality of GI products. They have explained the system followed by European Union and the America as regards to the quality maintenance. Though the approach of both the countries is different but the destination is same as to safeguard the interests of the consumers. The work would be more helpful if the research would be empirical research, so that the current situation as to quality maintenance of GI products would be understood very well.
3. *Tania Singla* in **Post registration quality control measures for geographical indications**, has given a comparative study of quality maintenance in European Union and the US and clear picture as to post registration quality control measures is given by

the Author. She has also referred to some of the Indian cases on GI, as to know the statutory mechanism in India. She has suggested a uniform statutory mechanism to overcome the issues relating to quality of GIs. But the reasons for the failure of Indian GI regime as to quality maintenance are not completely explained.

4. *Dr. B.L. Wadehra* in his books has explained everything regarding the Geographical Indications in a very simple language so that the reader can easily understand the content. The process of registration, case studies and the protection of GIs has been discussed in his book. But there is no explanation of the concept, quality control of GI which is very important from the view of a consumer.
5. *V. K. Ahuja* in his book on *Intellectual Property Rights* has given a relevance on International and National schemes of Geographical Indications. Even he has failed to explain the regulations that are missing related to the quality maintenance of GI products.
6. In a work written by *Kasturi Das*, regarding the *Prospects and the Challenges of Geographical Indications*, explains the issues that currently faced by the manufacturers or the producers of the GI products but failed to point out the problems faced by the consumers of the GI products. The interest of the consumers is not given importance.

Geographical Indications In India And Quality Maintenance

Geographical Indications have direct relationship between the quality and the reputation of a product. They are not only the sign of geographical origin but also the reputation and the quality of the goods or the products. Consumers or the purchasers of the products usually find it hard or problematic to find a product of good quality, because he is less aware of the information regarding the product. But the producers are fully informative about the goods and the quality of such products relative to other goods. This is the core cause of the supply of low quality or supply of duplicate products to the market and a consumer is exploited, as he has least knowledge regarding the products. In such cases GI comes to the rescue of the consumers, because the consumer has basic knowledge or information regarding the GI tag products. Reputation and the quality play a very important role in the marketplace. GI signifies quality and reputation of the products which in turn assists the consumer by decreasing his efforts to search for a good quality product.

One of the main objectives of obtaining registration under GI Act is to generate a reputation in

the minds of the consumers, so that they automatically are attracted towards the GI tag products other than non-GI products. Sometimes they are even ready to pay high amount for the GI products rather than buying non-GI products for lesser price, because they believe the quality in the GI products. Same case is with the food products also, public at large believes in certification of food stuffs. Certification of GI for food and the maintenance of quality of such food stuff is of major importance.

Some of the cases discussed below to understand the statutory mechanism of Indian law.

Darjeeling Tea Controversy

Darjeeling tea is a unique kind of tea which is grown in West Bengal state. The case was that some companies were indulged in marketing tea in the brand name of Darjeeling tea, which was not actually produced in Darjeeling. The original producers of Darjeeling tea started losing their income. That is the time when starting realising the need to protect the geographical indications. At this times Geographical Indications of Goods (Registration and Protection) bill was passed along with Geographical Indications of Goods (Registration and Protection) Rules 2002. Darjeeling tea was the first products to get GI tag in India, after the enforcement of this act.

The Alphonso Mango Controversy

There was a temporary ban on the import of mangoes (Alphonso) and some vegetables by the European Union in the year 2014, which caused major disturbance between India and European Union's trade. Such decision was taken by the EU because the imported alphonso and vegetables were filthy with fruit flies and some other flies. Though later the ban was removed the registration of Alphonso mangoes is still pending in GI registry because of the incident. After this the importance of quality certification gained some importance. The compulsory inspection and certification of agricultural products was delegated to APEDA (Agricultural and Processed Food Products Export Development Authority). The Authority finalises the standard for exporting products so as to ensure quality.

These instances make sure that there is a desperate need of quality regulatory mechanisms for GI.

European And The American Regulatory Frameworks On Quality Control Measures

The European quality maintenance scheme and the American quality scheme of the certification marks, are the most leading examples of quality control regulatory mechanisms.

The European Union's sui generis quality scheme

European Union was one of the demanders of geographical indications protection during the TRIPS conference. It has the very healthy issues resolving mechanism relating to the quality of geographical indications products or goods. It has a very different approach towards the quality control measures comparing to other nations. The European Intellectual Property Laws recognize geographical indications as sui generis rights. Sui generis means one of its kind or unique. Here sui generis right means special right. Europe has passed many laws pertaining to the working of geographical indications, there are many amendments to such laws also. Presently the law which governs the geographical indications is Regulation 1151/2012, in this act protection is provided only to agricultural products and the food products. There is a separate law which governs wines and spirits.

Currently European Union grants protection only to agricultural products, extending of protection to non-agricultural products is under discussion in the commission. The European Union has not left the maintenance of quality of GI products aside, though there is no specification of quality control measures in the TRIPS agreement. Under Article 22 of the TRIPS agreement², lays down only protection of geographical indication products, but does not specify the requirement of standard quality maintenance of GI products. European Union has adopted some standards for quality control, it has laid down quality structures for assuring the quality of all European products. The standards are mandatorily enforced by the competent officials who are appointed by Member States who are responsible for the fulfilment with the legal necessities regarding the quality schemes. The Reports of such activities should be added in multi-annual and annual national control plans which are to be submitted by every Member State.

At the time of registration of geographical indication and its origin, the group which is applying for the registration has to recognise one or more certification bodies, which will in turn assist in ensuring the specifications related to the GI products are fulfilled before they are supplied to the market. The working of such certification bodies is inspected by the Competent

² TRIPS, art 22.

Authorities. So that there will be a check and balance on the geographical indication mechanism

The American quality schemes

The United States have a very different approach towards quality control. They prefer regulatory model for quality certification and implementation of geographical indications products. The American law does not follow sui generis system of protection as followed by the European Union, only wine is exception to the said regulation of the US. Under US law, geographical indications can be protected under the trademark protection. The primary statute protecting the geographical indications in US is the Lanham Act, under which certification marks concept is in force. In this Act certification mark is used to indicate geographical origin, quality, manufacturing method, material used for manufacturing, also the work performed by the members of the group in manufacturing of such products and the service rendered by such groups.

Though there is no distinct appreciation is approved to the GI products, under the American law, the government plays an important role in safeguarding the quality connected with the GI certified goods or products. It makes sure that the products are not adulterated or diluted. Under US law, the authority that is responsible for the registration of the GIs, continuously have watch over the usage of geographical term as a certification mark. There are inspectors to keep a watch on the quality maintenance post registration for agricultural products and the food stuffs under US government. If the prescribed standards are not maintained by the producers or the manufacturers, consumers and competitors have right to file opposition or cancellation of the certification mark in front of the Federal Court. Though US follows regulations different from that of European Union, the main objective of both the systems is to protect the interest of the consumers by keeping watch on the quality maintenance.

Research Question Answered

1. No, Indian Geographical Indications Act 1999 read with Geographical Indication Rules 2000 do not have regulations with regard to post registration quality control of GI product.
2. European Union has adopted Sui generis system for maintaining the quality of GI product, where quality is checked at every stage before supplying it to the market by the concerned authority.
3. United States has a law called Lanham Act under which GI is protected, they follow certification mark concept which includes origin quality and reputation of the product. The authority always keeps a watch on the proper usage of the certification marks.

If the quality is not maintained by the producers or the manufacturer, the consumers are free to approach Federal Court for the cancellation of registration of such products.

Hypothesis Tested

It is tested from the above discussion that there are no regulations regarding the quality control measures after registration under the Geographical Indications Goods Act 1999 followed by Geographical Indications Goods Rules 2002. The importance is given only to the registration and protection of GIs, the rights of the GI holders, but not to the interest of consumers.

Suggestions

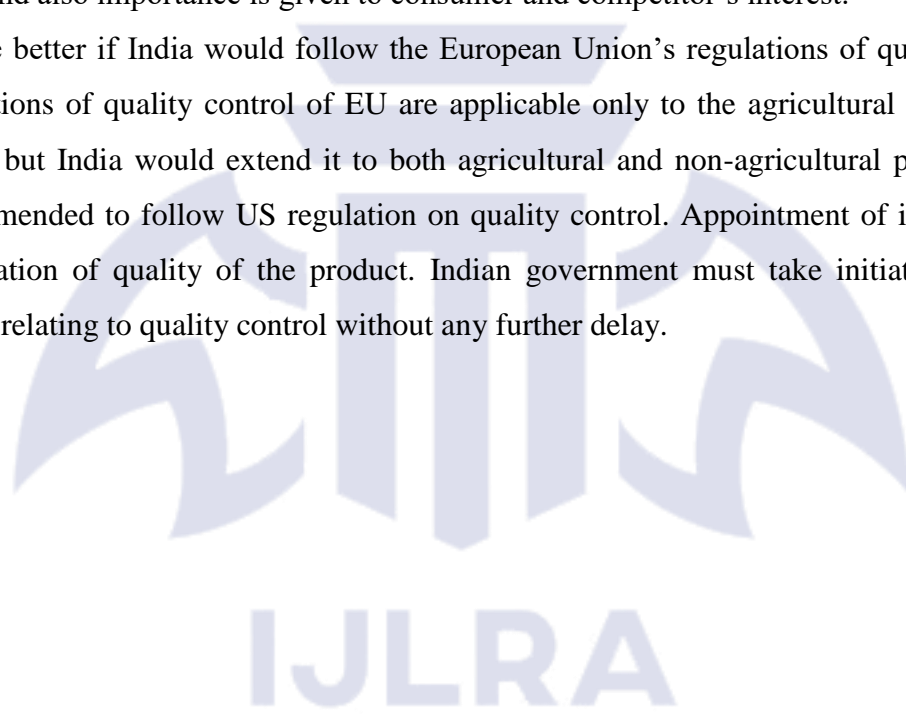
The researcher recommends to make some of the necessary changes and adoption of certain regulations to the Geographical Indications Act 1999. They are as follows-

- To adopt necessary regulations for the quality control of GI tag products to the Indian GI Act.
- To follow sui generis system of protection of GI's as followed by European Union.
- To have a check on quality before supplying to the market, for which an authority is to be appointed to have regular watch on quality.
- To appoint inspectors to check quality to inspect whether the set standard is met or not.
- Importance is to be given to the interests of the consumers and the competitors in the market.
- If the said quality is not met, then there should be provisions to cancel the registration of the GI.

Conclusion

The geographical indications are not only of the protection of rights of the producers of geographical indications products but of quality of the product too. Producers or the manufacturers of the GI tag products must also generate a good value of such products. The current Indian law dealing with geographical indications has been borrowed from the trademark act, it is more of rights of the producers or the manufacturers of GI tag products. The concept of interest of the competitors and the consumers is left behind under the Indian Law. European Union and the United States's GI regulation provides for maintenance of quality assurance and also importance is given to consumer and competitor's interest.

It would be better if India would follow the European Union's regulations of quality control. The regulations of quality control of EU are applicable only to the agricultural products and food stuffs but India would extend it to both agricultural and non-agricultural products. It is also recommended to follow US regulation on quality control. Appointment of inspectors for the certification of quality of the product. Indian government must take initiation to insert regulations relating to quality control without any further delay.



Bibliography

PRIMARY SOURCES (ACTS)

- Geographical Indications Goods (Registration and Protection) Act, 1999.
- Geographical Indications Goods (Registration and Protection) Rules, 2002.

BOOKS REFERRED

- Dr. B.L Wadehra, Law Relating to Intellectual Property, Universal Law Publications.
- V.k Ahuja, Law Relating to Intellectual Property Rights, Lexis Nexis (2013)

ARTICLES

- Das, Kasturi, Socio Economic Implications of Protecting Geographical Indication in India, Centre for WTO Studies. August, 2009.
- Neetha Rose and K. B. Umesh, Expectation towards Geographical Indications- Empirical Evidence from India. August 2012.
- Tania Singla, Post Registration Quality Control Measures for Geographical Indication in India: The Way Forward, Indian J. Intell. Prop. L, 2014.
- Yogesh Pai and Tania Singla, “Vanity GIs”: India’s Legislation on Geographical Indications and the Missing Regulatory Framework, SSRN, 2016.

ONLINE SOURCES

- https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en accessed on 07/12/2021 at 9.12pm
- <https://www.everycrsreport.com/reports/R44556.html> accessed on 09/10/2021 at 12.06pm