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REQUIREMENTS FOR REGISTRATION OF GEOGRAPHICAL INDICATIONS IN INDIA

By Shubham Maheshwari

ABSTRACT

Every individual are has it name and is famous for certain goods its quality and characteristics uniquely in some geographical areas and reputable to “as produce of certain locations” use to come under the category of Geographical Indication. In order to come under the category of Geographical Indication a sign must identify a product as producing or originate form a specific place. After the Geographical Indication is successfully implemented in Darjeeling Tea as the first product to get Geographical Indication tag in 2004 in which the producer are not allowed to use the term if it was not upto the standard of Geographical Indication. Therefore, the Geographical Indication gives the right to producers as it prevent the use of this by third party whose product does not live upto the standard. The reason behind putting Geographical Indication under Intellectual Property is that it becomes the selling point with unique characteristics to the extent of premium pricing. This paper has been divided into 3 parts:

The first part of the paper deals with the concept of Geographical Indication, rationale of protecting GI, brief about the Trademarks and GI and in brief about the benefits regarding GI

The second part of the paper contains history of GI and in-depth details about the process and registration for GI.

The third part deals with the findingsand suggestion regarding improvement in GI.

KEYWORDS: Geographical Indication (GI), Geographical Indication Act, TRIPs Agreement, GI Tag

INTRODUCTION

Geographical indication refers to the certain special qualities, characteristics or reputation of the particular good. These special qualities arose due to various natural factors or manufacturing method or other factors which is for specialization in the product or maintain specific standard for the product. Geographical indication includes two concepts, “indication of source” refers to the origin of product not showing any quality of the product and “appellation of origin” refers to the certain character qualities which is shown in that specific geographical environment

In early 20th century, the first country to implement the Geographical Indication was France, as appellation d'origine controlee (AOC). This protected the French wine trade from its crises. In 1919, the concept of Geographical indication emerged with law as intellectual property and also granted legal recognition.

The term ‘Geographical indication’ in the TRIPs Agreement refers to “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.”¹

Any person, association of person or organization can apply for registration but the applicant must give the application in the prescribed format, in writing, must show the interest of manufacturer or producer and it should be addressed with prescribed fees to Registrar of Geographical Indication. The duration period of registration 10 years and renewal is possible for next 10 years. If it is not renew then it will be removed from register.

GEOGRAPHICAL INDICATION

Geographical Indication of Goods (GI), as the name implies, is an indication , in the form of name and or sign, used on the goods that have a specific geographical origin and possess qualities or a reputation that are due to the place of origin. In order to function as a Geographical Indication, a sign must identify a product as originating in a given place². In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of

¹Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Art 22(1), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299

²Felix Addor and Alexandra Grazioli *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications*, 5 J. WORLD INTELL. PROP. 880, 865-899 (2002)

origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.³

The first GI tag product was Darjeeling Tea. Later on more than 200 product have been tagged and added to the list of Geographical Indication. In agriculture there are new seeds have been found and farmer is also paying a high price to reap the benefit of such superior seeds.

LEGAL SIDE OF GEOGRAPHICAL INDICATION

Geographical Indication Act enacted in 1999 and came into force in 15th September, 2003.

Under Section 2(e) it is defined the term 'Geographical Indication' as "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 good is essentially attributed 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."⁴

The Act mainly focus on characteristics or qualities of the product, which is derived from its geographical region, it can be either country or state or locality. If the product is raw or in processing or completed in a particular region than the registrar can register into his registry.

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TRADE MARK AND GEOGRAPHICAL INDICATION

Trademark is used for distinguish of goods and services from another by using sign. This gives owner an exclusive right to using its own trademark and exclude others from the same. The geographical indications shows the characteristics and qualities of a product due to its place of origin. This is used by all the producers of the region.

RATIONALE OF PROTECTING GEOGRAPHICAL INDICATION

Geographical Indication have features that respond to the needs of indigenous and local communities and farmers. Geographical Indication:

- a. are based on collective tradition and a collective decision making process

³Diva Rai, *Geographic Indications : Know more about them*, IPLEADERS (Mar. 30, 2021, 11:10 AM), <https://blog.ipleaders.in/geographic-indication-law-in-india/>

⁴Geographical Indications of Goods (Registration and Protection) Act, 1999, § 2(e), No. 48, Act of Parliament, 1992 (India)

- b. reward tradition while allowing for continued evolution
- c. emphasize the relationship between human efforts, culture, land resources and environment
- d. Are not freely transferable from one owner to another.⁵

BENEFITS OF REGISTRATION

1. Establishes protection in legal arena to geographical indications in India.
2. It preventunlawful use of a registered geographical Indication by others.
3. GIs have generated employment and increase the quality of rural employment.
4. GIs are market-oriented, as it often align with emerging trade demands since they tend to have standards for quality, traceability and food safety.
5. GI was essentially the reason behind export boost of Indian geographical indications by providing legal protection.
6. It promotes economic prosperity of producers.
7. It enables the country to seek legal protection in other WTO member countries.

HISTORY

Prior to 1994, when the TRIPs Agreement concluded, there were mainly three international conventions dealing with protection of IGOs, i.e. the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). Both the Paris Convention and the Madrid Agreement apportioned with 'indications of source', and the Lisbon Agreement mainly focused on protection of 'appellations of origin'.

India want to increase the protection under GI at Doha. There are various countries which want to increase it to the higher level of protection by effectively differentiating them between competitors by covering all categories of goods... The opposition argue that level of current protection is quite adequate and if it increases there will be a heavy burden on marketing practices.

India has put in place a sui generis system of protection for GI with enactment of a law exclusively dealing with protection of GIs. The legislations which deals with protection of GI's in India are 'The Geographical Indications of Goods (Registration & Protection) Act, 1999' (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI

⁵Supra Note 5 at 883

Rules). India enacted its GI legislations for the country to put in place national intellectual property laws in compliance with India's obligations under TRIPS.

REGISTRATION OF GEOGRAPHICAL INDICATION IN INDIA

Section 11 of the GI Act specifies the documentation requirements for registration for GI in India. The application is required to contain the following:

“(1) Any association of persons or producers or any organization 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.

(2) The application under sub-section (1) shall contain-

(a) 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;

(b) the class of goods to which the geographical indication shall apply;

(c) 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;

(d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;

(e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and

(f) such other particulars as may be prescribed.”⁶

⁶Supra note 7, at § 11

The document named 'statement of case' is to be annexed with application form which will contain:

- a. Specification
- b. Description of goods giving its uniqueness and geographical linkage
- c. Method of production
- d. Uniqueness of product
- e. Proof of Origin
- f. Inspection Body
- g. Present scenario of Geographical Indication product⁷

There is a single application for different classes of products and goods which will reduce the processing time and paperwork of the application.

PROCESS OF REGISTRATION

As soon as application is received, it is scrutinized by the examiners and if any defect is found, a notice is sent to the applicant for its rectification. Within 1 month of receipt of such, the applicant is required to send the reply.

In the next stage, a group consist of technical expert, chaired by registrar, will ascertain whether it is correct or not. The registrar can refuse the application wholly or partially with certain conditions or modifications in the application.

As per the comments of the above group or committee, the registrar has to issue report. If any, objection is raised by the report the applicant has to satisfactorily respond them within 2 months of date of communication. Once, the answer is provided satisfactorily by the applicant to the registrar, the application is automatically accepted by the GI Registry, which will publish it in bi-monthly in GI Journal in Hindi and English.

Upon the publication if within the specified time(generally 3 months but can be provided 4 months) there is no opposition, even if any opposition came it must be in writing, and still the decision made is in the favor of the applicant then The Registrar will register the GI and its authorized user in particular GI Register.⁸

⁷Sanjay Sharma, *India: Registration Of Geographical Indications In India*, MONDAQ (Mar. 30, 2021, 10:00 AM), <https://www.mondaq.com/india/trademark/1043076/registration-of-geographical-indications-in-india>

⁸Ramki, *A complete protocol for the registration of Geographical Indication*, LEGALSERVICEINDIA (Mar. 30, 2021, 11:00 PM), <http://www.legalserviceindia.com/legal/article-3229-a-complete-protocol-for-the-registration-of-geographical-indication.html>

The Registrar has to issue certificate for both applicant and authorized user with seal of GI Registry. The date of filing of application is considered as date of registration.

GI which are not registrable

Section 9 prohibits certain registration of Geographical Indication:

- “the use of which would be likely to deceive or cause confusion; or
- the use of which would be contrary to any law for the time being in force; or
- which comprises or contains scandalous or obscene matter; or
- which comprises or contains any matter likely to hurt the time being in force; religious susceptibilities of any class or section of the citizens of India; or
- which would otherwise be dismantled to protection in a court; or
- which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country; or
- which although literally true as to the territory region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality as the case may be.”⁹

Rights of Action against Passing-Off

As per the GI Act in India, no one can pass off his goods as of another. There is remedy, if the right is affected by the person against whom passing-off goods or products. The principle regarding this right is to protect the reputation, name and goodwill of the manufacturer or producer against unfair trade practices. In India, there is no statute specifically regarding the passing off to take action against such unfair trade practices and to prevent it from happening again.

Any lawsuit relating to infringement of a registered GI or for passing of an unregistered GI has to be instituted in a district court having jurisdiction to try the suit. No suit shall be instituted in any court inferior to a district court.¹⁰

⁹Supra note 7, at § 9

FINDINGS, SUGGESTIONS AND CONCLUSION

The registration of Geographical Indication in India is divided into mainly two type, i.e. State wise distribution and type wise distribution. In state wise distribution, Karnataka registered the maximum Geographical Indication followed by Tamil Nadu. In type wise distribution, Textile category has been registered maximum Geographical Indication followed by both Horticulture and Handicrafts.

There is a pricing elevation problem as due to registration there is higher cost of production which also increases the price of the product. This will put burden on the consumer due to hike in prices. It may also reduce the benefit which will reduce the innovation department or improvement in the product. If the organization is not run by the state it also have to bear legal costs.

This also protect the local tradition and culture as the product can only be manufactured only at the place of origin which also mean there is increase in employment, rural development, etc.

The authorized user and owner enjoys their exclusive right over the goods registered under Geographical Indication. Further, it also provides with right to recover damages by institution of suits against such infringement.¹¹ The use of such goods which are not from it's originate place but use it as Geographical Indication goods of that place can cause infringement.¹² And in case of such products which are not registered there is right of passing off which can be instituted.¹³ Registration of the product indicate the ownership and also acts as a prima facie evidence of the same.¹⁴ The registration can only be transferred in case of death except it cannot be transferred or assigned by the authorized user.¹⁵

Any person who infringes the Geographical Indication may be punished not less than 6 months which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakhs rupees.¹⁶ In case of second and for every subsequent offence, a person can be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. However, the judge may under certain condition may reduce the sentence, and reasons for reduction of punishment must be written in the

¹⁰Id § 66

¹¹Id § 21

¹²Id § 22

¹³Id § 20(2)

¹⁴Id § 23

¹⁵Id § 34

¹⁶Id § 39

judgment.¹⁷ It also include Falsifying and it's apply on Geographical Indication or wrongly showing a place of business.

There are few suggestions for above mentioned findings:

- The cost of the product increases due to the cost indulge in marketing and legal enforcement of Geographical Indication. The total cost for procedure and marketing for the same shall be reduced so that it will does not create a heavy burden on the producer.
- There is more benefit to the high quality product than the low quality ones as it will lead to closure of new business. The low quality product should be also upgraded or given some benefits so that the fair competition in the market take place.
- There are loose framework for procedures of Geographical Indication even after the TRIPs Agreement and other international accords. There is a need for specific system or procedure at international level.
- The failures of Geographical Indication is mainly due to the unrealistic expectations, bad planning, and insufficient governance structures. If the Geographical Indication is not managed properly it can destroy the market competition.
- There is a need for strong organizational structures as well as institutional structures in developing countries to monitor the Geographical Indication. The main need of Geographical Indication is identify, organize existing standard as per today or future needs and protect all local organization and institutional structure for long term.
- There must be equitable participation between the producers and enterprises in a Geographical Indication region. 'Equitable' is defined as the manufacturer or producer of that particular region must enjoy benefits and also bear cost together so that it will help the consumers rather than fighting among them for benefit and cost that will harm the competition.
- Strong market partners committed to promote and commercialize over the long term. Many of the GI market successes are the result of mutually beneficial business relations via which consistent market positioning and effective commercialization have led to a long-term market presence

¹⁷Id § 41

- There must be effective and efficient legal protection in the domestic as well as in national and international Geographical Indication system. There has to be an effective monitoring and enforcement of the laws so it will reduce the chances of fraud that can hinder not only the reputation but also legal validity.

A Geographical Indication tag shows the symbol of originality and quality of both consumer and producer. The Geographical Indication is boon to poor craftsmen or producer or manufacturers which shows their handiwork in the product which was earlier not appreciated.

The Geographical Indication Act along with Geographical Indication Rules came into force in September 2003. There is Geographical Indications Registry at Chennai with all India jurisdiction. The Geographical Indications Registry with all India jurisdiction, at Chennai, is rapid emerging field of Intellectual property. Every region has its claim to fame and it has to be protected. The Geographical Indication Act does not limit itself to wine or spirits as in TRIPs Agreement. The Central Government has power to decide which good or product will have what level of protection, it was done due to Indian drafter's main aim to provide stringent protection of Geographical Indication. If the product is registered, it will get legal protection domestically and internationally both.



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