

## **PROBLEMS AND CHALLENGES OF GEOGRAPHICAL INDICATIONS IN INDIA**

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### **INTRODUCTION**

Over the years geographical indications have emerged to be a significant branch of intellectual property rights. A society as a matter of time establishes a certain knowledge base that forms an important part of economy and tradition. As time passes by, it has become important to preserve this rich knowledge and tradition as in the present globalised world these are prone to misuse. A geographical indication identifies a product as belonging to a particular area of origin and is recognized as an accepted tool for ensuring that the consumers are provided accurate information about true origin of a product. Besides a geographical indication adds commercial value to a product and serves as an asset to the producers authorized to use it as it creates goodwill. `

A geographical indication is basically a sign or a symbol which is used on products that have a specific geographical origin and possess such features or qualities or reputation that are due to that place of origin<sup>1</sup>. In order to qualify as a G.I, a sign must determine a product as to have originated in a given place. Additionally, the qualities, characteristics or reputation of the product must essentially be attributable to its place of origin. Since the quality or characteristics is dependent on the geographical place of production, there is a direct link between the product and the region<sup>2</sup>.

A geographical indication has three basic functions. The provide information about:

- The name of a product

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<sup>1</sup>BERNARD O'CONNOR, *THE LAW OF GEOGRAPHICAL INDICATIONS*, 26 (1<sup>st</sup> ed. 2004)

<sup>2</sup>World Intellectual Property Organisation (WIPO), *Geographical Indications: An Introduction*, available at [http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo\\_pub\\_952.pdf](http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf) ( last accessed on 26<sup>th</sup> March, 2016)

- The geographical origin of the product
- A given quality, reputation or characteristics attributable to a geographical area<sup>3</sup>.

The concept of geographical indications came into existence in mid-1970 with the initiation of WIPO negotiations. However, its use became prevalent only with the conclusion of TRIPS in 1994. Earlier the protection of product names indicating their source was illustrated in different legal doctrines, namely passing off or under the tort of unfair competition. But these laws were found to be inadequate to deal with the ever growing deceptive geographic claims and issue pertaining to it. It was in furtherance to this and basically to help bring greater consistency to the unsettled areas that “geographical indication” was introduced and mentioned for the first time under the TRIPS Agreement. It is to be noted that although TRIPS obligates the Member States to safeguard the rights in geographical indication, it only lays down the minimum standard. The Member States are free to determine the manner of enforcement of such protection.

- **DEFINITION UNDER THE TRIPS AGREEMENT**

TRIPS Agreement defines geographical indications as “*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*”<sup>4</sup>. As such to qualify for protection as geographical indication, an indication must:

- (i) Identify the goods and its area of geographical origin
- (ii) Possess a given quality, reputation or other characteristics, which

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<sup>3</sup>CARLOS M. CORREA, TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS: A COMMENTARY ON THE TRIPS AGREEMENT, 209 (1<sup>st</sup> ed. 2007)

<sup>4</sup>Article 22 (1), TRIPS

(iii) Is essentially attributable to its area of geographical origin<sup>5</sup>.

Most commonly, a G.I includes the name of place of origin<sup>6</sup>. For example: Roquefort Cheese identifies a unique variety of blue cheese made in the South West region of France. Similarly, Darjeeling tea relates to a famous and popular kind of tea, well known for its taste, aroma and brightness with these features essentially attributable to a small district of Darjeeling in eastern state of West Bengal. Other well known G.Is known by the geographical name includes the Bordeaux wine, Idaho potatoes, Jamaica Blue Mountain Coffee, Champagne and Parmigiano-Reggiano cheese<sup>7</sup>.

Though geographical indications are usually geographical names, they can also be symbols or icons as far as they convey the geographical information<sup>8</sup>. It may include symbols or signs which relate to certain significant landmarks such that a common man is able to determine that the goods belong to a particular region; for example, picture of Statute of Liberty, Eiffel Tower or for that matter, the map of Canada, Florida, etc. An example of one such indication is “Basmati” for specific varieties of rice produced in certain regions of India and Pakistan. It is to be noted that “Basmati is not a geographical name, but a symbol indicating rice originating from the particular geographical regions of India and Pakistan<sup>9</sup>. “Feta cheese” from Greece is another example of a geographical indication that does not use direct geographical names<sup>10</sup>.

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<sup>5</sup>Dr. Dwijen Rangneka, *Geographical Indications- A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits*, INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT, Issue Paper No. 4 ( 2003)

<sup>6</sup>Kirti Bikram, *Article on Geographical Indications*, MANUPATRA INTELLECTUAL PROPERTY REPORTS 142 (2014)

<sup>7</sup>*Ibid*

<sup>8</sup>Jorge Larson, *Relevance of geographical indications and designations of origin for the sustainable use of genetic resource*, available at [http://underutilized-species.org/Documents/PUBLICATIONS/gi\\_larson\\_lr.pdf](http://underutilized-species.org/Documents/PUBLICATIONS/gi_larson_lr.pdf) (last accessed on 26<sup>th</sup> March, 2016)

<sup>9</sup>Kasturi Das, *Socio-economic Implications of Protecting Geographical Indications in India*, available at [http://wtocentre.iift.ac.in/Papers/GI\\_Paper\\_CWS\\_August%2009\\_Revised.pdf](http://wtocentre.iift.ac.in/Papers/GI_Paper_CWS_August%2009_Revised.pdf) ( last accessed on 26<sup>th</sup> March, 2016)

<sup>10</sup>BERNARD O’CONNOR, *supra* note 1, at 28

Moreover, the definition is limited to “goods”. It is not restricted to any specific kind of goods. Therefore goods belonging to all categories could be covered, be it agricultural produce, food products, wines and spirits, handicrafts or other industrial products. The Member States are free to decide as to which of the products should benefit from G.I protection<sup>11</sup>. Further, the use of the term “goods” instead of products indicates that the negotiators intended to reject the proposal of including service attributable to territories<sup>12</sup>. No doubt, there are a number of services which prima facie appears to fulfil the essentials of a G.I, such as spas, traditional healing methods and other health services. To be classified as a G.I, a service will essentially have to meet the pre-requisites for protection that require a direct link between the place of origin and the service. In each of the instances as described above, the quality of service can be considered as attributable to the geographical area of origin. However, the problem arises when service is dispensed in another location or in case of training personnel and relocating them outside their respective area of origin. Such circumstances would undermine the fundamental rationale of G.Is<sup>13</sup>. Thus it can reasonable be concluded that the drafters of the TRIPS did not intend to include services within the ambit of Article 22. Yet, it is to be noted that TRIPS only provide for minimum standards. There is nothing in the Agreement which prohibits members from including services under their respective national legislation. Some countries that protect services under the ambit of G.I include Peru, Switzerland and Liechtenstein<sup>14</sup>.

Next important requirement is that the goods identified by the geographical indication has a given quality, reputation or other characteristics essentially due to the geographical origin i.e. there must be direct link between the goods and the region to which it belongs. For example, oranges grown or cultivated in certain part of the

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<sup>11</sup>World Intellectual Property Organisation (WIPO), *Geographical Indications: Basics*, available at [http://www.wipo.int/geo\\_indications/en/about.html](http://www.wipo.int/geo_indications/en/about.html) ( last accessed on 26<sup>th</sup> March, 2016)

<sup>12</sup> UNCTAD-ICTSD, RESOURCE BOOK ON TRIPS AND DEVELOPMENT, 291 (1<sup>st</sup> ed. 2005)

<sup>13</sup> CARLOS M. CORREA, *supra* note 3

<sup>14</sup> *Ibid*

country may possess a high concentration of fructose making it unique. It may also be reputed for the size and the method of cultivation. TRIPS provides the need to comply with only one of the three requirements- quality, reputation or other characteristics. Compliance to any of the three can suffice for eligibility as geographical indication<sup>15</sup>. Thus the factors affecting G.I can broadly be classified into two- natural and human factors. Natural factors consist of those which are essentially attributable to the place of origin; such as raw materials, soil, climate, temperature and moisture. On the other hand, human factors consist of method of manufacture, preparation, cultivation and concentration of similar business.

- **DEFINITION UNDER THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999**

In compliance to the TRIPS, India had enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into effect from 15<sup>th</sup> September, 2003. Under the Act Geographical indication has been defined as "*an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be*<sup>16</sup>."

For the purpose of the aforesaid, any name relating to a specific geographic area used upon or in relation to particular goods originating from that country, region or locality

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<sup>15</sup> UNCTAD-ICTSD, *supra* note 12

<sup>16</sup> Section 1 (e), Geographical Indications of Goods (Registration and Protection) Act, 1999

shall be considered as a G.I. It is not essential that the name pertains to a specific country, region or locality of that country<sup>17</sup>. The act also defines “goods” to mean any:

- a) agricultural goods;
- b) natural goods;
- c) manufactured goods or;
- d) any goods of handicraft or of industry and foodstuff<sup>18</sup>.

The above definition is merely illustrative and not exhaustive<sup>19</sup>. India being a country rich in culture and heritage, many of the products are manufactured using traditional knowledge of the communities living in these locations. Some of the famous G.Is of India includes the Darjeeling Tea, Aranmula Kannadi, Kancheepuram Silk, Mysore Sandal Soap, Mysore Silk, Nagpur Orange, Madhubani paintings, Thanjavur paintings, Alleppey Coir, Malabar Pepper, Blue Pottery of Jaipur, Kashmir Pashmina, Bikaneri Bhujjiya, Agra Petha and so on. Based on the data from the GI Registry in Chennai, as of February 2016, a total of 238 G.Is have been registered in India including few of foreign origin. Fig 1 shows how G.Is are classified on the basis of types of products.

The word “indication<sup>20</sup>” has also been defined to include:

- i. any name<sup>21</sup>; including abbreviation of a name;
- ii. geographical or figurative representation; or
- iii. any combination of them suggesting the geographical origin of goods.

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<sup>17</sup>See *Explanation Sec 1(e)*

<sup>18</sup>Section 2(f), Geographical Indications of Goods (Registration and Protection) Act, 1999

<sup>19</sup>SURESH C. SRIVASTAVA, *Geographical Indications And Legal Framework In India*, 38 ECONOMIC AND POLITICAL WEEKLY 4023(2003) available at <http://www.jstor.org/stable/4414050> (last accessed on 26<sup>th</sup> March, 2016)

<sup>20</sup> Section 2(g), The Geographical Indications of Goods (Registration and Protection) Act 1999

<sup>21</sup> Section 2 (h), The Geographical Indications of Goods (Registration and Protection) Act 1999

An analysis of the above definition affirms that India has not only adopted in its legislation the words used in the TRIPS Agreement, but also afforded for a broader protection providing for an explicit definition for the terms “goods” and “indication.”<sup>22</sup>

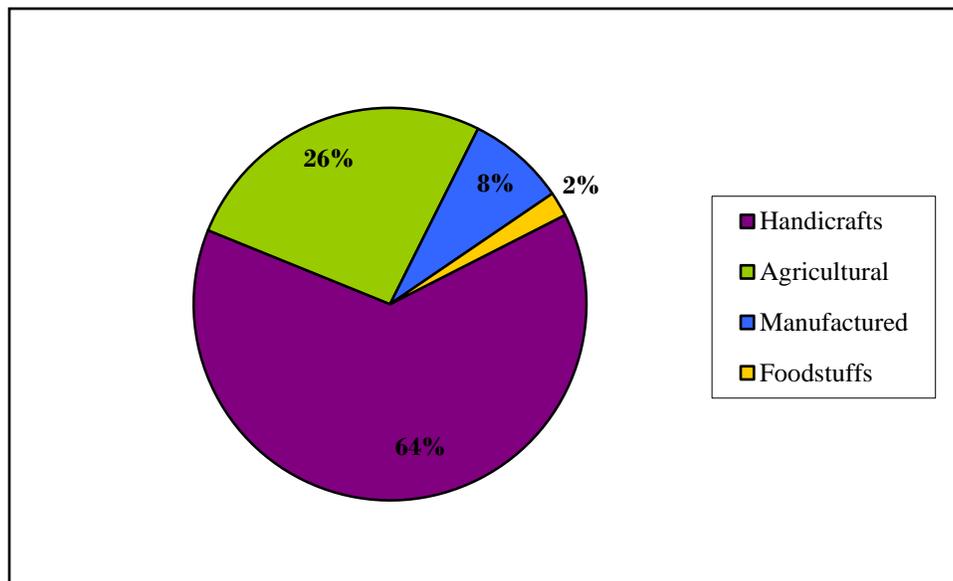


Fig.1- Number of registered G.Is (category wise)

• **GEOGRAPHICAL INDICATIONS & TRADEMARK - A COMPARISON**

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<sup>22</sup> Surekha Vasishta & Amar Raj Lall, “Geographical Indications of Goods (Registration and Protection) Act, 1999” in THE LAW OF INTELLECTUAL PROPERTY RIGHTS: IN PROSPECT AND RETROSPECT 248 (A.K. Koul & V.K. Ahuja eds., 2001)

Both trademark and geographical indication convey information about the origin of goods or service and enable the consumers to associate a specific quality with goods or service. However both can be differentiated in the following aspects. In general terms, trademarks are signs that distinguish goods or services of one proprietor from the goods and services of another. TRIPS define Trademark as “*Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of another undertaking.*”<sup>23</sup> It follows from the definition above that a trademark is a sign that distinguishes the products belonging to a specific trader from those of his competitors.<sup>24</sup> Geographical indication on the other hand refers to a geographical region, identifying goods originating from a particular place. Unlike trademarks they do not identify the producer or manufacturer of a product but the place of origin and special quality of product originating in that place<sup>25</sup>.

Trademarks are personal property that is exclusively owned by the proprietor of goods. TRIPS provides that “*the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion*”<sup>26</sup>. Thus it can be followed from the above provision that a trademark can contain a geographical indication so long as it does not mislead the public in respect of the true place of origin<sup>27</sup>. Moreover, a trademark can be assigned or licensed to third parties located anywhere in the world, because it is linked to a specific company and not a particular place. Whereas geographical indications are basically collective rights of all the producers of a given goods that are located in the geographical area and are incapable of ownership by individual. A geographical

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<sup>23</sup> Article 15(1), TRIPS

<sup>24</sup> 3 D.VAVER, INTELLECTUAL PROPERTY RIGHTS: CRITICAL CONCEPTS IN LAW, 171 (1<sup>st</sup> ed. 2006)

<sup>25</sup> BENARD O’CONNOR, *supra* note 1 at 113

<sup>26</sup> Article 16 (1), TRIPS

<sup>27</sup> Article 22 (3), TRIPS

indication cannot be assigned or licensed to any person situated outside that place or not belonging to the group of authorised producers<sup>28</sup>.

Development of a trademark involves human creativity. This element of human creativity is capable of creating original and novel sign that distinguishes specific products and services from similar goods and services<sup>29</sup>. A G.I is linked to something more than mere human creativity. Apart from human factors which require skill and talent, it comprises of natural factors such as topography, climate, temperature and moisture that are independent of human creativity. Also, in case of a G.I, there has to be a specific link between the product and the geographical area of origin such that a no delocalization of production is permissible<sup>30</sup>. For example: “Nagpur Oranges” as a geographical indication can only be used in relation to oranges from Nagpur.

Consequently, it can be asserted that whereas, a geographical indication puts emphasis on the geographical origin of a good and the characteristics, quality or reputation derived there from, a trademark puts emphasis on the producer of a particular product. Registration of a trademark is not dependent of the specific quality, reputation or characteristics.<sup>31</sup>

- **NEED FOR PROTECTION OF GEOGRAPHICAL INDICATION**

Though imitations may be appreciated by some, for a large number of G.Is such duplicity is costly in terms of their income and reputation or goodwill. Often, there are attempts to misuse the reputation of the goods that have earned the reputation over the years by using same or similar names. In order to do away with such malpractices it is necessary that G.Is be provided with adequate means of protection.

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<sup>28</sup> DWIJEN RANGNEKA, *supra* note 5 at 27

<sup>29</sup> 3 D.VAVER, *supra* note 24

<sup>30</sup> BENARD O’CONNOR, *supra* note 1 at 102

<sup>31</sup>Dev Gangjee, *Quibbling Siblings: Conflicts between Trademarks and Geographical Indications*, 82 CHICAGO-KENT LAW REVIEW (2007), available at <http://scholarship.kentlaw.iit.edu/cklawreview/vol82/iss3/6> ( last accessed on 27<sup>th</sup> March, 2016)

It can be seen that TRIPS provide for greater protection to wines and spirits making infringement or misuse of G.I pertaining to it very difficult. However protection for foodstuff and other agricultural product is less certain and less understood. Under the TRIPS only those G.Is which misleads the public as to the true place of origin of the goods are prohibited. Such prohibition excludes the instances where though the true origin of the goods are mentioned with the use of words such as “like” and “kind of” or “type of”, there are possible chances that the public is misled. Current negotiations at WTO deals with issue as to whether the protection granted to wines and spirits should be extended to all G.Is. Some countries are in favour of such extension, whereas others oppose it. Focus must be placed in providing protection taking into account the very purpose for which such provisions were implemented.

A geographical indication adds value to a particular product. Uniqueness of the product attached to its locality, or peculiar farming techniques, preservation methods, processing procedures etc. makes a product distinct, thereby attaching value to it. As far as producers are concerned, a G.I tag serves as a reward representing a brand name for their product. The tag also confers uniqueness, differentiation, further assuring the consumers of high standard of quality of the product<sup>32</sup>. Apart from the value of legal protection, a G.I status can provide overall information about origin of the product as well as its characteristic enabling the consumers to decide whether products are worth their price<sup>33</sup>.

In the past few years, there has also been growing interest in determining whether G.Is can be held to have preserved traditional or cultural knowledge. Unlike other forms of intellectual property rights such as patents and trademark which necessitate novelty in knowledge and technology capable of industrial application, non-obviousness and so on, geographical indications are commonly based on traditional knowledge developed

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<sup>32</sup>V.K.Ahuja, *Protection of Geographical Indications – National and International Perspective*, 46 JOURNAL OF THE INDIAN LAW INSTITUTE 269 (2004)

<sup>33</sup> *Ibid*

and transmitted over generations. Relevant and apt use of geographical indications scheme can aid the producers in developing countries in transforming this knowledge into marketable products<sup>34</sup>. Thus G.I tag serves as a protection of traditional knowledge and community rights. By safeguarding the traditional knowledge which in fact depicts the culture of many indigenous and local economies, G.I serves to convey the cultural identity of a nation, region or locality.

Protection of G.I could also possibly promote international trade of traditional products from their countries<sup>35</sup>. The producers of commodities can turn into exporters of high quality products and thereby potentially generating positive effects on the overall economy of the country<sup>36</sup>. Other merits of G.I include providing better employment opportunities in various sectors, promotion of tourism and protection of environment and biodiversity. G.Is also contributes in the overall sustainability of a territory<sup>37</sup>. For rural areas, the G.Is can foster unique socio-cultural features of a specific locality and the products produced in therein. Apart from serving as a measure of protection for the intellectual property, traditional knowledge and cultural property of a particular place, G.Is also helps in improving market access, improving market governance and reducing the price fluctuation<sup>38</sup>.

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<sup>34</sup> Monique Ngo Bagal & Massimo Vittori, *Practical Manual on Geographical Indications for ACP Countries* 16, ORGANIZATION FOR AN INTERNATIONAL GEOGRAPHICAL INDICATIONS NETWORK (2011)

<sup>35</sup> KASTURI DAS, *supra* note 9

<sup>36</sup> A.K Rai & Birendra Srivastawa, *Management of Intellectual Property Rights in India: An updated review*, 2 JOURNAL OF NATURAL SCIENCE, BIOLOGY AND MEDICINE 12 (2011)

<sup>37</sup> Lina Monten, *Geographical Indications of Origin: Should They Be Protected and Why? An Analysis of the Issue from the U.S. and EU Perspectives*, 2 SANTA CLARA HIGH TECHNOLOGY LAW JOURNAL 317 (2006)

<sup>38</sup> Felix Addor and Alexander Grazoli, *Geographical indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 866 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY (2002)

In the case of Darjeeling Tea, it can be seen that around 10, 000 tons are produced annually of which 70 % are exported<sup>39</sup>. The profits so derived from the export of tea have an important impact on the Indian economy. Moreover, Darjeeling tea industry employs more than 50,000 people on a full time basis and around 15,000 people during the season for harvesting. It can be observed that the tea production has brought about benefit to the entire region both economically as well as socially<sup>40</sup>.

<b>Benefits</b>	
<b>Consumer</b>	<b>Owner</b>
1. Identifies product source thereby determines the liability of the producer or manufacturer more easily	1. Fetches premium price for the products
2. Indicate higher product quality	2. Protects local tradition and cultural practices
3. Provides means by which universal values may be preserved via marketing	3. Promotes international trade in traditional products from their countries
<b>Drawbacks</b>	
1. Exclusivity generally elevates the cost of the product	1. Maintenance of higher quality results in higher cost of production

<sup>39</sup> SUDHIR RAVINDRAN & ARYA MATHEW, *The Protection of Geographical Indication in India- Case Study on "Darjeeling Tea. International Property Rights"* 58, Index Report (2009) at 69

<sup>40</sup> *Ibid*

2. Possibility of reduced innovation or improvement	2. Requires greater local governance, institutional capacity and costs
3. May reduce competition and increase protectionism	3. If not run by the state, it will elevate the costs of legal protection

**Fig: 2 Benefits and drawback of G.I**

**Source:** V.K.Ahuja, *Protection of Geographical Indications – National and International Perspective*, 46 JOURNAL OF THE INDIAN LAW INSTITUTE 269-287 (2004)

In the recent years, the popularity of G.Is has increased. At present a growing body of research is exploring the extent of these benefits attributed by the G.Is. The unique characteristics of the product that emerge in relation to the locality they belong, the traditional method of production, processing etc. may be difficult to imitate in other regions or countries and hence can contribute to lasting competitive advantage

It can be seen that over the years, the number of G.Is that has been registered under the Act has considerably increased. This is certainly a positive sign because it indicates that more and more people understanding the scope and prospects of G.I registration have come forward in seeking registration. Registration confers a number of benefits. Mainly it guarantees the exclusive use of the G.I by the registered proprietor/ authorized user and further eliminating any scope of its unauthorized use by other. However it is to be noted that even though there exists innumerable benefits attached to a G.I tag, there also subsists certain issues and concerns especially in relation to registration, usage and infringement of G.Is. Reference to few case studies helps us to obtain the clear picture as to the significance of registration, the controversies pertaining to grant of G.I to certain products followed by cancellation of the conferred

G.I status by the Registry. Government can play an active role in addressing the issues and challenges concerning G.Is.

- **KEY PROBLEMS AND CHALLENGES OF GEOGRAPHICAL INDICATIONS IN INDIA**

Some of the major issues and challenges of geographical indications in India is briefly discussed below.

**1. Enforcement of the legal provisions within and outside India**

G.I grants an exclusive legal right to the registered proprietor and also the authorised to not only produce or manufacture the product but also prevent any unauthorised use of a G.I by any other person. Unless there is proper enforcement, these rights are of no use. So that the right conferred and are enforced it is essential to continuously keep a check on the market to find out whether the fake products are being passed off.

Conflicts may also arise in determining whether or not the products of the competitors or their marketing strategies are in any way damaging the reputation of the original product. Though such cases of unauthorised use and infringement could be resolved outside the court in most of the cases it results in bitter conflicts in courts.

Off late we have come across a lot of instances wherein the Indian G.Is have been subjected to rampant misuse and exploitation for example the case Darjeeling tea and Basmati rice. In spite of the efforts taken and the strategies adopted by the Tea Board in ensuring protection in India as well as abroad an average of about 40 million kilos of tea is still sold worldwide in the name of “Darjeeling tea” whereas it is interesting to note that the original Darjeeling tea production only constitutes only about 9 million kilos<sup>41</sup>. Various cases pertaining to infringement of handicrafts and handloom have also been reported causing a big threat to their existence. In the past few years we have

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<sup>41</sup> Neelanjana Mitra, *Indian Tea Industry: Problems and Policies*, 26 ECONOMIC AND POLITICAL WEEKLY 153(1991)

observed a wide range of imitations of certain well known G.Is of India such the Banaras sarees, Kuthampully Sarees, Pashmina shawls etc. It is observed that handlooms are substituted by inferior quality power loom which requires less labour, less cost of production and is therefore available for cheaper rates further posing a competition to the genuine products within the market. Since the consumers are unaware to make a difference between fake and original products, they end up purchasing those that are available at cheaper rates. As such the fake products continue to replace the actual G.I registered product adversely affecting the artisans and weavers engaged in their production. Lesser demand leads to less productivity resulting in a rather deplorable condition wherein the artisans and weavers are forced to go in for alternate means of livelihood. This is the main reason why many of the industries in the handloom sector are on the verge of being extinct<sup>42</sup>.

In order to prevent such misuse, it is essential to keep a check on the fake products introduced in the market which is a challenging task primarily because the products are not sold via single outlets. The products are sold from different outlets and regulating this by keeping a check on each and every product is not an easy job.

Irrespective of the difficulties, some cases have been brought before the court of law seeking against such unauthorised misuse. One such case was that of “Pochampally Ikat” where a suit for infringement was filed in the High Court of Delhi against a manufacturer for having made and sold imitations in the name phonetically similar to that of the actual product. However, the matter was settled out of court with the person undertaking to pay adequate compensation to the complainants. Similarly the enforcement measures undertaken by the “Chanderi Fabrics” have also been noteworthy. They had taken up a survey to determine the supply point of these fake products and had in fact warned such manufacturers against the penalties and legal

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<sup>42</sup> Soumya Vinayan, *Intellectual Property Rights and the Handloom Sector: Challenges in Implementation of Geographical Indications Act*, 17 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 60 (2012)

implication likely to follow on account of such unauthorised use. Such strategies adopted have curbed instances of infringement to a greater extent<sup>43</sup>.

Enforcement of G.Is in foreign countries is way too difficult in comparison to the enforcement at the domestic level. For a developing country like India, it is not possible to keep a check on the fake products produced or sold within the international market. Hence the services of international watch dog agencies will have to be adopted which is very costly process<sup>44</sup>. For example the large scale infringement of Darjeeling tea in different parts of the world and efforts taken by the Indian government in the appointment of an international watch dog agency to monitor and report cases of misuse. With the appointment of this agency several cases of infringement and misuse have come to notice of the Tea Board so such that there are now able to take appropriate actions against the same.

But, it may not always be feasible to hire international agency as they charge exorbitant fee for services that they render<sup>45</sup>. However, it is also to be noted that in the absence of an international watch agency, the registered proprietors or the users may not be able to take actions against the misuse further limiting the enforcement of G.I rights outside the territory.

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<sup>43</sup> Radha Kashyap & Shikha Gupta, *Marketing Strategies for Entrepreneurship in Indian Textiles*, 2 INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH 2 (2013)

<sup>44</sup> Kasturi Das & Biswajit Dhar, *Operationalisation of GI Protection in India: A Preliminary Exploration* Available at [https://www.researchgate.net/publication/237420395\\_Operationalisation\\_of\\_GI\\_Protection\\_in\\_India\\_A\\_Preliminary\\_Exploration?enrichId=rgreq-7afb789f-b7f2-44db-9b4e-62c49917b9d3&enrichSource=Y292ZXJQYWdlOzIzNzQyMDM5NTtBUzoyNzkyNjY3MTQ1MDUyNDhAMTQ0MzU5Mzc4MTYyNg%3D%3D&el=1\\_x\\_2](https://www.researchgate.net/publication/237420395_Operationalisation_of_GI_Protection_in_India_A_Preliminary_Exploration?enrichId=rgreq-7afb789f-b7f2-44db-9b4e-62c49917b9d3&enrichSource=Y292ZXJQYWdlOzIzNzQyMDM5NTtBUzoyNzkyNjY3MTQ1MDUyNDhAMTQ0MzU5Mzc4MTYyNg%3D%3D&el=1_x_2) (last accessed on 18<sup>th</sup> March 2016)

<sup>45</sup> Kasturi Das, *Protection of Geographical Indications: An Overview of Select Issues with Particular Reference to India*, CENTAD WORKING PAPER 8 (2007)

## **2. Defining geographical boundaries, identification of goods, brand building, promotion and marketing**

Often it is difficult to demarcate the exact geographical boundary especially in relation to non-agricultural products<sup>46</sup>. For example, Banaras brocade sarees are manufactured not within the confined limits of the city but also in the interior rural areas and sometimes extends to the nearby districts as well. Another example is that of Malabar pepper where the area of production comprises of composite states in the Malabar region. Since it is hard to define the exact area of production, G.I is granted in respect of the entire region.

At present the state governments are in a haste trying to get their products registered as G.I merely to increase the count of G.Is from the state. Thus identification and registration takes place without due assessment as to whether the product granted the G.I status would enhance the growth of the product or bring commercial prospects in the domestic or international market.

Moreover, the consumers buy the products on the basis of the brand value attached to a product. Brand building and goodwill is built over the years and it requires immense patience, time and resources. For example the products such as Champagne have taken about 150 years to build up a premium brand image. So as the consumers are informed of the G.I, it is also essential to adopt for marketing and promotion techniques. It is also to be noted that the preference of the consumers is never stable, it keeps on changing. In a developing country like India when it comes to brand building outside its territory requires not just time and efforts but a strong financial backing or support<sup>47</sup>.

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<sup>46</sup> G.E. Evans, *The Strategic Exploitation of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union*, 1 THE WIPO JOURNAL 161 (2010)

<sup>47</sup> KASTURI DAS, *Prospects and Challenges of Geographical Indications in India*, 13 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY, 174 (2010) at 163

Another factor is the importance of maintenance of quality and standard. Willingness to pay premium price can directly be linked to the quality of the product. Therefore product quality has to be maintained and ensured. For this purpose, a provision has been formulated in the Indian G.I Act which requires furnishing of informations about the quality control mechanism adopted by manufacturers and producers of each product<sup>48</sup>. For example, in case of Darjeeling Tea, inspection structures were adopted as early as in the year 2000 even the before the product had attained the G.I status. No blending of tea is allowed and certificate of origin have been issued for all export transactions. The main object of all these measures is to confirm and certify that the consumers are supplied with original products. Though sincere efforts are taken by the Indian government to promote its products across the globe, only Darjeeling Tea has been able to gain a global reputation over the years. Thus it can be concluded that quality control mechanisms play a significant role in brand building and reputation of the product<sup>49</sup>.

### **3. The issue of beneficiaries**

The Indian G.I Act is not clear about the expression “producer”. Therefore it may include an actual producer, retailer or a dealer. No demarcation is provided between the three on account of which the benefits of registration may not pass on to the actual producer involved in the manufacture of the genuine G.I registered products. It is also observed that it is often the middle men such as traders who reap benefits of G.I tag who earn greater profits for the sale of the products<sup>50</sup>. The artisans/weavers/ farmers who are unaware of the tag and its benefits often end up in misery<sup>51</sup>. Furthermore, it can be noticed that in India, majority of the applications for G.I has been filed by the State government and has its own limitations. It is also difficult in such circumstances

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<sup>48</sup> SOUMYA VINAYAN, *supra* note 42 at 60

<sup>49</sup> *Ibid*

<sup>50</sup> *Ibid* at 62

<sup>51</sup> Anson C. J, *Marketing flexibilities in Geographical Indications (GI) and Trademark: A Comparative Study*, 1INTERNATIONAL JOURNAL OF MARKETING, FINANCIAL SERVICES & MANAGEMENT RESEARCH 106(2012)

to determine whether due share has been allotted to the actual producers by the Central and State governments.

#### **4. Registration in foreign countries**

For the registration in foreign countries it is essential to fulfil the requisites of G.I registration as per the laws of the respective country. The existence of divergences among countries makes it a rather challenging task to obtain the registration in respective countries. Geographical indications are protected in WTO Member Countries under three categories; namely- common laws, trademark law and *sui generis* system of protection.

Under the *sui generis* system of protection, the claimants have to prepare the application as per the requirements of the respective legislation of the country where the protection is sought. India is an example of a country that follows *sui generis* system for the protection of G.Is. The claimants belonging to foreign countries who wish to get their product registered in India have to fulfil the criterias under the Indian G.I Act. Peruvian Pisco, Champagne, Napa Valley, Tequila are some of the foreign products which has obtained G.I registration in India complying to the requirements under the Indian G.I Act<sup>52</sup>. Similarly if India wishes to obtain registration for any of its products in a foreign country, then the claimants have to specify and codify the application accordingly which is a technical and costly process.

Some countries provide protection to G.Is under the trademark laws. Since trademarks prohibit registration of products which indicates a geographical region, in countries where such provisions exists, they are protected under collective or certification mark. Where such protection does not exist, the claimants may be confined to obtain limited protection by virtue of trademark registration for the only the logo. Hence in such instances adequate protection may not be secured.

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<sup>52</sup>G.I Registry, Chennai, available at <http://ipindia.nic.in/girindia/> (last accessed on 1<sup>st</sup> April, 2016)

Some countries offer protection to G.Is under the common laws such as passing off, unfair competition and consumer protection acts. In such countries the authorized users and owners of G.I will have to spent huge amount of money in evading any form of misuse/unauthorised use of their registered products. Besides, it is rather a costly process to obtain a legal remedy in a foreign country as either the complainant has to travel all the way to that particular country to institute a suit for infringement. Therefore obtaining protection in a foreign country is not only a cumbersome and costly process, it is to a greater extent uncertain too. On account of these reasons, it can be seen that only Darjeeling Tea from India has gone ahead in securing protection in foreign countries<sup>53</sup>.

### **CASE STUDIES**

It is often contented that adequate protection to G.Is could bring about socio-economic benefits to the producers of goods and also involves preservation of traditional knowledge. With the countries adopting for domestic legislations to protect G.Is of their respective, it is interesting to ascertain the nature of G.Is in existence and their potential to improve the socio- economic conditions of the producers of the goods. A few case studies are discussed here under to study the existing controversies, problems and challenges pertaining to registration, cases of infringement and exploitation of the Indian products abroad and the importance of registration in the overall protection of the product.

#### **1. DARJEELING TEA**

Tea is one of the oldest industries in the organized manufacturing sector that is statutorily controlled by the government. It has also been ranked as the single largest

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<sup>53</sup> SUDHIR RAVINDRAN & ARYA MATHEW, *supra* note 39 at 60

employer in this sector. Recognized as one of the biggest consumers of tea, India accounts for about 30% of the world's tea production<sup>54</sup>.

“Darjeeling Tea” is one of the finest quality teas belonging to the hilly regions of Darjeeling district in the eastern state of West Bengal in India. The tea has earned a global reputation over the years and has a unique quality and flavour<sup>55</sup>. The factors that have contributed to the distinct and rare taste include both the natural factors such as climate, soil, topography etc and human factors such as method of cultivation and processing.

- **Need to protect Darjeeling tea as geographical indication**

It is necessary to provide sufficient legal protection to the legitimate producers and manufacturers of Darjeeling Tea from deceptive or fraudulent business practices of different commercial entities. A number of infringement cases have been reported especially in the countries of Sri Lanka, Nepal, Kenya and USA where local tea is sold to the consumers in the name of “Darjeeling tea”<sup>56</sup>. Such cases of misuse and infringement can be curbed to a greater extent by providing for adequate means of protection. Moreover such unfair practices can diminish the brand name and cause damage to the reputation of Darjeeling tea further denying premium price to the tea industry. Strict enforcement measures can improve the financial situation of the industry to a greater extent and hence it necessary to adopt them.

- **Evolution of legal Protection**

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<sup>54</sup> S. C. Srivastava, *Protecting the Geographical Indication for Darjeeling Tea: Managing The Challenges of WTO Participation: Case Study 16*, available at [https://www.wto.org/english/res\\_e/booksp\\_e/casestudies\\_e/case16\\_e.htm](https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm), last accessed on 15<sup>th</sup> March, 2016

<sup>55</sup>Rajendra Kumar & Vasundhara Naik, *Darjeeling Tea- Challenges in the Protection and Enforcement of Intellectual Property Rights*, available at <http://www.wipolint/index.html.in>, last accessed on 18<sup>th</sup> March, 2016

<sup>56</sup> SUDHIR RAVINDRAN & ARYA MATHEW, *supra* note 39 at 62

The first endeavour towards protection of “Darjeeling” as a brand by the Tea Board was initiated in 1983 with the creation of “Darjeeling” logo. Consequently, the Tea Board attained a domestic protection for the logo as certification mark under the Indian Trade and Merchandise Marks Act 1958. Later, in 1986, the registration was granted under class 30 in the name of Tea Board. The logo was also registered as a trademark in several countries like U.S, U.K, Japan, Canada, Egypt and under the Madrid Agreement in countries like Austria, Portugal, Germany, Italy, former Yugoslavia, Switzerland and Spain<sup>57</sup>.

At that particular point of time, India did not have any exclusive law dealing with geographical indication and hence the protection was confined to that obtained under the Trade and Merchandise Act 1958 (now the Trade Marks Act 1999). Later, when the G.I Act of 1999 was enacted, the Tea Board applied for the G.I protection under the Act and it was granted the status in October 2004. Darjeeling Tea was the first product to attain the G.I status in India. Domestic level protection is essential primarily to obtain reciprocal protection in foreign country.

- **Enforcement Steps taken by the Tea Board**

In 1998, the Tea Board hired the services of World Wide Watch, Compumark agency to eliminate the misuse of “Darjeeling” and the logo. The agency monitors and reports all cases of unauthorised use and instances of attempted registration to the Tea Board. In lieu of Compumark’s appointment, numerous cases of misuse and attempted registration of “Darjeeling” and “Darjeeling logo” have been brought to notice of Tea Board<sup>58</sup>.

On account of such notice, tea board can make attempts to resolve the matter through negotiations with the concerned parties. Against the misuse of the word Darjeeling tea

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<sup>57</sup> *Ibid*

<sup>58</sup> Dr. Prabuddha Ganguli, *Geographical Indications: Its Evolving Contours* (WTC Research Study Report), Institute of Intellectual Property Studies ( 2009), available at <http://iips.nmims.edu/docs/iips-main-book.pdf>( last accessed on 18<sup>th</sup> March 2016)

and its infringement, the Tea Board has in the past four years fought around fifteen cases and includes USA, France, Germany, Sri Lanka, Russia, Norway, Israel etc<sup>59</sup>. During the last four years the Tea Board has spent about 200,000 USD (exclusive of any administrative cost) for these purposes<sup>60</sup>. Some of the cases of misuse of “Darjeeling” as opposed by the Tea Board are as mentioned below.

- **TRIPS and Protection for Darjeeling Tea**

Article 23 gives additional and better protection to wines and spirits in comparison to rest of the geographical indications and due to this fact, recognition of Darjeeling tea as a G.I in the international level is yet to be achieved<sup>61</sup>. Further, absence of multilateral system of notification and registration is hindering the international protection that would have offered adequate protection. Certainly, extension of additional protection under Article 23 is important for India in keeping in view such large scale infringement in foreign countries.

Country	Subject matter of misuse	Product category
U.S.A	“Darjeeling” word	Tea
Sri Lanka	“Darjeeling” word	Tea
Russia	“Darjeeling” word and logo	Tea

<sup>59</sup> *Ibid*

<sup>60</sup> NEELANJANA MITRA, *supra* note 41 at 153

<sup>61</sup> Suresh C. Srivastava, *Geographical Indications and Legal Framework in India*, 38 ECONOMIC AND POLITICAL WEEKLY 4024 (2003), available at <http://www.jstor.org/stable/4414050> (last accessed on 17<sup>th</sup> March 2016)

Norway	“Darjeeling” word	Telecommunication
Japan	“Darjeeling” word and logo	Tea, coffee, cocoa, soft drinks
Israel	“Darjeeling” word	Agricultural and horticultural products
Germany	“Darjeeling” logo	Devices
France	“Darjeeling” word	Telecommunication, clothes, perfumes

**Fig: 3 Unauthorized use of ‘Darjeeling’ Opposed by the Tea Board of India**

**Source:** Kasturi Das & Biswajit Dhar, *Operationalisation of GI Protection in India: A Preliminary Exploration*<sup>62</sup>

## **2. BASMATI RICE**

Basmati is one of the premium quality aromatic rice with a global reputation. The basmati rice is generally determined by its three unique features- taste, aroma and appearance. With regard to appearance, one of its special features is the distinct shape of the grain which elongates on cooking. It is traditionally cultivated in the north and north western parts of India, where rice is a staple food. It has low glycaemic index in

<sup>62</sup>Available at [https://www.researchgate.net/publication/237420395\\_Operationalisation\\_of\\_GI\\_Protection\\_in\\_India\\_A\\_Preliminary\\_Exploration?enrichId=rgreq-7afb789f-b7f2-44db-9b4e-62c49917b9d3&enrichSource=Y292ZXJQYWdlOzIzNzQyMDM5NTtBUzoyNzkyNjY3MTQ1MDUyNDhAMTQ0MzU5Mzc4MTYyNg%3D%3D&el=1\\_x\\_2](https://www.researchgate.net/publication/237420395_Operationalisation_of_GI_Protection_in_India_A_Preliminary_Exploration?enrichId=rgreq-7afb789f-b7f2-44db-9b4e-62c49917b9d3&enrichSource=Y292ZXJQYWdlOzIzNzQyMDM5NTtBUzoyNzkyNjY3MTQ1MDUyNDhAMTQ0MzU5Mzc4MTYyNg%3D%3D&el=1_x_2) (last accessed on 18<sup>th</sup> March 2016)

comparison to other rice and it therefore estimated to be an excellent source of slow releasing carbohydrates. Basmati rice is also much costlier than ordinary rice.

- **The US-India Basmati controversy**

A major issue arose in late 1977 when RiceTec Inc. a Texas based company obtained patent for some kind of rice which they termed as “Texmati” or “American basmati”. Against the grant of patent legal petitions were filed in the U.S by the two Indian NGOs namely the Centre for Food Safety and Research Foundation for Science, Technology and Ecology. Consequently, the Indian government in June 2000 officially challenged the grant of patent after placing together all the evidence<sup>63</sup>.

The petitions were filed on the basis that the grain and plant variety belonged to India as that it was already in existence. The pre-requisites of patent are novelty, non-obviousness and invention. Since the rice already being in existence in India, it fails to satisfy the aspect of novelty and hence cannot be granted a patent in the first place. Moreover, India contested that the use of the expression “basmati” in relation to patent and marketing of rice would create confusion in the minds of people as to the geographic origin of the product resulting in damage to the goodwill and reputation of the original rice cultivated in India.

TRIPS explicitly provide protection to ‘indicators of origin’ and allow legal remedy against misleading geographic indicator. But the problem is that ‘basmati’ is not a geographic indicator as the word does not describe the geographic origin. Taking into account this scenario, the government adopted for a law that protects not just the geographic origin but also sign, and symbols which indicate geographic origin. Thus as per the Indian G.I Act, Basmati is protected. Further, one of the contentions that Indian government made against the grant of patent to RiceTec was that the product should be given protection similar to that of ‘champagne’ and ‘burgundy’. Just like India cannot

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<sup>63</sup> Georges Giraud, *Range and Limit of Geographical Indication Scheme: The Case of Basmati Rice from Punjab, Pakistan*, 11 INTERNATIONAL FOOD AND AGRIBUSINESS MANAGEMENT REVIEW 65 (2008)

label wine as champagne, even they should not be allowed to label their rice in the name of basmati.

However, RiceTec argued that the expression “basmati” has become more or less a generic word and so is not subject matter of protection. It was also contested that basmati denotes fragrance and not the name of any place and hence cannot be protected as a G.I. Nevertheless the position is now settled with the terminology that it is not always necessary for a G.I to signify the place of origin so long as it possess certain qualities specifically attributable to a particular place. Thereafter re-examination was initiated as a result of which RiceTec agreed to withdraw its claims. Accordingly on January 29, 2002 the claims of RiceTec were cancelled by the U.S Patent and Trademark Office.

- **Importance of G.I registration for Basmati**

India has now realised the importance of enacting laws for the preservation of biodiversity as well as control acts of piracy. There is a belief that the entire controversy cropped up on account of weak, non-existent Indian laws to protect their culture, tradition and knowledge. So as to acquire exclusive commercial use of ‘basmati’ grown within the boundaries of Indo-Gangetic plains, the Agricultural and Processed Food Products Export Development Authority (APEDA) in 2008 applied for G.I registration. Thereupon, both India and Pakistan had taken steps to register Basmati as a joint heritage to protect its misuse in the countries abroad. Pakistan had consented to India’s move to include ‘basmati’ in the G.I registry on the condition that when their IP laws are framed, they would recognize and register the rice grown in Punjab under its G.I system<sup>64</sup>. Finally, 7 long years after which the application was filed, G.I protection was accorded to Basmati rice on February 16, 2015.

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<sup>64</sup> [Delphine Marie-Vivien](#), *The Protection of Geographical Indications in India: A New Perspective on the French and European Experience* (1<sup>st</sup> ed.2015)

Following the registration, now the farmers from the districts of Punjab, Haryana, Uttarakhand, Delhi, Jammu and Kashmir, Uttar Pradesh gets legal right to exclusively use the product as registered proprietor and authorised users eliminating any kind of misuse by unauthorised users<sup>65</sup>. The G.I tag can certainly play a significant role in enhancing exports and promoting economic prosperity of the producers within the territory. Similarly, protection in India would lead to recognition of the product in other countries such as EU and US legally barring India's competitors from using the title basmati.

### 3. POCHAMPALLY IKAT

Pochampally is a small town in the Nalgonda district of Andhra Pradesh and is famous for its handloom fabric with its distinct traditional designs known as "Ikat". The unique features of the product is that it is made of natural fibre such cotton, silk or a combination of both and are the threads are dyed to give different colour to textiles. The most common design is that of diamond or chowka which constitutes a special trait. Weaving is traditionally practiced as a traditional art in these regions as well as parts of Warangal District of Andhra Pradesh such that there are around more than 5000 weavers carrying out this tradition<sup>66</sup>.

Facing tough competition from the power loom made imitations, there was a declining trend observed in relation to handloom sector. There was low productivity, inefficient marketing efforts, lack of innovative product, lack of skilled workmen etc. as a result of which the weavers were suffering from extreme poverty and forced sale of the products at cheaper rates. The condition of the handloom industry was rather deplorable when the Textile Committee launched a Development Programme in Pochampally with the object to preserving this declining art form. The Programme

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<sup>65</sup> [Sandip Das](#), *Seven years after application, basmati rice gets GI tag*, THE FINANCIAL EXPRESS, February 17, 2016, available at <http://www.financialexpress.com/article/markets/commodities/seven-years-after-application-basmati-rice-gets-gi-tag/212218/> (last accessed on 17<sup>th</sup> March 2016)

<sup>66</sup> SOUMYA VINAYAN, *supra* note 42 at 63

comprised of skill and quality up gradation programmes, brand building and technological advancements undertaking strategic measures to combat counterfeiting of products<sup>67</sup>. In lieu of better and adequate protection of the textile, Pochampally Handloom Weavers Co-operative Society Ltd in collaboration with other organisations proceeded for G.I registration. Consequently, it was accorded G.I status on 31<sup>st</sup> December, 2004, after which the textile witnessed significant rise in demand. Increase in demand provided for realisation of returns at a faster pace. It further contributed to increased productivity and better sale and profits. Today the Society is better off both socially and economically, constantly taking the efforts to revive this art form<sup>68</sup>.

- **Case analysis**

The first ever law suit that was instituted under the Indian G.I Act was that of ‘Pochampally Ikat’. The facts of the case are as follows. The plaintiffs are the registered proprietors and are vested with the exclusive use of the product. In May 2005, they became aware of defendants no: 1 retailing sarees under the name ‘Hyco Pochampally’. Investigations were carried out as a result of which yet another case was reported wherein defendant no: 2 were manufacturing and retailing the sarees in similar name. A suit was filed in this regard seeking permanent injunction against such unauthorised use.

‘Hyco Pochmpally’ which is both visually and phonetically similar is likely to cause confusion in the minds of the people that the products are belong to plaintiffs or is a hybrid variety of the original Pochampally sarees. The plaintiffs thus contested that the use of label ‘Hyco Pochampally’ is in the nature of passing off and are damaging the goodwill of the the original sarees. Therefore use of the expression constitutes a dishonest and malafide attempt so make use of the plaintiff’s goodwill<sup>69</sup>. Both the defendants are also guilty under Sec 38 (1) (a) and (b) for having falsified the G.I and

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<sup>67</sup> KASTURI DAS, *supra* note 45 at 172

<sup>68</sup> *Ibid*

<sup>69</sup> KASTURI DAS, *supra* note 47 at 59

using it in an unauthorised manner without the consent of the plaintiff. Accordingly, suit was decreed under order 23 rule 3 r/w sec 151 C.P.C in favour of the plaintiffs.

#### 4. **PAYYANNUR PAVITHRA RING**

Payyannur Pavithra mothiram is a peculiar variety of handmade finger ring made out of gold and silver by the traditional artisans of Payyanur in the Kannur district of Kerala. The sacred ring is distinct for the “Pavithra Knot” at the middle of the ring. The ring also has three lines at the heart of it which represents the “nadis”, namely, ida, pingala and sushumna which ensures health, wealth and prosperity of the person. The ornament is believed to bring good fortune and divine blessings not only to anyone who wears it with deep devotion but also his family<sup>70</sup>. Hence it is significant among both Keralites within the state and also those outside the state. One necessarily requires immense skill, expertise and dedication into making these rings.

- **A battle for G.I tag ownership**

On 23<sup>rd</sup> February, 2004, Payyannur Pavithra Ring Artisans & Development Society submitted an application for G.I registration of the “Payyanur Pavithra Mothiram”. As a part of scrutiny a Consultative Group was constituted and a meeting was held where the applicants were asked to comply with certain requirements of the G.I Act. After the said amendments to the application it was advertised in the G.I Journal on 1<sup>st</sup> July 2005, inviting any opposition from any interested persons. In this regard a notice of opposition was filed by Shri. Balakrishnan, which was later rejected and the society proceeded for registration of the product by an order dated 22<sup>nd</sup> October 2010. Consequently, Mr. C.V Dayanandan, filed a writ petition to restrain the Registrar from proceeding with the registration process. The same was dismissed on the ground that

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<sup>70</sup> R. Sivaraman, *GI registration for ‘Payyannur Pavithra’ ring revoked*, THE HINDU, November 18, 2012, available at <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/gi-registration-for-payyannur-pavithra-ring-revoked/article4107531.ece> (last accessed on 18<sup>th</sup> March 2016)

remedy could be sought by filing for appeal before the IPAB. Accordingly appeal was filed. The Board pointing out the short comings of the application removed the name of the applicant from the register, directing the Registry to sent notice to all parties. Additionally, Board also instructed parties to apply for authorised user. The G.I application was therefore remanded back for fresh consideration. Meanwhile a new application was filed by M/s Choovatta Trust for the registration of the ring. The Registrar suggested for a scrutiny of both the applications.<sup>71</sup>

- **Present position**

In lieu of this battle for G.I tag ownership, a meeting of consultative group chaired by the Registrar was held on 11<sup>th</sup> March, 2014 in Bangalore. It had decided in the meeting that since both the applicants had failed to satisfy the criterias of registered proprietor, and also refused to accept the grant of G.I in favour of any, the Registry should in fact recommend the Government of Kerala to intervene the matter so as to ensure that actual/bona fide artisans reap the benefits of G.I tag<sup>72</sup>. Accordingly, C.G Naidu, head of office, G.I Registry, Chennai stated that “The Payyannur Pavithr Mothiram still enjoys G.I status, but we have decided no to give the ownership of status to any individual, group or society because we are of the opinion that it will not help the community of artisans that make the ring.<sup>73</sup>”

## 5. **THE RASGULLA G.I DEBATE**

“Rasgulla” is of the famous Indian sweets, sold not only across the country but also Indian restaurants around the globe. It is spongy and white in colour and is soaked in

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<sup>71</sup> *Ibid*

<sup>72</sup> P Sudhakaran, *Payyannur Pavithra Mothiram in a Geographical Indication tag ownership tussle*, THE TIMES OF INDIA, August 21, 2014, available at <http://timesofindia.indiatimes.com/city/kozhikode/Payyannur-Pavithra-Mothiram-in-a-Geographical-Indication-tag-ownership-tussle/articleshow/40549595.cms> ( last accessed on 18<sup>th</sup> March 2016)

<sup>73</sup> *Ibid*

sugar syrup. However in the recent years debates have appeared two neighbouring states- West Bengal and Odisha over the claim of origin of this iconic sweet.

The people in West Bengal claim that the sweet was first made in 1868 by Nobin Chandra Das of Kolkata, processing the mixture of ‘chenna’ with ‘semolina’ in boiling water. Later, his son established the prominent sweetmeat chain K.C Das. Another belief is that Das merely popularized the rasgullas and that it was prepared by someone else. The State on 18<sup>th</sup> September, 2015 has submitted an application for registration of the sweet claiming for an origin based recognition<sup>74</sup>.

On the other hand, the people of Odisha hold that rasgullas have always been a part of ‘Rath Yatra’ rituals and its origin can be traced to the existence of the Jagannath temple in the 12<sup>th</sup> century. The state government has planned to proceed for G.I registration in the name of “Pahala Rasgullas”. Pahala is a place located between the two big cities of Bhubaneswar and Cuttack where there are more than hundreds of shop selling these. ‘Pahala Rasgullas’ are different from the general rasgulla, unlike the general rasgullas are not very sweet and are brown in colour. The state government has also established three committees to conduct a study and prepare documents as to the origin of rasgullas. The first committee is to submit documents on the origin of rasgullas, whereas second committee shall study the claims of the West Bengal government over the origin of the dish. The third committee shall prepare all essential documentation in support of Odisha’s claim over rasgullas<sup>75</sup>.

Though Odisha appears to have a comprehensive plan for the enforcement of the right to use the name “Rasgullas” it is still a question to be determined whether all the issue

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<sup>74</sup> Zia Haq, *Why Bengal, Odisha’s claim to rasgulla is not ‘rational’*, HINDUSTAN TIMES, October 6, 2015, <http://www.hindustantimes.com/india/why-bengal-odisha-s-claim-to-rasgulla-is-not-rational/story-qIIH1u1WyyLNk762Rp6ucK.html> ( last accessed on 18<sup>th</sup> March 2016)

<sup>75</sup> Kajari Bhattacharya & Debabrata Mohapatra, *Geographical Indication tag sparks a bitter debate on rasgulla*, THE TIMES OF INDIA, August 1, 2015, available at <http://timesofindia.indiatimes.com/india/Geographical-Indication-tag-sparks-a-bitter-debate-on-rasgulla/articleshow/48302143.cms> ( last accessed on 18<sup>th</sup> March 2016)

involved for registration has been considered<sup>76</sup>. Debates have also cropped up in relation to whether or not Rasgullas in general and specifically Pahala Rasgullas can obtain the G.I status. As the sweet is has over the years earned a global reputation earning millions of dollars for the state, both states are adamant upon getting a G.I tag for the respective states. However, only time will tell us who will emerge successful in this battle.

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<sup>76</sup> *Ibid*