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GI Protection: The Need for Amelioration

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ABSTRACT

The long felt need for the protection of GI has not yet reached its full potential. Due to various reasons, the producer of the good is at a disadvantage after all the efforts and trouble. The “unjust enrichment” of the produce of a community, in the hands of a few individuals has to stop. To enable this, apart from granting GI, the government has to conceive a scheme for promotion, supply and sale of the product, along with granting the GI. The grant of GI would go a long way in giving a supporting hand to the farmers and help in rural development. The recent struggle of the farmers in the Palghar district in Maharashtra for the “wada kolam” rice is one such example. There needs to be a quick decision on such cases, as to not let the poor suffer. Many rice mills are on the verge of shutdown, facing a competition from many deceptive similarities. It is true that a Geographical Indication cannot be given randomly without analysing certain set of factors. But a scheme could be put in place as discussed by the World Intellectual Property Organisation and such process should be headed by a team of experts who are well versed in such fields and with the help of legal members who can visualise the ongoing discrepancies in obtaining such a grant, and thereby helping the community in need.

Keywords: *Geographical Indications, Traditional Knowledge, rural development, WIPO, WTO, Wada Kolam,*

There is an increasing need to protect traditional knowledge in the coming times. This urgency is due to the commercialisation of all products in many Industries. Article 31 of the UN Declaration on the Rights of Indigenous Peoples states that, “ Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts”. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. In conjunction with indigenous peoples,

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States shall take effective measures to recognize and protect the exercise of these rights. Geographical Indication serves as a great tool to protect traditional knowledge. The protection of GI has been in the forefront since the Uruguay round of GATT negotiation began in 1986, which led to Marrakesh treaty and later to the WTO. It was decided at the Doha convention that the GI would be protected. At Doha, India wanted to extend protection and some countries opposed it and though still negotiations are going on, India has implemented the GI protection

THE INDIAN GI ACT

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 that deal 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 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. Under the purview of the GI Act, which came into force, along with the GI Rules, with effect from 15 September 2003, the central government has established the Geographical Indications Registry with all-India jurisdiction, at Chennai, where right-holders can register their GI.² Since GI and traditional knowledge both protect the rights of communities and the appellations of origin under Lisbon Agreement establish that majority of the indication-product link reflects strong historical and symbolic links between the places and the products. This feature of the GI makes it amenable aimed at protecting the rights and interests of indigenous communities.³ The growing of rice by each region in India is distinct in nature and hence each variety has its own speciality and it is worthy of its own GI. Some have been granted the same too. But many still suffer the need to attain a recognition for their continuance. One such variety is the Wada Kolam.

Rice forms an integral part of the culinary traditions in many parts of India. Rice obtained from paddy is processed in different types to produce different varieties of Rice. Each type of rice has its own taste and flavor. Kolam rice, also known as Lachkari Raw Rice is one of the very famous varieties of rice. Kolam Rice is used as an everyday substitute of Basmati because it gives the same feel and taste as that of Basmati Rice. It has a smooth texture and

² Dr. Sudhir Ravindran and Ms. Arya Mathew, "The protection of Geographical Indication in India, (Sep. 1, 5pm), <https://www.altacit.com/publication/the-protection-of-geographical-indication-in-india/>.

³ Manisha Singh, "Role of Geographical Indication in the field of Traditional Knowledge", (sept 10, 2pm), <https://www.mondaq.com/india/intellectual-property/56866/role-of-geographical-indications-in-the-field-of-traditional-knowledge>

does not have any preservatives.

The rice variety which poses a competition to the Basmathi rice in flavour, now is on the verge of extinction. Locally known as “zini”, this variety is local to Wada Taluk in Palghar district in Maharashtra. This variety is now only grown in 2500 hectares of the Taluk, whereas earlier it was grown around the whole District. The hybrid varieties triple that. Besides this, it is susceptible to rodent attack as it is a late growing variety and labour intensive process. The other rice varieties are whiter and are polished twice or thrice to reduce the size to look like the wada kolam. After two to three months, they gain a blackish tinge.⁴

Mr. Ganesh Higmire who had submitted the application for obtaining the GI had averred that it is a non basmathic variety of rice produced in Wada taluka and the farmers have been growing it for centuries. The GI tag will help them get a premium price and it will also cut down the sale of hybrid varieties. And it is gluten free and easy to digest. It is high in micro nutrients because of the quality of soil and other conditions where it is grown.⁵

The mills are on the verge of shutdown, because of two reasons. One, due to the inability of being able to sell their products at a profit, because the yield is less and two, the variety even if sold in the markets cannot achieve its goal because of the many counterfeit varieties of the same product being sold at a low price. Hence, the farmers in the area belonging to a co-operative society have applied for a GI tag.

This GI tag would give them a priority over the other products and increase their sale, thus giving a livelihood to the farmers in the area and also preventing the loss of the distinct variety. This tag has been given so far to a lot of rice varieties in India and has helped in building up the prices and hence the cultivation of the said variety of crop. But to obtain this recognition, a lot of process and proper documents are required by the applicants. This poses a problem, for some of the cultivators may have been cultivating the same crop simultaneously in another district or area but may not have the proper documents and history to prove that it has been with them for such a long time, hence losing the right to obtain GI. Though there are certain hurdles in obtaining a GI, overall it acts as a boost for protecting a community rather than protecting a couple of individuals like Trademarks. Hence it is useful

⁴ Makarand Gadgil, “Palghar farmers want Geographical Indication tag for wada kolam” <https://mumbaimirror.indiatimes.com/mumbai/other/palghar-farmers-want-gi-tag-for-wada-kolam-rice/articleshow/66289247.cms>

⁵ Gitesh Shelke, “Farmers eye Geographical Indication for Wada Kolam rice”, (sep10, 4pm), <https://timesofindia.indiatimes.com/city/pune/farmers-eye-gi-tag-for-wada-kolam-rice/articleshow/76791559.cms>

on the whole. But it is not the only way to promote the distinct varieties of crops or plants that grow in each region. The government is bound to step in and take initiatives to protect them to preserve the eco-diversity in the country. GI also serves as an exhibition to show the heritage and history of various parts of India.

GI has both its pros and cons. It either can be turned as a positive asset to help a whole community or can be exploited by a very few even neglecting the very poor for whom it was to be made helpful in the first place. It can even stimulate inappropriate outcomes such as the dissolution of traditional practices or the destruction of biodiversity. One of its cons includes limited scope against the claims unless infringement/ passing off is documentarily proven and there is limited scope for Indians and/or any Indian companies or other corporate body carrying out business within India for carrying suit against any other Indian and/or any other corporate body within India. This is the obiter dictum of the judge in *Tea Board, India Vs. ITC* ⁶However, there is a scope of litigation where the case is established on the basis of the proof of deception and harm to the reputation of goods. It is not the only means to uplift the rural society. But if managed properly, it can bring in competitiveness and equity in the society. Though India has a variety of products which could be cashed in as Geographical Indicators, GI is still a new concept to India. The idea to set in place a legislation for it was because of TRIPS and the need to place proper IPR laws in the country rather than the need coming from within the country itself.

The panellists of the Fourth Global Review of Aid for Trade at The World Trade Organisation in Geneva held on 9th July 2013 have suggested that the Geographical Indications need to be developed, because they increase revenues for local producers and can also cater to the needs of the more demanding and conscious customers. Geographical Indications reduce rural shift and contribute to social cohesion. Hence there is a great need to preserve them, as stated by the Managing Director of OriGIn, the Organisation for an International Geographical Indications network. According to him GI contributes to social cohesion and helps in preventing the rural exodus. Various factors contribute to the growth of Geographical Indications, which in turn develop the rural environment. But the growth of a Geographical Indication in a rural area, is accompanied by the need to take care of the International prices and supply of the product which are some of the factors that contribute to its growth. They add to the development of the whole region, because of the value it brings with it. For instance, consumers start buying more quality products, and producers are paid

⁶Dhivya Uthaman, Limited scope for registration and Protection for Indians under Geographical Indication of goods(Registration and Protection)Act,1999,(Sep 09, 10 pm), <https://www.lexology.com/library/detail.aspx?g=c9580f16-12fc-407a-bd00-e914ce9559cb>

more because of their superior quality goods. Hence it promotes higher jobs and higher income in the same area. For all this to happen, mere increase in the product is not enough but many other factors are to be given attention. A specific method is to be adopted for promotion of the Geographic Indication in that area.

Geographical Indications are also important because they are a great method to protect and preserve the Traditional Knowledge and traditional Cultural expressions of the place from which the Geographical indication originated. Many of the Geographical Indications have a deep connection with the culture and heritage of the place and the GIs can protect them indefinitely over a long period of time, without the problem of “Assignment or licensing “ it to third parties, thus preventing misappropriation. It recognises their cultural significance and puts in place the code of conduct or regulation of use. The most important thing is the value it brings or adds to the goods. Without the protection of GI, a manufacturer of a product, may be tempted to use cheaper and lesser quality items, because of the imitations of the same products selling at a very lower price, than the original. GI takes care of the same, by adding value to the product and making consumers conscious of the superior quality thereby improving commercialization of the product.

The WIPO has given certain guidelines to improve the Geographical Indication in a place, as it is not a simple step. There are various matters to be looked upon like that of the level of cohesion and cooperation involved between the producers and the other operators concerned, how their interests are managed and the legal problems in getting the GI-both domestically and internationally. The institutional support is also vital. As it has been asserted, that a comprehensive GI scheme is needed to assess and identify the product’s market- internally and externally, strengthening the cooperation of the producers, defining market strategies, setting up methods, code of conduct and regulations of use for the product. It should describe the product’s location and describe the production and processing methods. It should also describe a mechanism that can attribute the right to use the product to its producer or operator and also set up standards for usage within the established boundaries. Obtaining legal protection and devising a legal enforcement strategy is also important.

On the whole, granting geographical Indication to a product can also help the government in attaining more transparency in the marketing of local products. More dependency on local products, would lead to a self-sufficient government. It can also bring an increase in the overall GDP of the country, as more and more quality products are made and exported, there would be more income inflow. Hence an awareness is to be created on the benefits of GI and the process on the whole should be made user friendly. An Agrarian developed economy will

eventually be a well developed economy. In this era of globalisation, protecting the uniqueness and cultural identity of a nation, poses a challenge and the granting of legal protection to GIs also extends to protection of traditional knowledge and traditional cultural expression contained in the products. In doing so, not only are livelihoods protected but also possibilities of generating employments encouraged. GIs have the potential to be the nation's vital growth factor, and its nature is yet to be realised and the seed for growth is be watered further, for the realisation of a better nation and better prospects.
