Protection Of Geographical Indications (GIs) In India

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ABSTRACT

The issue of Geographical Indications (GIs) has been debated in India and globally at various forums like the World Trade Organization (WTO). World Intellectual Property Organization (WIPO) provides for the protection of GIs at an international level. 'Geographical Indication' refers to an indication of goods that have originated from a definite geographical territory, used for identifying an agricultural, natural or manufactured good. Examples of Gls in India are Basmati Rice, Kanchipuram Silk Sari, Tellicherry Pepper, Nilgiris Tea, Darjeeling Tea etc. In India, Protection and Registration of GIs relating to goods comes under The Geographic Indications of Goods (Registration and Protection) Act, 1999 and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deals with GIs' protection at international levels.

GIs have rapidly gained importance, and the WTO has initiated actions to legalize the registration of goods as GIs in the context of an increasing integrated international regime. Major objectives of this study are: i) To understand GIs in India through overview of GIs protection, registration and the challenges faced by GIs protected -agricultural, natural and manufactured- goods in the Indian context. ii) Effort has been made to identify the difference between GIs and Trademarks through this research. iii) An overview of few GIs registration of goods in India has been conducted to know how GIs have been protected and further scope for GI registration for more goods has been explored. iv) In the present study, efforts have also been made to find out the benefits and challenges of GI certification for various goods in the Indian context. The major challenges faced by goods applying for GI status are: Origin of the goods for identifying geographic territory; Registration of GIs; Monitoring and controlling specified processes, procedure and quality of GI protected goods; Protection of GIs from infringement; and enforcement of intellectual property rights.

Keywords: Geographical Indications, Trademarks, Intellectual Property Rights, Registration and Infringement, Gls, Goods

JEL Classification: M31, O34

INTRODUCTION

Geographical names and other associations of a product with a particular place have a great importance for the consumers, who make such a choice based on such indications. Geographical Indications (GIs) means an indication which identifies goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in the territory of a country or a region or locality in that territory where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality as the case may be, and place names are sometimes used to identify a product (http://textilescommittee.nic.in/GI FAQ.pdf accessed in January 2013) . As per The Geographical Indications of Goods (Registration and Protection) Act, 1999, protection of such goods is known as Geographical Indications (GIs) Protection. If such goods are manufactured goods, one of the activities of production or processing or preparation of the concerned goods takes place in such territory or locality as per the Geographical Indications Act.

WHY DO GEOGRAPHICAL INDICATIONS (GIS) NEED PROTECTION?

GIs are an Intellectual Property Right (IPR), and they point to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place, since those qualities depend on the place of production, and a specific "link" exists between the products and their original place of production. Geographical indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorized parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they, in fact, get a worthless imitation. The latter suffer damage because valuable business is taken away from them, and the established

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reputation for their products is damaged. Hence, GIs need protection (http://textilescommittee.nic.in/GI_FAQ.pdf accessed in January 2013).

The GIs protection term is initially for a period of ten years and can be renewed from time to time. If the registered GI certifications are not renewed within a specified time limit, they are liable to be removed from the register. There are community, national and international jurisdictions for the protection of GIs and Designations of Origin (Dos). GIs' protection has its own opportunities and challenges at the national and international level due to different legal systems and definition of GIs prevailing in different countries.

OBJECTIVES OF THE STUDY

Primary Objectives

- ❖ Understanding the Geographical Indication Registration process in India through overview of GI protections registration till 2009.
- ❖ Study the opportunities and challenges faced by GI protected products in the Indian context.

Secondary Objectives

- To explore the definition of Geographical Indications protection by analysis of the Indian Legal System.
- ❖ To study the similarities and differences between GIs and Trademarks.

RESEARCH METHODOLOGY

The paper is descriptive in nature. Data was collected through secondary data sources like national and international journals, Government publications like Geographical Indications Journal, newspapers, and online data sources. Research was conducted during the time period from May 2011 to March 2012.

THEORETICAL BACKGROUND OF THE STUDY

- ❖ Definition of Geographical Indications: Section (2)(e) of the Act defines "Geographical Indication" (GI -in relation to goods) means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods, 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.
- ❖ **Definition of Goods Under GI:** Goods as per the GI Act are defined as "any agricultural, natural or manufactured goods or any goods of handicraft or of an industry. Food stuff is also included in the definition under Section 2(1) (f) of the GI Act, provided that such food stuff can be stocked, preserved and sold as goods."

Legal acts at the national and international level have been varying in the definition of the term Geographic Indication. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provisions defined GIs as "indications that identify a product as originating from the geographic territory of a State that is party to the Agreement, or from a region or from a place located in the territory, if a specific quality, reputation, or other characteristics of the product are essentially attributable to its geographical origin".

Under TRIPS Agreement, "Designation of Origin" (named as PDO) means the name of a region, a specific place or, in exceptional cases, a country used to describe an agricultural product or a foodstuff:

- Originating in that region, specific place or country,
- The characteristics or quality of which are essentially or exclusively due to a particular geographic environment with its human and inherent natural factors, and
- The production, preparation and processing of which take place in the defined geographic area.
- "Geographical Indication" (named as PGI) means the name of the specific place, region or in exceptional cases, a country, used to describe an agricultural product or foodstuff:
- ❖ Originating in that country, region or specific place,

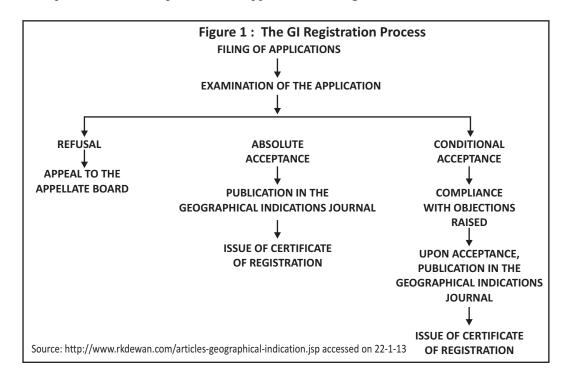
- * Which possess specific reputation, quality or other characteristics attributable to that geographical origin, and
- The production and/or preparation and/or processing of which takes place in the defined geographical area.

Till March 2010, 205 GI applications were received according to Geographical Indication Journal's 32nd issue, Government of India, in which under the description of Goods, as per GI Act, includes: *Agricultural Goods* (Tea, Pineapple, Banana, Basmati Rice, Nashik Grapes, Alphonso Mango, etc.); *Textile* (Gadwal Sarees, Banarasi Sarees and brocade, Toda Embroidery, Surat Zari Craft, etc.); *Handicraft* (Moradabad Metal Craft, Kanpur Saddlery, etc.); Manufactured Goods (Kannauj Perfume, etc.); *Alcoholic Beverages* (Scotch Whisky & Napa Valley, etc.); *Food Stuff* (Bikaneri Bhujia, Hyderabadi Biryani & Tirupathi Laddo, etc.) as Goods.

❖ GI Protection Vs Trademarks: A trademark is a sign used by an organization to differentiate its goods and services from its competitors, which gives its owner the right to exclude others from using the trademark. A trademark consists of arbitrary or fanciful names or devices. A Trademark is used by registered individual enterprises only. A GI suggests to the consumers that a product is produced in a certain place or locality or region and has certain special characteristics that are due to that product being produced in a certain place of production. It may be used by all the producers (authorized users of GIs) who produce their products in the place designated by a GI and who follow similar production processes and specific quality standards. Like Trademark, the name used as GI will usually be predetermined by the name of the place of production. GIs are different from other intellectual property like copyrights and trademarks. GIs are publicly owned by the artisans/producers of the concerned product, whereas copyrights and trademarks are monopoly private IPRs. Producers of similar products in other geographical regions are excluded from using the GI tag. Registration of GI as trademark is prohibited by the GI Act. The Registration of Trademark shall *suo motu* or at the request of an interested party, refuse or invalidate the registration of a trademark which consists of a GI as a trademark would confuse or mislead the public as to the true origin of the goods. However, trademarks that consist of a GI where it is registered in *good faith* under The Trade Marks Act are protected under the GI Act, where the right to such a trademark was acquired prior to coming into force of the Act.

GIPROTECTION LAWS

GIs are protected globally with international and national treaties and national laws under a wide range of concepts, which includes: Special laws for the protection of appellations of origins or GIs; in the form of *collective marks or*



certification marks under trademark laws; laws against unfair completion; consumer protection laws and recognized individual GIs under specific laws or decrees. In India, GIs are protected in accordance with Geographic Indications of Goods (Registration and Protection) Act, 1999 (GI Act, 1999). At the international level, a number of treaties administered by World Intellectual Property Organization (WIPO) provide for the protection of GIs, which includes the Paris Convention for the Protection of Industrial Property of 1883, the Lisbon Agreement for the Protection of Appellations of Origin and Their Registration. Article 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deals with protection of GIs at the international level.



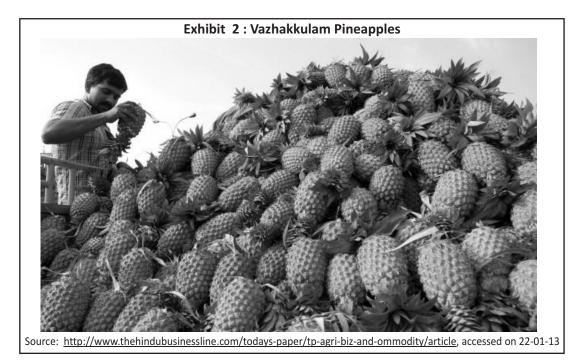
The GI Registry maintained at Chennai, which has all India jurisdiction is divided into two parts, Part A contains details of distinguishing characteristics of the goods and of the registered proprietor which would be an association of persons or producers or a body representing interest of such producers, e.g. Coffee Board, Tea Board or Spice Board, etc. A collective reference may be made to include all producers in the application. Particulars of "Authorized Users" of GIs such as those producers (dealers and traders) who have not been included in the original application for registration, this provision in the GI Act was included due to the socio-economic implications of GIs.

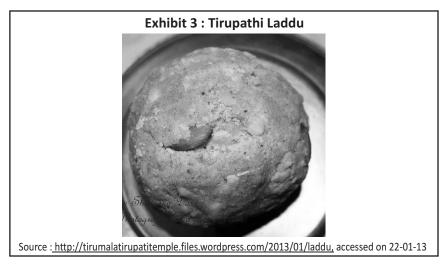
Sec. 11 of GI Act deals with application for registration, its contents, making and filing, acceptance or refusal. After submission of the application for registering a product for GI certification (see Figure 1), the Registrar examines the application and may consult the expert group to verify the technical details of the GI. On satisfaction, the Registrar accepts the Application which will then be published in the GI Journal. Within four months of publication in the journal, any person can file a Notice of Opposition. Then the matter will be put on hold for reply, evidence, then hearing, and if the Registrar accepts the application, then the Certificate of Acceptance is issued. Registration is for ten years, but can be renewed from time to time on payment of the renewal fee. For "Authorized Users", a similar procedure is followed. An infringement action can be initiated both by the registered proprietor, and by authorized users whose names have been entered in the Register.

OVERVIEW OF GEOGRAPHICAL INDICATIONS PROTECTIONS IN INDIA: RECENT GI CERTIFICATIONS IN INDIA

❖ GI Certification For Banarasi Sarees: Working closely with the weavers' community, the Banaras Bunkar Samiti, Human Welfare Association, Joint Director of Industries and six other organizations submitted an application to the GI Registry on July 4, 2007. After the rigorous process of scrutiny by the GI Registry to ascertain the unique properties of the Banarasi Sarees and brocades, and their link with the areas or regions of production in Uttar Pradesh,

and after a long wait of over two years, the world famous Banarasi saree and brocade got the GI status on September 4, 2009 (Exhibit 1). The Banarasi Sarees and brocades, renowned for their intricate designs of silk and gold thread have been registered as GIs under Geographical Indication of Goods (Registration and Protection) Act, 1999. This means that no saree or brocade made outside the identified six districts of Uttar Pradesh can be legally sold under the name of "Banaras Brocade and Sarees". The GI certification would help genuine producers to legally counter and protect increasing threats from silk sarees produced in other geographic regions and countries, but sold in India under the tag name of Banarasi silk sarees. The GI certification not only recognizes uniqueness and distinct identity, but related products such as silk brocades, dress material, bed and table covers manufactured traditionally by weavers in six identified regions i.e. Varanasi, Azamgarh, Chandauli, Jaunpur, Mirzapur and Sant Ravi Dass Nagar (Bhadohi) also received attention. The GI certificates can commercially benefit lakhs of weavers, traders and exporters of Banarasi sarees in India. United Nations Conference on Trade and Development (UNCTAD) Projects' intervention made this GI certification possible. Similar initiatives helped weavers and artisans to receive GI certifications for Pipli Applique Work of Orissa, Chicken Craft of Lucknow, Uppada Jamdani sarees of Andhra Pradesh and Cannore Home Furnishing.



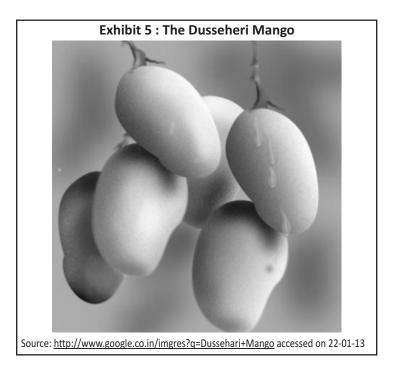


- * GI Certification For Vazhakkulam Pineapples of Kerala: After plantation crop, pineapple may become yet another major revenue getter for Kerala with the grant of GI status to Vazhakkulam Pineapples (Exhibit 2). Besides being the cheapest fruit, it hardly contains any pesticides residue, which is best for international markets. Vazhakulam lies near Muvattupuzha in Ernalulam district, Kerala. The GI status for the pineapples will help in branding the fruit in the international market for exports. The Pineapple Farmers Association is on the verge of signing a Memorandum of Understanding (MoU) with a gulf based entrepreneur for exporting branded Vazhakkulam pineapples. The Central government's Chennai-based GI Registry office of the Controller General of Patents, Designs and Trademarks has recognized the 'Vazhakkulam Pineapples' as a GI product. The pineapple has a reputation and is unique for its colour, taste, aroma and flavor, and is exported to Gulf countries. It is an effort of Vazhakulam Pineapple Farmers Association and Kerala Agricultural University's Pineapple Research Station's efforts that the GI certification has been awarded to the Vazhakkulam pineapples. The geographical area where the Vazhakkulam Pineapple is cultivated comprises of nearly 150 panchayats (village administrations) in Kottayam, Idukki, Ernakulam, and Pathanamthitta districts. Ten other products from Kerala have received GI status, these are: Palakkadan Matta Rice, Aranmula Kannadi, Pokkali Rice, Malabar Pepper, Navara Rice, Allepy Coir, Allepy Green Cardamom, Maddalam of Palakkad, Screw Pine Craft of Kerala and Brass-broidered Coconut Shell Craft of Kerala.
- * GI Certification For The Tirupathi Laddu: GI patent was granted for the Srivari Laddu popularly known as the ' Tirupathi Laddu' (a temple offering sweet made from Bengal gram dal and Cow ghee) to worship Lord Venkateswara, the presiding deity at the Srivari Temple at Tirumala Hills in Tirupati in the state of Andhra Pradesh, India. GI Registry of the central government's office of the Controller General of Patents, Designs and Trademarks, Chennai in October 2010 registered the Tirupathi Laddu for GI certification. GI registration of the Tirupathi Laddu would ban others from making and marketing the Laddu under the same name, and it gives legal protection to the Tirupathi Laddu and makes any infringement of the rights an offence.

GI for the "Tirupathi Laddu" (Exhibit 3) offers real value and protection from threat duplication. Except in the Tirumala Hills, this prasadam (sanctified with offering to God) is not available anywhere else; not even in other temples of Sri Venkateswara in India and abroad. The laddu is prepared in Tirumala, in kitchens specially built for preparing this prasadam.

However, Mr. R.S. Praveen Raj, a scientist from Kerala challenged the granting of the GI registration for the





"Tirupathi Laddu". He stated that the matter was about "the prejudice caused to article 25 of the Constitution and the violation of Section 9(d) 11 and 9(a) of the GI Act, 1999 and to register the Tirupathi Laddu as "Goods" under the GI Act." He was concerned about the potential devastation to the country "that was likely to happen if the private appropriation of religious symbols is allowed." According to the Section 9 (d) of Geographical Indication of Goods (Registration and Protection) Act, 1999 - GIs which comprise or contain any matter likely to hurt the religious susceptibility of any class or section of the citizens of India shall not be registered. He opined that this statutory mandate was ignored before granting the GI registration to the Tirupathi Laddu or calling sacred prasadam as commercial Goods may definitely hurt the sentiments of millions of devotees in India and abroad. TTD's GI for the "Tirupathi Laddu" has opened up the possibilities of applications for GI registration (for their offerings) by high income yielding temples such as the Shabaramalay of Ayyapa in Kerala for "aravana payasam" (rice based sweet porridge) and "appam" and the Mookambika Temple for its "tirumadhuram"; and several other temples in India might follow suit for registering their offerings for GI status. But such applications may result in opposition from devotees of these temples as per their perception of GIs as mentioned above.

- ❖ GI Certification For Phulkari of Punjab: Phulkari of Punjab got a GI registration in January 2011 (Exhibit 4) for its traditional embroidery art mostly practiced by women in the region. GI application for Phulkari was submitted in March 2005 and got delayed due to an opposition filed by a Mumbai-resident claiming that it would affect the earnings of those living outside Punjab. Punjab won the case after five years of legal battle and claimed its first GI registration with support from PIC (Patent Information Centre) of Punjab State Council for Science and Technology. The GI will be relevant for Phulkari work being done in the state of Haryana and Rajasthan as well. Traders and manufacturers of Phulkari will have to get themselves registered to be able to deal in the traditional art work.
- * GI Certification For The Dusseheri Mango: Lucknow's famous Malihabad and the areas surrounding it in the state of Uttar Pradesh in India are famous for the rarest of rare mangoes known as "Dusseheri", which received the GI status in May 2011 (Exhibit 5). Uttar Pradesh is producing 2.73 and 3 lakh metric tonnes of mangoes yearly and is on the second position, after Andhra Pradesh (with 4 lakh metric tonnes per annum) in the production of mangoes. By government support, Mango Growers Association of India (MGAI) got the GI status for the Dusseheri Mango after two years of drawn-out battle.

The other products registered as GIs in India are *Mysore Agarbathi* (incense sticks), *Mysore Betel Leaf, Mysore Sandal Soap, Mysore Sandal Wood Oil, Channapatna Toys and Dolls, Mysore Rosewood Inlay, Mysore Traditional Paintings, Mysore Silk, Nanjangud Banana, Bidriware, Coorg Orange, Kasuti Embroidery* (Karnataka); *Kotpad Handloom Fabric* (Koraput, Orissa); Orissa Ikat (Orissa); *Salem Fabric, Coimbatore Wet Grinder* (Tamil Nadu); *Kullu Shawl, Kangra Tea* (Himachal Pradesh) etc.

BENEFITS OF GIPROTECTION

GIs are legally protected when all stages of making a product (an agricultural product or a foodstuff) takes place in one and the same geographical territory or area to which the indication pertains.

- * Collective Benefits for producers or artisans in the region as it provides separate identity and income to the region.
- * Protection of process and procedures for producing products as specified in the application of GI registration as GI registration provides them support for training and motivation to improve the quality of the product.
- ❖ Protection of cultural identity of a Locality or Community which is well known for specific goods or agro-based products which are manufactured or cultivated as their tradition.
- **Rural Employment Opportunity:** GI registration of a product boosts employment opportunities for the rural population in their locality and discourages the local population's displacement and migration to urban areas.
- * Export potential of GI registered products is high as it provides a branding opportunity for locally produced goods in the international markets.
- ❖ The GI tag can provide collective benefits for registered members or artisans and the nation as a whole, as this initiative not only enhances product quality, but promotes balanced regional development.

GI registered members are able to protect and promote their GI tags, as these products can be successfully marketed in national and international markets as any other brand or trademark. Products with GI tag like wine brands in Europe and America have been using this branding strategy. Darjeeling Tea in India has not only received a GI tag, but it is also a very successful trademark in the packaged tea market.

CHALLENGES FACED BY GI PROTECTION IN INDIA

GIs are protected in accordance with international treaties and national laws under a wide range of concepts, it includes: special laws for the protection of GIs or *appellation of origin*; as *collective marks* or certification under trademark laws; laws against unfair competition; consumer protection laws, or decrees or specific laws that recognize individual GIs. Unauthorized use of GIs may face sanctions ranging from court injunctions to payment of damages and fines or, in serious cases, imprisonment. Though there are laws to protect GI tags, they still face various challenges to sustain and protect their status from infringements.

Major challenges for GIs pertaining to goods are origin of the goods for identifying geographic territory, registration of GIs, monitoring and controlling specific processes, procedure and quality of GI protected goods, seeking protection from infringement of GIs, and enforcement of intellectual property.

- * Registration process for obtaining a GI certification is a complex and a time consuming process, as applicants have to clarify and describe the specialty and specification of the product associated with the region. Once the Registrar accepts the Application, then publication in the GI Journal due to any objection from others will take four months. After final acceptance by the Registrar, only then the "Certificate of Acceptance" is issued. The overall process of GI registration may take two to three years, depending upon the type of product and the complexities involved.
- ❖ Protection from infringement in the local and international markets is the toughest challenge as different legal systems and laws are prevailing related to the protection of GIs in different countries.
- ❖ Monitoring and controlling specific processes, procedures and quality of the GI tag goods is a challenging task for the monitoring authorities.

Majority of the producers and artisans of traditional and unique products lack awareness, support, and resources for seeking GI registration to protect their commercial interests and skills.

FURTHER SCOPE FOR GI PROTECTION IN INDIA

The following products can apply for a GI certification: *Aligarh Locks* (Uttar Pradesh); *Jack Fruits of Madhugiri* (Karnataka), *Watermelons of Devanahalli* (Karnataka); and Traditional Food and Snack Food items in South and North India have a great potential.

In Maharashtra, the Great Mission Group Consultancy (GMGC) has identified 13 food items and utilities produced in various parts of the state - known for their special characteristics and taste - that have a great potential for GI protection. The identified items are:

Mahim Halwa, Kandi Pedha (Sweets) from Satara; Lonavala Chikki (sweet) and Nagpur Orange. The other products GMGC identified for GI status are Lasalgaon Onion; Devgad Alphonso; Latur Kesar Mango; Saswad Fig; Udgir Betel- Nut -Cutter; Tuljapur Paradi (Container), Kolhapur Sandals; Sawantwadi Toys and Kulthalgiri Pedha (sweet). The GMGC has done basic research for all the 13 products identified to get a GI registration, are is looking for financial support for securing GI registration for these products, which may cost approximately ₹ three lakhs for each GI registration.

Agra craftsmen's marble inlay work is found in world-famous works of architecture such as the Taj Mahal and the Fatehpur Sikri. Agra inlay marble work which is used in building material, monuments and decorative items like table tops, etc. has a great potential to be registered as a GI. Representing its 4000 craftsmen, Agra Mable Udyog Vikas Samiti (Mable Workers Development Association) has applied to the GI Registry in Chennai for registration of their craftsmanship.

CONCLUSION

There are a number of concerns and issues in the context of harnessing the potential benefits of GI certification in India. Without a well crafted policy, strategies on effective enforcement of GI registration in domestic and international markets, their underlying commercial potential might remain unrealized and threatened.

Most of the producers of traditional goods or agro-based products are illiterates and lack awareness about the GI tag, the registration procedure and information regarding the protection offered by the GI tag. They need awareness, support from government and NGOs at the national and international level to facilitate in registration, sustaining quality, protection and marketing of GI tag products. It is extremely important for India to weigh the costs and benefits of GI certification at multilateral levels to utilize the potential of GIs for the benefit of the farmers, artisans and other skilled workers, especially in rural areas to protect their tradition, economic interest and survival. The country should explore the economic, social and cultural benefits of GI protection on the basis of rigorous empirical research at the grass root level.

Geographical Indications are just an initial one stop in a long journey to strengthen and protect the intellectual property rights of traditional and artisan products of a specific region. However, the major challenge for the GI tag is to fight imitations and maintain the specific processes and quality of products registered under the GI registry in India.

LIMITATIONS OF THE STUDY

This study had been conducted based upon secondary data sources as there was a very limited access to collecting primary data from the concerned authorities of Geographic Indications Registry of India, Chennai. Access to the applicants of Geographic Indication was limited due to time constraints and cost issues.

SCOPE FOR FUTURE RESEARCH

This research on the topic of "Geographical Indications" can be also be carried out with reference to "Comparative Study on GI Laws in India and the European Union". A similar study on "Geographical Indication Branding : An Opportunity for Protecting and Preserving Indian Heritage Goods" can be carried out for identifying and protecting the Indian handicrafts and other heritage products. Another study on "Better Protection of Geographic Indications in India" can be studied for enhancing the sustainability of GI branding.

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