



NEED FOR REGISTRATION AND PROMOTION OF INDIAN GEOGRAPHICAL INDICATIONS IN FOREIGN COUNTRIES: ISSUES AND CHALLENGES

Jupi Gogoi*

Abstract

The GI Act came into force in India sixteen years back in 2003 and hence it is time to assess whether the Act has been successful so far or not. The Preamble of the Act states two purposes of the legislation, firstly, to register GIs and secondly, to provide better protection to GIs. The first part of the Act is implemented to a certain extent, but there are serious doubts on the implementation of the second part of the preamble of the GI Act. The second part will be fulfilled only if the GI product is able to fetch a premium price, thereby, bringing socio-economic development of the producer and other stakeholders of the product. Targeting foreign markets specially that of developed countries is vital as the consumers in those countries have the financial capacity and are willing to buy an expensive product if it is of a good quality. Hence it is important to introduce, promote and register Indian GIs in those countries. This paper briefly discusses some of the issues and challenges that Indian GI products face in their way to the foreign markets.

I. INTRODUCTION

The TRIPS Agreement defines Geographical Indications (GI) as an indication which identifies a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.¹ As an obligation to the TRIPS Agreement, India enacted the Geographical Indications of Goods (Registration and Protection) Act in 1999,² which came into force in 2003. Since then, 343 goods have been registered under the Act in India.³ The main aim of the GI law is to help producers to fetch a premium price for their goods. However, that purpose in India seems to have taken a back seat for now. The whole *hullabaloo* in India is till the good is registered as a GI, after that the product falls into oblivion. However, it is time to focus on the main aim of the legislation and registration has to be seen only as the first step towards the goal of fetching premium price for the goods. To achieve this goal, a proper plan for registration and brand building domestically as well as in foreign countries has to be laid down. This paper discusses the importance of registering and promoting Indian GI products in foreign countries.

The paper is divided into three parts, the first part looks at GI law as a tool for fetching premium price and the importance of promoting Indian GI products in the foreign market. The next part looks into the issues and challenges before the Indian GI products in the registration

* Assistant Professor, Faculty of Law, University of Delhi.

¹ TRIPS Agreement, art. 22, *available at*: https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm (last visited on December 1, 2019).

² Hereinafter GI Act.

³ GI Registry, Registration Details of Geographical Indications, *available at*: http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf (last visited on November 30, 2019).

process in foreign countries. This part examines that there is a lack of international instruments to ease the process of registration in foreign countries, for example a mechanism where a single application is sufficient for registration in multiple countries. Also, the other issues and challenges highlighted are ignorance of stakeholders, lack of funds and lack of interest of government as major obstacles for foreign registration of Indian GIs. The last part of the paper emphasises the need for India to sign the Geneva Act⁴ of the Lisbon Agreement⁵ which is expected to come into force in the near future, as well as the need of funds for promotion and brand building of Indian GI products in the foreign markets.

II. GI AS A TOOL FOR FETCHING PREMIUM PRICE

The Preamble⁶ to the GI Act states that the Act was enacted to serve two purposes, one was to register GIs and the other was to give better protection to the GIs. The first purpose of registering GI is going on in a rampant manner in India. At times, it has been criticised⁷ by scholars citing that in the process of quick registration of GI, the applicant as well as the GI authorities have not done a proper assessment about the feasibility of the product as a GI. However, the second purpose is overlooked. The second purpose is to provide better protection to the GIs. The meaning ‘to provide better protection of GIs’ is not defined anywhere in the Act and can be understood as a means to help producers of GI goods to fetch premium price.⁸ GI tag serves as a marketing tool and can help in creating a brand image. Ultimately, the GI Registration should lead to socio-economic development of producers as well as the local, tribal and indigenous communities who produce the GI product.

As mentioned earlier, the primary purpose of registration of a GI good is to help the producers fetch a premium price for their product. The essential ingredient of a GI product is its superior quality, owing to its geographical origin. The soil, water, other climatic conditions and sometimes the expertise of people of a particular area play an important part in making the quality of the product premium. GI is an instrument which ensures the consumer a good quality product, owing to its geographical origin.

Importance of Promotion of Indian GI Products in Foreign Market

GI is aimed at cashing on a simple consumer psychology, that is, the willingness to pay a higher price owing to the better quality of the product. Keeping in mind, as much as the consumers in India may want to buy a GI good, they might not have enough financial capacity to do so. Hence, for GI products to be successful it becomes extremely important to introduce and popularise them in the foreign markets, especially the developed countries where consumer

⁴ Lisbon Agreement for the Protection of Appellation of Origin and their International Registration, 1958, available at: https://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.html (last visited on November 29, 2019).

⁵ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, available at: https://www.wipo.int/edocs/lexdocs/treaties/en/lisbon/trt_lisbon_009en.pdf (last visited on November 29, 2019).

⁶ The Preamble states: An Act to provide for the registration and better protection of geographical indications relating to goods.

⁷ Yogesh Pai and Tania Singla, “Vanity GIs: India’s Legislation on Geographical Indications and the Missing Regulatory Framework” in Irene Calboli & Ng-Loy Wee Loon (ed.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press, Cambridge, 2017).

⁸ Owing to the fact that that the product has a reputation being a high quality product and the quality is owing to its geographical origin.

have the financial capacity to pay a higher price. For example, in India, the consumers might want to buy alphonso mangoes because of its superior quality but they might not be able to afford it. The same is the case of fine woven carpets that India is famous for.

However, the challenge that lies is to create awareness of these products, its specialties, followed by various steps of brand building in those countries. Brand building includes advertisement and other marketing strategies. There has to be sufficient funds to do so. Initial investments in brand building will go a long way in fetching premium price of the products. Finally, it will be important that the GI is registered in that country.

III. ISSUES AND CHALLENGES IN REGISTERING AND POPULARISING INDIAN GI PRODUCTS IN FOREIGN COUNTRIES

Lack of Instruments for International Registration

The Lisbon Agreement for the Protection of Appellation of Origin and their International Registration is the only international agreement which deals with international registration of Appellation of Origin (AOO), a neighbouring concept of GI. However, it is important at this juncture to mention that all AOO are GIs but all GIs are not AOO. The definition of AOO as given in the Lisbon Agreement is that it is the name of a particular territory, locality, region or country and it is used as a designation to indicate that the good has originated in such a place and the quality and other characteristics of the good can be linked to the geographical environment, whereas, Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) states that GIs are 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. To be a AOO, firstly it has to be a name of a place (for example, Basmati Rice will not be a AOO as it is not the name of a place) and either the quality and other characteristics of the good has to be linked to its geographical territory, whereas, in case of GI, it is not necessary that it has to be the name of a place, it can be any indication which identify that the goods come from a particular place and one of the three characteristics, quality, reputation and other characteristics has to be due to the geographical origin. That means, a good which has only a reputation that it comes from a particular place but does not have any quality or special characteristics as it comes from that place will be a GI but won't be an AOO.

This Lisbon Agreement provides a mechanism for obtaining protection in foreign countries through a single application form. However, those countries have to be member countries of the Agreement. The procedure is that the AOO has to be first registered in the country of origin. Then through the authority in the country considered, an application has to be forwarded to WIPO's International Bureau (IB). The WIPO IB will consider the application for international registration as requested by the authority of the country concerned. Then, it is notified to those countries where protection is sought. It is published in the official bulletin of the Lisbon system. In case a member nation does not register it, it has to notify within one year and state the reasons for the same. Once registered, the appellation shall be protection against imitation (even words like type, kind etc. cannot be used) and usurpation. Also, it shall not be deemed generic so long as it is protected in the country of origin.

Drawbacks of the Lisbon system

There were certain disadvantages of the Lisbon Agreement.⁹ The first one is that only the geographical names will be protected. Other names which are not geographic will not be protected, for e.g., Basmati will not qualify under the Agreement as it is not a geographic name. Secondly, the indications which are based on the reputation due to involvement of the human factors and has nothing to do with the geography including factors such as, soil, climatic factors will not be protected under this Agreement. For e.g., watches ‘Made in Switzerland’ will not qualify. Thirdly, it is important that the names which are to be protected have to be registered in the country of origin.¹⁰ It is important to note that under the Agreement, member states are obliged to protect even though the name has become generic in their respective countries.

The Geneva Act of the Lisbon Agreement

The Geneva Act was enacted in 2015 to reform the Lisbon Agreement. The EU acceded to the Act on November 26, 2019, hence the Act will come into force in February 2020.¹¹ While the Lisbon Agreement applies only to AOO, the Geneva Act extends protection to GIs covered under the TRIPS Agreement. Some of the highlights of the Geneva Act are that with the help of a single application, a person can seek registration in all the member nations of the Act. Under the Act, countries can jointly file for registration of the goods (there are certain GI good which transcends national boundaries, for example, Basmati Rice, which is grown both in India and Pakistan). The protection offered for such AOO or GI is against same kind of goods not originating in the same geographical area or not complying with the requirements for using the GI or AOO and also on goods that are not of the same kind or on services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the GI or AOO concerned, and would be likely to damage their interests, or, where applicable, because of the reputation of the GI or AOO in the relevant country, such use would unfairly dilute or take advantage of, that reputation. Moreover, unlike the TRIPS Agreement, it does not favour just wines and spirits,¹² but the protection is offered against any such use which amounts to imitation even if the true origin of the goods is indicated or the GI or AOO is accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar” or the like.

The Geneva Act will come into force in the near future (February 2020) and India should definitely deliberate on joining it especially because some of the GI products are premium export products, such as Indian handicraft items, tea, basmati rice etc. GI tag will help consumers identify the genuine product and help in making purchasing decisions.

⁹ Also see, Intellectual Property Watch, *Q&A with The EU on the Benefits of Amending the Lisbon Agreement*, 2015, available at: <https://www.ip-watch.org/2015/05/05/qa-with-the-european-union-on-the-benefits-of-amending-lisbon/> (last visited on November 29, 2019).

¹⁰ *Id.* at 19.

¹¹ WIPO, EU Joins Geneva Act of Lisbon Agreement, Enabling entry into Force, November 26, 2019, available at: https://www.wipo.int/pressroom/en/articles/2019/article_0015.html (last visited on November 30, 2019).

¹² Special protection for wines and spirits is included in art. 23 of the TRIPS. It means that all member-states of TRIPS must grant owners of GI of wines and spirits the right to file action against use of any GI to indicate wines and spirits which does not originate from a protected geographical territory. It is also applicable in those cases wherein the actual origin of the wine and spirit is provided or even in those cases where the indication is followed by words such as similar to or imitation of protected GI.

Other Issues and Concerns

GI Registration is seen as an end in itself

There are many other issues and concerns with regard to registration and brand building of Indian GI goods in foreign countries. Firstly, it is sad that the very purpose of the GI Act is not understood by the implementing bodies. GI Registration is seen as an end in itself whereas it is a means to an end. The most common mistake is that the Act is looked as a tool for registering GIs and nothing else. However, registering is one small part of the Act or the first step in popularising the product and then fetching a premium price for its quality or uniqueness. So, until and unless, the other steps of popularising, brand building and ultimately fetching a premium price for the GI product is not achieved, the registration cannot be seen as a success.

Lack of initiatives on Brand Building

Most GI proprietors in India have taken very little or no steps for brand building. They cite lack of funds as the main hindrance for advertisements and other brand building mechanisms. It is important to understand that without brand building, GI will never be a success.¹³ Hence the proprietor has to figure out a way to find funding. They should ideally find ways in the beginning of the registration process because if they do not have funding later, the entire purpose of GI fails. The GI Registry should harp on the funding requirements when the process of GI registration is going on.

Lack of government initiatives

Lack of interest of government is another major obstacle. The poor farmers and producers of the goods can't be expected to popularise and register the Indian GIs abroad. The role of government in this regard is pivotal and they have to provide the proprietors all the required aid in doing it. Since maximum GI proprietors in India are government bodies or semi government bodies,¹⁴ granting them funds and encouraging them to popularise and register them at foreign markets will prove extremely fruitful.

IV. CONCLUSION AND RECOMMENDATIONS

It is indeed sad that even after sixteen years of the enforcement of the GI Act in India, the purpose behind the Act could not be realised. In India, GI registration in most cases is seen as the end in itself and this approach will never lead to the true realisation of the purpose of the law. Keeping in mind the main aim of the law, that is, to fetch a premium price of the GI products thereby benefiting the producers, promoting and registering the GI products abroad is

¹³ WIPO, Making the Origin Count: The Colombian Experience, *available at*: <https://www.wipo.int/ipadvantage/en/details.jsp?id=2617> (last visited on December 3, 2019). Also see, Nadja El Benni & Sophie Reviron, "Geographical Indications: Review of seven case-studies world wide", *available at*: https://www.researchgate.net/publication/265618582_Geographical_Indications_review_of_seven_case-studies_world_wide?enrichId=rgreq-042038603a7007f3678c84100385d069-XXX&enrichSource=Y292ZXJQYWdlOzI2NTYxODU4MjU3MDgyNTQ1OTcxMjZAMTQ1NDY2NjMwNzg2OA%3D%3D&el=1_x_3&_esc=publicationCoverPdf (last visited on December 3, 2019).

¹⁴ Prashant Reddy, "Nationalisation of Geographical Indications in India", February 12, 2012, *available at*: <https://spicyip.com/2012/02/nationalization-of-geographical.html> (December 1, 2019).

extremely important. However, as aforementioned, there are many hindrances. However, the GI proprietors, other stakeholders and the government has to overcome these hurdles. Firstly, the problem of funds has to be looked into and remedied since funds are very important in promoting the GI products. The government has to play an important role in it by offering financial aid as well as by creating avenues through which the producers of India can showcase their products at international platforms. Saying this, there are few goods which are already popular and some are slowly making its entry in foreign markets. To protect the interest of such goods, GI registration in those foreign countries is very important, firstly, to help consumers identify the product as well as protect them from imitation and other infringements. Hence, it is time that India seriously deliberate the joining of the Geneva Act of Lisbon Agreement once it comes into force, especially now, when the limitations¹⁵ of the earlier system have been done away by the new Act.

¹⁵ Refer, Part III of this article, *Disadvantages of the Lisbon System*.