

The Law of Geographical Indications

R.Kalpana Sastry

Former Joint Director-ICAR-NAARM

and

Currently Director , AgHub Foundation,
Centre of Innovation and Agri-Entrepreneurship, PJTSAU.



Flow of Session

- Introduce the concept of GI as form of IP
- TRIPS Provisions
 - Principles and Practice
- National Law
 - India
 - Case Studies

IP- Fortress in Making ?

- Sort of but not to stop innovation
- Doors open for licensing, partnering, recognition to creators
- Strategizing is the **key** for monetization, recognition, and also as defense



IPs in Agri-Food Systems

Source: Manoj Samuel et al,2014

IP	Legislation	Administration Authority	Qualifying Attributes	Stakeholder (s) to be benefited
Patent	The Patents Act, 1970	The Controller General of Patents Designs and Trademarks(CGPDT)/	Novel, non-obvious, indust.appl.	Inventors, Traders, Economy
Design	The Design Act, 2000	The CGPD/Registrar of Designs	New or original, distinguishable	Industry including SMEs
Trade Mark	The Trade Marks Act, 1999	The CGPDT/Registrar of Trademarks	Distinguishing character	Industry- products and service sector
Geographical Indication	The Geographical Indications (Registration and Protection) Act, 1999	The CGPDT/Registrar of Geographical Indications	Naturally occurring Varieties/breeds, Known product, processes of comm. value	Communities, Traditional practices, knowledge holders
Copyright	The Copyright Act, 1957	Director and Registrar of Copyright	Databases, software, other literary products	Creators of all works
Integrated Circuit Design	The Semiconductor Integrated Circuits Layout-Design Act, 2000	Registrar, Semiconductor Integrated Circuits Layout-Design Registry	Original; not exploited commercially anywhere; distinctive	Electronic Industry, Traders, Economy
Plant varieties	The Protection of Plant Varieties and Farmers' Rights Act, 2001	Protection of Plant Varieties and Farmers' Rights (PPV&FR) Authority/Registry	NDUS	Plant breeders, Farmers, Industry
Biodiversity	The Biological Diversity Act, 2002	National Biodiversity Authority (NBA)	Biological entities, herbal remedies; assoc.TK	Farmers, Knowledge holders, communities
Traditional knowledge	None	Secretary of the concerned Ministry(ies)	Traditional Knowledge/ Genetic Resources	Knowledge holders in communities;

International Obligations

- Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs.
- Also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement
 - which was part of the Agreements concluding the Uruguay Round of GATT negotiations

GIs are defined

- in the TRIPS agreement 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 geographic origin"

Geographical Indications of Goods

- Defined as that aspect of Industrial Property
 - which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product.
- Typically, such a name conveys an assurance of quality and distinctiveness
 - which is essentially attributable to the fact of its origin in that defined geographical locality, region or country.

source: <http://www.ipindia.nic.in/about-us-gi.htm>

What is GI Tag?

- A GI or Geographical Indication is a name or a sign given to certain products that relate to a specific geographical location or origins like a region, town or country.
- Using Geographical Indications may be regarded
 - as a certification that the particular product is produced as per traditional methods, has certain specific qualities, or has a particular reputation because of its geographical origin
- GI Tag ensures that **none other than those registered as authorized users can use the popular product name**
 - In order to function as a GI, a sign must identify a product as originating in a given place

Geographical Indications Protection

- GIs are protected and preserved in various countries and regional systems through a wide array of approaches
 - and often using a consolidation of two or more approaches.
- There are three major ways to protect a geographical indication:
 - So-called sui generis systems (i.e. special regimes of protection)
 - Using collective or certification marks
 - Techniques concentrating on business practices, including administrative product approval schemes

Geographical Indications Protection

- These approaches have been developed in consonance with different legal practices and within a framework of individual historical and economic conditions.
- The approaches to protect GI comprise differences with respect to critical questions like conditions for protection or the scope of protection
 - Like combination of two modes of protection
 - sui generis systems and collective or certification mark systems,
 - share some common characteristics, such as the fact that they set up rights for collective use by those who comply with defined standards

Role of GI in Rural Development

- **GIs are mostly traditional products,**
 - produced by rural communities over generations that have gained prominence on the markets for their precise qualities.
- **Recognition and protection of the markets of these products**
 - allow the producers' community to devote and maintaining the precise qualities of the product on which the reputation is built.
- **Allows to invest together in promoting the reputation of the product.**
- **Some of the observed rural development impacts of GI are:**
 - Structured Supply chain around a common product reputation
 - Increased and stabilised prices for the GI product
 - Distributed through all the levels of the supply chain adds value
 - Efficient Natural Resources Management

Significance of GI Tags

- GI right facilitates those who have the right to use the indication
 - To prohibit its usage by a third party whose product does not conform to the applicable standards
 - For example, producers of Darjeeling tea can omit the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the norms set out in the code of practice for the geographical indication.
- However, a protected GI does not permit
 - the holder to forbid someone from making a product using the same approaches as those set out in the standards for that indication
- Protection for a GI tag is usually procured by acquiring a right over the sign that constitutes the indication
 - Resources can be preserved on which the product is based
 - Preservation of traditions and traditional expertise
 - Tourism can be boosted

Benefits of GI Tags

- Through Geographical Indication registration
 - Legal protection to the products
 - Prevents unauthorised use of GI tag products by others
 - It helps consumers to get quality products of desired traits and is assured of authenticity
 - Promotes the economic prosperity of producers of GI tag goods by enhancing their demand in national and international markets

Why GI Protection?

In a competitive environment protection affords

- Right of Exclusion
- Protection of Reputation
- Protection of Collective Goodwill
- Protection and assurance of Quality

- Establish the Genuineness
- Prevent misuse by others
- Ensure Quality
- Better Market Returns

Other IPRs and GIs

Other IPRs

- Are essentially rewards for new creations
- New Products or Expressions or Marks or Designs
- Mostly privately owned

GIs

- Are not created but only recognized
- Already existing products with history and reputation
- Mostly owned by a Group or Community

GI-Community patent!

A Geographical Indication (GI)

Is a sign used on products

that have a specific geographical origin

and possess qualities or a reputation that are due to the place of origin.

In order to function as a GI,

- a sign must identify a product as **originating in a given place**
- The qualities, characteristics or reputation of the product should be **essentially due to the place of origin**
- Since the qualities depend on the geographical place of production,
 - there is a **clear link** between the product and its original place of origin

Hence,

- **GI is a type of intellectual property**
 - which identifies goods originating in a territory, region or locality,
 - where a given quality, reputation and other characteristics are essentially attributable to their geographical origin.
- **The coveted GI tag ensures that**
 - only authorised users and those residing inside the geographic territory are allowed to use the GI tag for registered product
- **The goods may be**
 - agricultural, handicrafts, textiles, manufactured goods, food stuff, etc.
 - indications may be any geographical name or figurative representations
 - or any combinations of the both conveying the geographical origin of goods to which it applies.

GIs in Horticulture- granted in India

Type	No	Examples of crops	Unique Attributes*
Fruit Crops	36	Mango, pineapple,litchi, pomegranate,citrus	Taste, shape quality, medicinal , pickle quality
Vegetables	11	Tree tomato,onion,brinjal	Shape, color, size, protein content
Spices	8	Cardomom, pepper	Oil content, pod size
Plantation Crops	8	Tea, coffee, cashew,coconut	Shape, quality, aroma
Flowers	5	Jasmine, kewra	Shelf life, fragrance
Aromatic Plants	2	Betel vine	Aroma, shelf life

* Indicative only

**till March 2018

Source and for more Details Kundan Kishore. 2018. Geographical Indications in Horticulture: An Indian perspective. Journal of Intellectual Property Rights. Vol 23, July-September 2018, pp 159-166

Why is GI-tag important?

- When a product is given GI status,
 - Its price increases in international market (because consumers in first world prefer such “exotic” items)
 - It boosts exports
 - It can boost tourism
- The poor farmers/artisans from the given region have to face less competition from fake guys selling bogus products
 - Indirectly leads to Sustainable Development

Challenges

- India has huge social, cultural, ethnic, food diversities
 - thousands of products that would qualify for a geographical indication.
- But most of the people engaged
 - in the production of such products are small households or small units, although in the same area.
- So it is often difficult to organize them into associations and apply for the GI registration

Extension , Developmental Professionals, NGOs can play a key role

Difference between GI vs. Trademark?

GI

Product comes from a particular place/region.

Right is enjoyed by a community / association of producers.=community right.

Given for “Goods” (physical stuff.)

Trademark

Product comes from a particular enterprise/company.

Right enjoyed by only one person/company=individual right.

Can be goods (mobile, PC etc) or service (e.g.music, spa etc.).

Mechanism in India: GI Act 99

- Government of India enacted Geographical Indications of Goods (Registration and Protection) Act in 1999. (Came into force in 2003)
- As per this act:
- Registrar of Geographical Indications= you've apply to this person.
 - ✓ Intellectual Property Appellate Board to hear appeals over the decisions of the Registrar of Geographical Indications.
 - ✓ Geographical Indications Registry (to keep the GI-database @Chennai
 - ✓ GI can be given to agricultural, natural or manufactured goods originating in the said area
 - ✓ GI rights are given to an association of persons, producers, organization. (=it is a "community right".) Because geographical indications are not built up by one individual but by a community of persons
 - ✓ Punishments for violating GI
 - ✓ Registration of a geographical indication is valid for a period of 10 years (can be renewed.)

Geographical Indications of Goods (Registration & Protection) Act, 1999

Geographical Indications of Goods (Registration & Protection) Act, 1999

- India, as a member of the World Trade Organization (WTO),
 - Enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.
 - A Sui generis Act of Parliament of India for protection of GIs in India

The Geographical Indications (Registration and Protection) Act, 1999

- It is a method of IP protection by a decree or by a register
 - Defined as the notice that a given product originates in a given geographical area
- GIs can be granted to
 - A group of individuals, a family, a partnership, a corporation, a voluntary association etc or any organization or authority
 - representing the interest of the producers of the concerned goods
- GIs protect and reward traditions while allowing for products to evolve over time
- GIs can be protected over long periods as long as **the collective tradition is maintained** –
 - Indian Act -an initial period of 10 years, which can be renewed after the expiry of the initial period of protection for another 10 years

Definition of GI –as per GI Act,1999

- ▶ As per Section 2 (1) (e) of the **Geographical Indications of Goods (Registration and Protection) Act, 1999.**
- ▶ Geographical Indications 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 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 processing or preparation of the goods concerned takes place in such territory, region or locality as the case be.
- ▶ As per Section 2 (1) (f) of the **Geographical Indications of Goods (Registration and Protection) Act, 1999.**
- ▶ ‘Goods’ means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes foodstuff.

Registration Procedure

Allotment of application number

Issue Preliminary Examination Report / Formality check report and compliance with in one month, If not complied abandon the application,

Meeting of consultative group to ascertain the correctness of application,

Issue of Examination Report.

Accepted application shall be published in the GI journal,

If not accepted, show cause hearing for final adjudication

Opposition if any,

Registration certificate

Renewal

Chapter VI. Sec 6.

Register of Geographical Indications

(1) For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (2), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in any other electronic form, as the case may be.

(4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.

(6) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in section 78 as the Central Government may, by notification in the Official Gazette, direct.

Chapter II. Sec 7

- Part A and Part B of the Register

(1) The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B.

(2) The particulars relating to the registration of the geographical indications shall be incorporated and form part of Part A of the register in the prescribed manner.

(3) The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

Sec 8. Registration to be in Respect of Particular Goods and Area

(1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

(2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.

(3) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (2).

(4) Any question arising as to the class within which any goods fall or in the definite area as referred to in sub-section (1) in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published under sub-section (3) shall be determined by the Registrar whose decision in the matter shall be final.

Chapter III

Procedure for and Duration of Registration

11. Application for Registration

(1) Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

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

- (a) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;
- (b) the class of goods to which the geographical indication shall apply;
- (c) the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
- (d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- (e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and

Chapter III Procedure for and Duration of Registration

(3) A single application may be made for registration of a geographical indication for **different classes** of goods and fee payable therefor shall be in respect of each such class of goods.

(4) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated:

Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.

(5) Every application under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.

(6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

(7) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

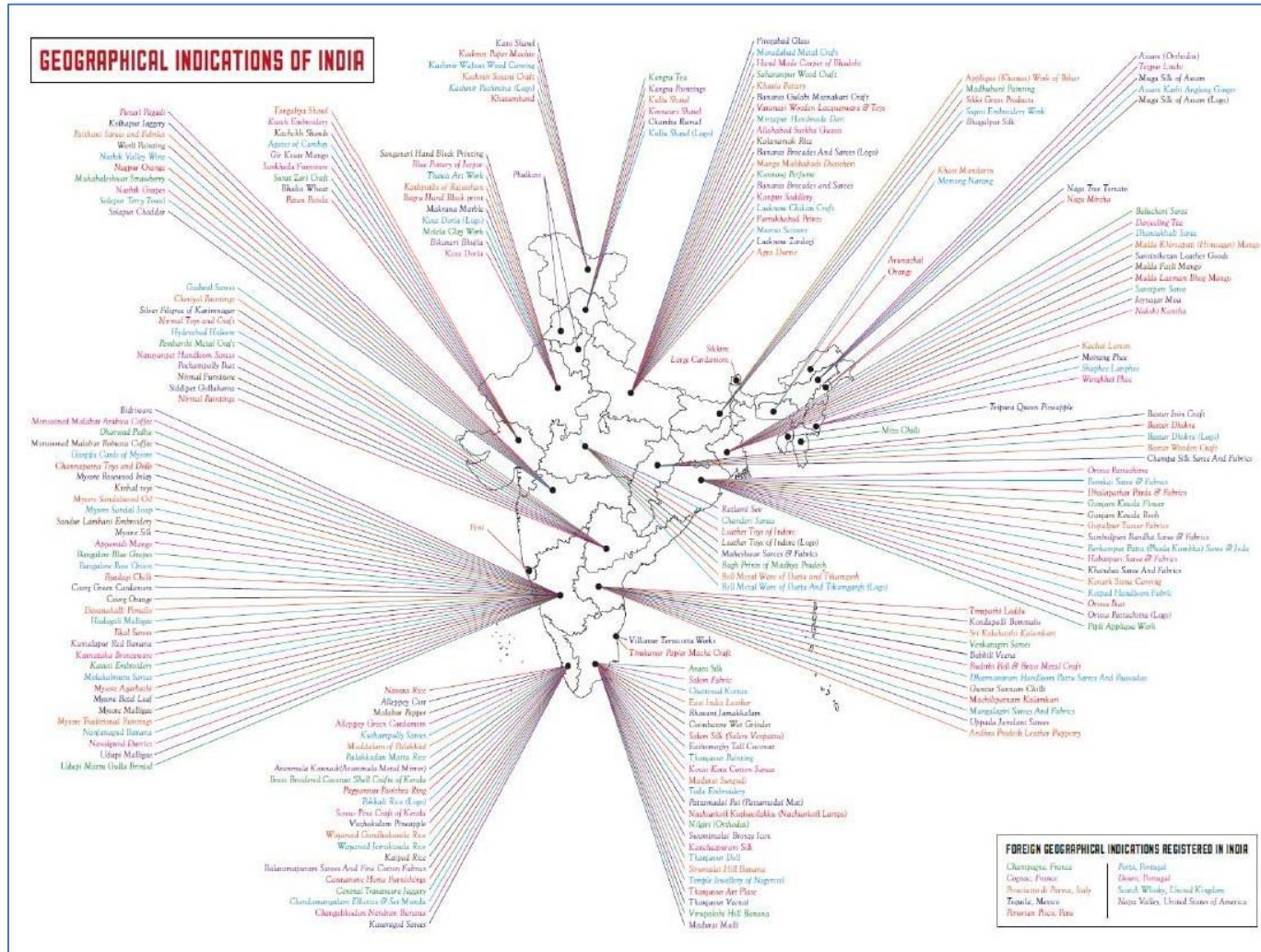
Sec 17. Application for Registration as Authorised User

(1) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

(2) The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.

Source: <http://www.ipindia.nic.in/guidelines-gi.htm>

Registered GIs – as on date



Goods	India GIs	Foreign GIs
Agricultural	92	0
Food Stuff	11	4
Manufactured	10	9
Handicraft	100	0
Textile	98	1
Natural goods	1	0
Total	312	14
Logo Applicatio	29	

Source: Prashant Kumar Bhairappanavar. 2015. At:
https://www.wipo.int/geoind/en/wipo_geo_bud_15/wipo_geo_bud_15_11.pdf

A total of 326 Geographical Indications (GIs) have been registered (since 15th September 2003,) including 29 logos and 14 Foreign GIs.

Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

- Customs authorities have the power to seize imported goods at the border,
 - if there is *prima facie* evidence that xyz product is infringing on the geographical indication of the rights holder
 - ✓ Customs authorities don't even need a court order to carry out such raid or seizure