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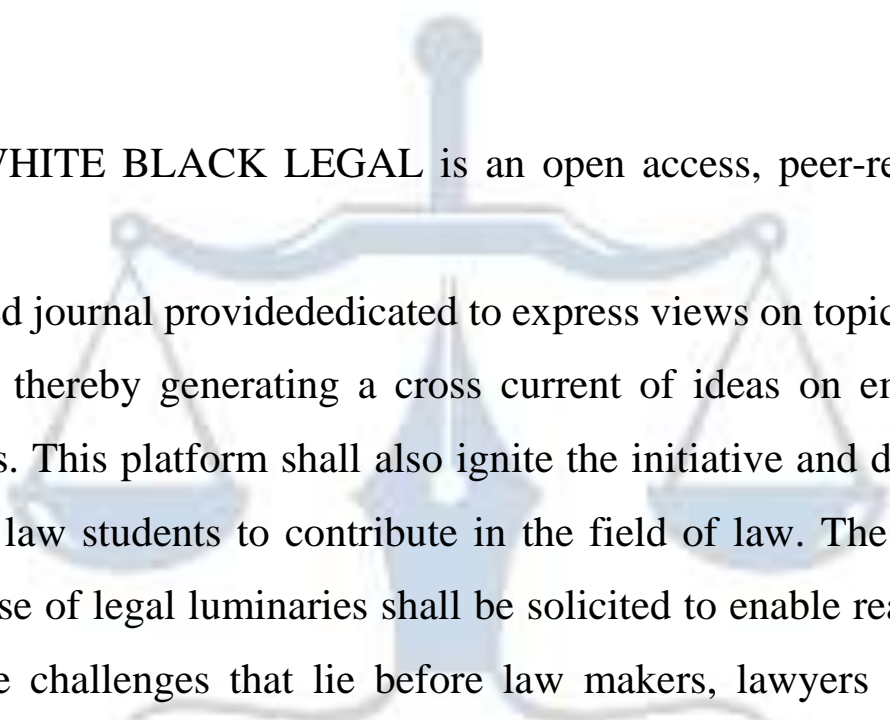


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With this thought, we hereby present to you

GEOGRAPHICAL INDICATION AND PROBLEM IN ITS MANAGEMENT AND IP VALUATION.

AUTHORED BY - VIKAS

KEY WORDS:

GEOGRAPHICAL INDICATION, IP VALUATION, MANAGEMENT, INTELLECTUAL PROPERTY RIGHTS IN INDIAN PROSPECTIVE

ABSTRACT¹

This project aims to explore the topic of geographical indications (GIs) and their management, specifically focusing on the valuation and dispute resolution processes. GIs are a type of intellectual property (IP) that identifies a product as originating from a specific geographical location and possessing qualities, reputation, or characteristics unique to that location. The project will begin by providing an overview of GIs and their importance in protecting local cultures, promoting trade, and boosting the economic growth of regions. The various methods for managing GIs, such as legal protection, certification, and labeling, will also be discussed. In addition, the project will examine disputed cases related to GI management and valuation. These cases could include instances where a product is falsely labeled as originating from a specific location, disputes over ownership of GIs, or disagreements over the economic value of GIs. The project will analyse the legal and institutional frameworks in place for resolving these disputes and identify best practices for dispute resolution. Overall, the project aims to provide a comprehensive understanding of the management and valuation of GIs, as well as the various challenges and disputes that can arise. This knowledge will be beneficial to policymakers, stakeholders, and businesses involved in the management of GIs.

Statement of Problem

Geographical indications (GIs) are an important type of intellectual property (IP) that identifies a product as originating from a specific geographical location and possessing unique qualities, reputation, or characteristics. However, the management of GIs, including their legal

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protection, certification, and valuation, poses several challenges and disputes, such as mislabeling, ownership, and economic value. These challenges affect the promotion of local cultures, trade, and economic growth. Therefore, the research problem for this project is to identify the best practices for managing GIs, including their valuation and dispute resolution, to enhance their effectiveness and promote their benefits for society.

INTRODUCTION

1.1 Concept, characteristics and importance of geographical indications

A Geographical Indication (GI) is a symbol that certifies that a product originates from a particular location and has acquired specific characteristics or reputation due to its origin. This label distinguishes the product from other similar products in the market. GI is commonly used for agricultural products, and it involves traditional production, processing, marketing, and branding methods. However, ensuring compliance with quality standards, production processes, distribution, environmental regulations, and logistics can be challenging for products with a GI label. The GI comprises of either the name of the spot of beginning like Darjeeling tea or an anonymous spot of beginning like Chanderi saree of MP.²

a) Provision related to Geographical Indication

Provisions of GI at global level and national level(India) included in various laws. These are:-

1. The TRIPS Agreement of 1994, which is part of the World Trade Organization's provisions on Intellectual Property Rights, incorporates the concept of Geographical Indication (GI). According to *Article 22.1 of the TRIPS Agreement*³, GI refers to an indication that identifies a product as originating from a specific region, locality or country, where the unique qualities, characteristics, or reputation of the product can be attributed primarily to its geographical origin.⁴
2. Industrial property is defined as "*indications of source*" and "*appellations of origin*" in *Article 1(2)* of the Paris Convention for the Protection of Industrial Property of 1883. In addition, the definition of industrial property in sub-clause 3 of Article 1 includes agricultural and extractive industries, manufactured and natural products like wines, grains, fruits, cattle, beer, tobacco leaf, cattle, minerals, and flour, in addition to industry and commerce.⁵

² Kumari S, 'Geographical Indications Laws In India: Challenges And Issues - Trademark - India' (*Welcome to Mondaq*, 23 March 2021) accessed 1 April, 2023

³ *Article 22.1 of the TRIPS Agreement*.

⁴ Article 22, TRIPS Agreement.

⁵ Article 1(2) of the Paris Convention for the Protection of Industrial Property of 1883

3. The GI of Goods (Registration and Protection) Act, 1999 (the "GI Act") was enacted by India, a member of the World Trade Organization, on September 15, 2003. It guaranteed that, as a matter of fact, the approved clients could deliver, circulate and sell such geological beginning items. *Section 2(1)(e)* provides the definition of GI, which identifies the types of goods that can be identified as agricultural, natural, or manufactured goods that originated or were manufactured within the territory of a country, region, or locality. In 2004-2005, Darjeeling tea became the first product to receive a GI tag. Since August 2020, 370 goods had been registered as GI.⁶

1.2 characteristics of geographical indications

- ✓ It provides the product with legal protection.
- ✓ It prohibits any user from unauthorized use.
- ✓ It helps customers in obtaining high-quality goods that meet all standards.
- ✓ it boosts economic expansion and raises product demand on domestic and international markets.
- ✓ it assists manufacturers in acquiring the label of premium goods and obtaining a fair price in a competitive market.
- ✓ It steers clear of low-quality products on the market as well as malpractice.
- ✓ Customers can take advantage of premium goods as a result.

1.3 Importance of geographical indications for local cultures, trade, and economic growth

GIs are used to identify products that are linked to a particular region, which have specific qualities or characteristics that are derived from the region's natural or human factors. GIs protect the heritage and traditional knowledge of the local communities who produce these products, thereby promoting cultural diversity and preserving traditional practices. In terms of trade, GIs enable local producers to differentiate their products from similar products produced in other regions, thereby creating a unique identity and increasing their market value. This can lead to increased exports and create new trade opportunities for local producers, thereby contributing to the economic growth of the region.⁷

GIs can also foster innovation and entrepreneurship. The protection of GIs encourages

⁶Section 2(1)(e) of GI act, 1999.

⁷Significance of Geographical Indication Tags in India - Ipleaders' <https://blog.ipleaders.in/significance-of-geographical-indication-tags-in-india/> > accessed 5 February 2023

producers to develop new and innovative products that are unique to the region, thereby promoting entrepreneurship and creating new job opportunities. GIs can also help small and medium-sized enterprises (SMEs) to access new markets, enabling them to expand their business and create additional employment opportunities and in promoting and protecting local cultures, trade, and economic growth. By protecting the unique identity of local products, GIs promote cultural diversity, preserve traditional practices, create new trade opportunities, foster innovation and entrepreneurship, and create employment opportunities, thereby contributing to the sustainable development of the region. Famous GI tags in India are Darjeeling tea (W.B), Bikaneri-bhujia (Bikaner), Tirupati Ladoo, Makrana Marble (Rajasthan), Madhubani painting (Bihar), Kutch Embroidery (Gujrat), Phulkari (Punjab), Basmati Rice (Haryana) etc.

CONCEPT OF VALUATION AND PROBLEMS IN THE VALUATION OF GI

Valuation refers to the process of determining the monetary value of a product, service, or asset. In the context of Geographical Indications (GIs), valuation refers to the process of determining the economic value of a product or service that is linked to a particular geographical region.⁸ The valuation of GIs is crucial in the management of these products, as it can have significant implications for the protection, promotion, and commercialization of these products.

In contrast to the plant variety protection regime, very few circumstances could necessitate the valuation of a GI.⁹ As there is no chance of authorizing or task of the GI, the extent of valuation is restricted. Additionally, despite the fact that the GI statute imposes a number of predetermined offenses and penalties, it still provides for the award of damages, cost and profit accounts, and other similar remedies.

As a result, valuing a GI is necessary for both the management of intellectual property (IP) when the owner is a corporation and the mitigation of damages in infringement and passing off lawsuits.¹⁰

⁸According to WIPO Definition(2021) At https://www.wipo.int/geo_indications/en/

⁹Lesser, W.(1994) , “ Valuation of Plant Variety Protection Certificates”, Review of Agricultural Economics, Oxford University Press , vo16(2)

¹⁰ Sanjeev Agarwal, & Michael Barone (2005), “*Emerging Issues for Geographical Indication Branding Strategies*” Midwest Agribusiness Trade Research and Information Center (MATRIC) at Iowa State University Publications.

In every way, GI is thought to be a descendant of trademark law, which later developed into a system of its own. However, there are significant differences between GI and trademark in terms of valuation:

- ✓ The use of a trademark can be traced back; However, not all cases of GI follow the same pattern. Because a trademark is a common aspect of business and is owned by an individual, it typically contains a record of the costs associated with building the brand. However, given that the majority of GIs are elderly, it is impossible to estimate the expenditure.
- ✓ According to the laws, trademarks can be handled like individual assets, so they can be part of a transaction on their own, licensed, assigned, and so on. However, the licensing and assignment of GI are specifically restricted by the statutory provision regarding GI.¹¹

Despite the fact that GI and trademark may share jurisprudence, the valuation strategies utilized for trademark cannot be said to be applicable to GI because of the aforementioned differences. GIs are a piece of the local area IP and consequently by and large vest with no one individual specifically. Also, most of the goods and GI that have been recognized and registered as GIs have been around for a long time in the society. Due to this, we can see that the Cost Method of valuation cannot be used in the case of GI. However, this may not always be the case. The situation in which the owner and the person using the GI are different people is covered by Indian law. So in the event that there is an element, which has enrolled a GI once more and has put resources into the showcasing and marking of the products, then it will have the part of cost engaged with improvement of the GI. Applying verifiable methodology of Cost Technique could give a fundamental worth of the GI, however not precise, on the grounds that it could never have thought about the work and mind contributed before such a substance got it enlisted.¹²

In addition, the Income Method of Valuation is inapplicable if there is no direct transaction of GIs, which is against the law. In such a circumstance Market Technique may guide the valuer. Although rarely reported, instances of infringement and passing off of GIs are not unheard of. Such cases of infringing or passing off goods, as well as cases pertaining to them, would become quite evident under a stronger IP regime.

¹¹ Abhijeet Kumar (2021), book- “A Complete Guide to Valuation of IP Assets – With Discussions on Managing, Auditing and Taxing IPs” 1st edition, [Thomson Reuters](#).

¹² *Supra note 10*.

However, as previously stated, GI cannot be licensed or assigned. This indicates that there will not be a transaction that is comparable in order to apply the Market Method when valuing IP for damages awards. In such a scenario, damage valuation methods will have to be used instead of IP valuation. Claimable Harm, Legal Harms and Expenses are the most ideal techniques for valuation of harm that could be depended upon. In addition, in the event that there is no explicit transaction of the GIs, this award of damages may be regarded as a comparable transaction in future cases of passing off and infringement. The court may also award compensatory damage as additional damage based on the GI's value.¹³

Even though it does not belong to a separate transaction, the successor in title provision for passing the registration of an authorized user can also be considered a trigger. As examined previously, in such cases where one organization is being obtained by another, or when two organizations are converging to frame another element, then a valuation of the GI, for which an organization has enrolment of approved client, basing the above techniques will constantly be useful to have a legitimate exchange and to accomplish an all-win circumstance. Based on a preliminary understanding and reading of the provision regarding authorized users, it may be viewed as a licensing-type scenario in which users use IP owned by the owner.

There is, however, something off about this consideration. Since the IP owner grants licenses, royalty payments are made to the IP owner. If authorized user registration is done with the registrar and the registrar grants permission to use the IP, royalty should only be paid to authorities; this logic fails when compared to compulsory licensing. Therefore, the Registrar may demand royalty payments from the IP holder even in the event of an authorized user registration that allows for the use of IP.¹⁴

The question of the royalty rate arises as a result of this agreement. As previously stated, determining the value is very difficult due to the limited transaction rights over GI. Where value has been determined, an industry approach can be used to determine the royalty rate. However, since authorized users can be treated as licensees and the value of GI cannot be established, applying the 25% rule would be the best way to begin valuation for purely

¹³ *Supra note 11.*

¹⁴ *Ibid 12.*

economic reasons. Through practice, a different industry average can be established for various GI related goods.¹⁵

2.1 Challenges in the valuation of GI

- A) **Lack of data:** One of the main challenges in GI valuation is the lack of data on market prices, production costs, and consumer preferences. This can make it difficult to accurately estimate the value of the GI.¹⁶
- B) **Subjectivity:** Valuing GIs is often subjective and can be influenced by factors such as cultural heritage, traditions, and consumer perceptions. This can make it difficult to come up with an objective valuation method that is universally applicable.¹⁷
- C) **Changing consumer preferences:** Consumer preferences can change over time, which can impact the value of GIs. For example, a GI product that was popular in the past may not be as popular in the present, leading to a decrease in its value.
- D) **Diverse production methods:** GI products are often produced using traditional and diverse production methods, which can make it challenging to compare them to similar products that do not carry the GI designation. This can lead to difficulties in determining the appropriate valuation method for the product.¹⁸
- E) **Limited market access:** Some GI products may have limited market access due to trade barriers, which can affect their value. For example, a GI product produced in a specific region may face tariffs or other trade restrictions when exported to other countries.¹⁹

MANAGEMENT OF GEOGRAPHICAL INDICATION

3.1 What is management of GI?

Management in Geographical Indications (GIs) refers to the various activities and strategies that are used to protect and promote the value of products associated with a particular region or origin. Effective management of GIs involves a range of activities, including legal protection, promotion and marketing, quality control, stakeholder engagement, and research and

¹⁵ *Supra note 11.*

¹⁶ Aswath Damodaran (2009), “*Valuing Young, Start-Up and Growth Companies: Estimation Issues and Valuation Challenges*” Elsevier BV. E- journal at <http://dx.doi.org/10.2139/ssrn.1418687>

¹⁷ ShraddhaKamatagi (2022),Book-”*Geographical Indications in Karnataka: Legal Issues and Challenges*” Jupiter Publications Consortium.

¹⁸ ShraddhaKamatagi (2022),Book-”*Geographical Indications in Karnataka: Legal Issues and Challenges*” Jupiter Publications Consortium.

¹⁹ *Ibid*

development.²⁰

Legal protection includes registering the GI and enforcing regulations. Promotion and marketing raise awareness of the product's unique qualities. Quality control maintains the integrity and value of the GI. Stakeholder engagement builds support among producers, consumers, and government officials. Research and development improves the quality and value of the product. Effective GI management requires a multi-faceted approach to protect and promote the product's unique characteristics, providing value to producers, consumers, and the community. By effectively managing GIs, it is possible to protect and promote the unique qualities and characteristics of products associated with a particular region or origin, and to ensure that these products continue to provide value to producers, consumers, and the wider community over time.²¹

3.2 Challenges in management of GI

There are several challenges in managing Geographical Indications (GIs), including:²²

- a) **Legal challenges:** Securing legal protection for GIs can be difficult, particularly in countries with weak intellectual property laws and varying legal frameworks between countries.
- b) **Quality control:** Ensuring consistent quality for artisanal or traditional products requires significant investment in infrastructure and training.
- c) **Climate change:** Changes in environmental conditions can affect crop yields, quality, and characteristics of GI products, impacting their value and integrity.
- d) **Marketing and promotion:** Small producers may lack resources to effectively market GI products, and consumers may be unfamiliar with the designation and its significance.
- e) **Stakeholder engagement:** Building consensus and managing competing interests can be challenging, particularly in areas with complex social and political dynamics.

²⁰ BarbaraPick (2022), "The legal protection of GIs in France Intellectual Property and Development" journal published in Routledge, pg 23-51

²¹ Claire C.Garcia (2015), "Traditional Food Products: The Effect of Consumers' Characteristics, Product Knowledge, and Perceived Value on Actual Purchase" Journal of International Food & volume 27(3) pg-155-176

²² Das, Kasturi(2010) "Prospects and Challenges of Geographical Indications in India" The Journal of World Intellectual Property vol(13)pg 148 – 201

- f) **Consumer awareness:** Limited awareness or understanding of GIs can limit demand for GI products, and misconceptions can undermine their reputation and value.
- g) **Cultural and social factors:** Local traditions and social norms can influence how GIs are perceived and marketed.
- h) **Counterfeiting and misappropriation:** GIs are vulnerable to fraud and mislabeling in international markets with weak enforcement of intellectual property laws.

By addressing these challenges, it is possible to protect and promote the unique qualities and characteristics of products associated with a particular region or origin, and to ensure that these products continue to provide value to producers, consumers, and the wider community over time. These challenges requires a multi-faceted approach that involves collaboration and cooperation between different stakeholders, including producers, policymakers, consumers, and civil society organizations. By addressing these challenges effectively, it is possible to ensure that GIs continue to provide value to producers, consumers, and society as a whole.²³

3.3 Methods of managements of GI

As above discussed in chapter 2, it is clear that GI cannot be properly valued due to various factors. It may easy task for GI that it can be properly manage instead of valuation. There may be various approaches which can be used for its managements. These ares-

Club good theory

The club good theory can be applied to GI management in India as it pertains to products that associated with a specific GI. This creates a sense of exclusivity of unauthorized user and belonging among authorized producers, contributing to the quality and reputation of the products. The Champagne region of France is an example of the club good theory in action, where only producers who meet certain standards and use specific methods are authorized to use the Champagne designation. This creates a sense of prestige among producers and benefits consumers, who know they are getting a high-quality product. However, the specific application of any theory will depend on the context and circumstances of each individual case.²⁴

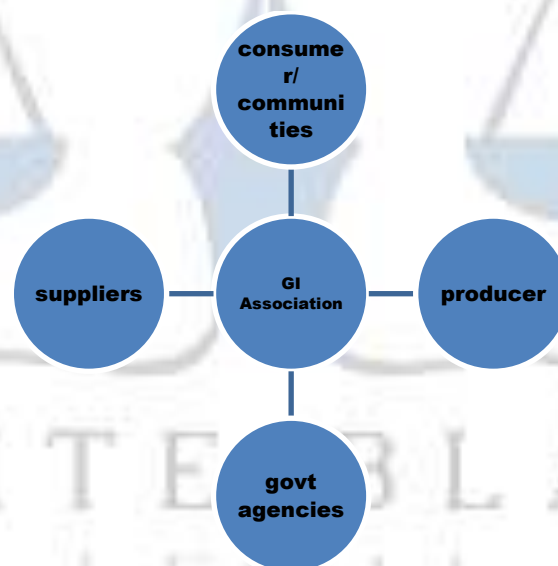
Stakeholder theory of GI

Stakeholder theory was initially proposed by Freeman in 1970 and later integrated into management theory. Freeman's definition of stakeholders includes any group or individual that

²³ *Ibid.*

²⁴ D..Benavente (2013) “Chapter 1 – Introduction to Geographical Indications: Origin and Characteristics” In The Economics of Geographical Indications(book), Graduate Institute Publications

can impact or be impacted by an organization's goals. Beauchamp and Bowie expanded this definition in 2004 by adding employees, vendors, the local community, and society as stakeholders. On the other hand, Barry's definition of stakeholders encompasses all members of the local community where the business operates, employees of the company, and suppliers of raw materials.²⁵The stakeholder theory of Geographical Indication (GI) management is a framework that highlights the significance of taking all stakeholders engaged in the administration and protection of GIs' demands and interests into account. Products with a specific geographic origin and traits or a reputation attributable to that region are identified with a GI. The stakeholders in GI management can include producers, consumers, governments, NGOs, intellectual property offices, and other interested parties. The stakeholder theory suggests that businesses and other organizations involved in GI management have a responsibility to manage their operations in a way that balances the interests of all stakeholders and creates sustainable value for them.²⁶



27

In the context of GI management, the stakeholder theory can be used to guide decision-making on issues such as the protection of traditional knowledge and cultural heritage, the equitable distribution of benefits among stakeholders, and the promotion of sustainable development. By considering the needs and interests of all stakeholders, GI management can be more effective in achieving its goals and in promoting the long-term viability and success of the products and

²⁵ Talat Afza and Sajid Nazir (2014), "Theoretical Perspective of Corporate Governance: A Review" European Journal of Scientific Research, vol . 119(2) pg 255-264

²⁶ *Id* 25.

²⁷ Image shown in this page is prepared on the basis of this theory.

communities associated with GIs.

CASE STUDIES ON GI MANAGEMENT

(a) Case study 1: DARJEELING TEA GI Label Debate

In 2004–2005, Darjeeling Tea became the first product to bear the GI label in a very long time. Darjeeling Tea has been consumed since the 1830s' first decade. It was a sector of the tea business that the government had legal control over from 1933 until the Tea Act of 1953. The Tea Board has the power to regulate all phases of tea cultivation, processing, and sale through a number of orders. The well-known flavour and quality of Darjeeling Tea have gained it the admiration and endorsement of discriminating consumers all around the world.²⁸ The Darjeeling Tea's GI label has been the subject of numerous arguments. ITC Limited's registered GIs were the basis for the Tea Board's initial action. Since 2003, ITC Limited's ITC Sonar Hotel featured a first-rate executive lounge known as the "Darjeeling Lounge." In order to ban ITC Ltd from utilising the Darjeeling Lounge trademark, the Board filed a civil lawsuit at the Calcutta High Court in 2010. [The Darjeeling case, Tea Board India v. I.T.C. Ltd. from 2011.] They argued that ITC's use of the word "Darjeeling" caused their accredited brand names and enlisted GIs to be infringed upon. They also argued that using the name "Darjeeling Lounge" is unfair competition, that it confuses visitors to Darjeeling Lounge, and that these visitors would be misled into thinking that Darjeeling Tea is associated with it.²⁹

The defendant pleaded that Darjeeling is primarily a place name and that tea is not Darjeeling's most significant feature. Because its monopoly ends at "tea," Tea Board cannot therefore claim singularity over "Darjeeling." It was asserted that the lawsuit was prohibited by limitation because use of the "Darjeeling Lounge" started before the GI Act was passed and it took time for the suit to be filed. The complaint against the Tea Board was dismissed, and the case was ruled in favour of ITC. The Plaintiff's registered GI and Certification trademarks are solely applicable to tea, according to the court, and do not cover lounge services.

(b) Case study 2: Kolhapuri chappal

Kolhapuri chappal is a popular type of ethnic leather footwear made in several districts of

²⁸ Disputes Over Geographical Indications disputes-over-geographical-indications, <https://www.intepat.com/blog/disputesgeographicalindications/#:~:text=Disputes%20Over%20Geographical%20Indications%201%20DARJEELING%20TEA%0GI,TIRUPATHI%20LADDU%20%E2%80%93%20THE%20SAVOURY%20FROM%20ANDHRA%20> (last visited Jan 4, 2023).

²⁹ *Ibid.*

Maharashtra and Karnataka. In 2019, it was granted a Geographical Indication (GI) tag. The GI application for Kolhapuri chappal was jointly submitted in 2009 by the Dr. Babu Jagjeevan Ram Leather Industries Development Corporation of Karnataka (LIDKAR) and the Sant Rohidas Leather Industries & Charmakar Development Corporation Limited of Maharashtra. The application was successful, and in 2018, the artisans from both states were granted the GI designation for Kolhapuri chappal.

The GI for Kolhapuri Chappals was given to two states and eight districts within them due to the insufficient availability of leather in Maharashtra and the increasing demand for Kolhapuris. The second issue has been a shift in the tastes of young people worldwide and in India. The last explanation was the ascent in contest. The most acknowledged danger of 'Chinese impersonation' consistently poses a potential threat.³⁰

(c) Case study 3: Tirupati Balaji Ladoo.

For the Tirupathi Laddu, the Tirumala Tirupati Devasthanam requested a GI tag under class 30. It received the GI tag in 2009. The holiness, reputation, and uniqueness of the Laddu are due to the fact that it is offered to the Lord as naivedyam. Devotees often receive this laddu as prasadam after worshipping Lord Venkateshwara, the presiding deity at Sri Vari Temple in Tirupathi, Andhra Pradesh.³¹

Mr. R.S. Parveen Raj, a Trivandrum resident, filed a PIL in 2009 against GI Tag for the "Tirupati Laddu" at the Madras High Court. He presented the suit based on 3 claims. The 1st is that the Geographical Indication was only given to one producer, the 2nd is the name lacks distinctiveness; and the third is that it is a generic name. The suit was denied on the bases that a different, more effective venue for resolving such a dispute existed. Under the Act, such a request might have been documented before the G.I. Vault or the Ipad.³²

³⁰ *Supra note 26.*

³¹ Disputes Over Geographical Indications Disputes-over-Geographical-Indications' (26 February 2020) <<https://www.intepat.com/blog/disputesovergeographicalindications/#:~:text=Disputes%20Over%20Geographi%20Indications%201%20DARJEELING%20TEA%20GI,TIRUPATHI%20LADDU%20%E2%80%93%20THE%20SAVOURY%20FROM%20ANDHRA%20>> accessed 4 January 2023

³² *Id.*

CONCLUSION

The project has examined the management of geographical indications (GIs), with a particular focus on their valuation and dispute resolution processes, and we can conclude that the valuation of IP like geographical indications is not an easy task. GI is a different IP than other IPs like patents, trademarks, copyrights, and designs, so it is quite hectic and challenging. The project has brought to light the significance of GIs in preserving regional cultures, encouraging trade, and fostering regional economic expansion. It has discussed a variety of valuation and management-related issues. The Darjeeling case, the Tirupati Ladoo case, and the Kolhapuri Chappal case, among others, were examined as part of the project. related to GI management, such as when a product is mislabeled as coming from a particular location, disagreements about who owns GIs, and disagreements about GIs' economic value. Best practices for resolving disputes have been identified, as have the legal and institutional frameworks for resolving these disagreements.

The management and valuation of GIs, in addition to the various difficulties and disagreements that may arise, have all been thoroughly examined through this project. Policymakers, stakeholders, and businesses involved in the management of GIs will benefit from this project's knowledge, which will also contribute to the ongoing promotion and protection of local cultures and economic growth in regions all over the world.

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