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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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GEOGRAPHICAL INDICATORS: IN SECURING THE CULTURAL HERITAGE ABSTRACT

AUTHORED BY - N ARUN VAIDYANATH

In an era of globalisation and homogenisation, preserving the cultural heritage and regional identities tied to traditional products has become a paramount concern. Geographical Indications (GIs) have emerged as a multifaceted tool that marries commerce with culture. This research paper delves into the dynamic relationship between Geographical Indications and the protection of cultural heritage. It explores the historical evolution of GIs, their legal framework at the international and national levels, and the types of GIs that exist. Moreover, this paper demonstrates the inherent synergy between GIs and the preservation of cultural heritage, uncovering how they safeguard traditional practices, indigenous knowledge, and the distinct identities of regions and communities. This research highlights the critical role of Geographical Indications (GIs) in preserving cultural heritage and protecting regional identities. It underlines the importance of GIs as a means to navigate the delicate balance between global trade and the preservation of traditional practices, cultural diversity and assess the emerging trends in GIs and their application to handicrafts, textiles, and traditional art forms.

KEYWORDS

Geographical Indications, Globalisation, Culture, Heritage

INTRODUCTION

Geographical indications (GIs) refer to markers that designate a product as originating from a specific country or a particular area within that country. These indications highlight that certain qualities, reputation, or distinctive characteristics of the product are primarily linked to its geographical origin. Some examples of GIs from India are, Darjeeling Tea from Assam, Mysore Betel Leaf from Karnataka, Madhubani paintings from Bihar, Malabar Pepper from Kerala. Geographical indications (GIs) hold significant value for producers, akin to the importance of trademarks. They fulfill similar

roles by serving as identifiers of the geographic origin of goods or services, ensuring quality guarantees when the owner controls the mark's usage and mandates adherence to production standards. GIs also function as valuable business assets.

Countries and their citizens, as part of the World Trade Organization, increasingly acknowledge the worth of GIs as effective marketing tools in the global economy. Moreover, intellectual property (IP) owners recognize that safeguarding IP is no longer solely a domestic concern. Consequently, being well-informed about both domestic and international systems of GI protection is crucial for IP owners to maximize the enhanced value that GIs bring to their products and services, both domestically and internationally. GI products are now being exported to other countries where there is a huge market for such products. In such a scenario the owners of the respective IP should be well aware of the global GI laws and regulation in order to safeguard the IP because post the Globalisation, the market has expanded to other countries and he must be aware of the opportunities and concerns that will arise internationally as well. The contentious nature of Geographical Indications (GIs) is well-established, sparking debates not only within academic circles but also involving national governments and businesses. People supporting GI protection have traditionally asserted that GIs merit safeguarding due to their role in identifying distinct qualities and characteristics associated with the specific terroir where products are cultivated, processed, or manufactured. Conversely, those opposing GIs contend that modern agricultural and manufacturing techniques allow for the replication of most products anywhere. Furthermore, producers from "new world" countries argue that numerous GIs have long been generic terms in their respective regions.

Geographical indications (GIs) gives identity and legal recognition for the product which will economically benefits the producers and also the economy of the nation. GIs are also considered as a property that identifies a product as originating from specific geographical location conveying a unique set of qualities, reputation, or characteristics associated with that location. The products which received GI tag is identified as a product which is deeply rooted in a specific geographical location which helps to understand the identity of the particular community, their traditions, practices etc. all of which put in together known as cultural heritage.

Lets take an example of Payyannur Pavithra Ring also known as Payyannur Pavithra Motiram is a holy ring which is worn by Indians for its holy value. It is worn by people mainly during the pithrubali ritual or any other ritual relating to the prayer for the dead ancestors. This was initially made using dharma grass and in the modern times it is made in gold. The word Pavithram mean “Purity” and Motiram means “Ring” and there is a rigorous ritual which is to be followed by the maker and the person who is wearing the ring. The sacred origins of the holy ring are associated with the historical narrative of the Payyannur Subramanya Temple situated in Kannur. Pavithra Motiram received its GI status in the year 2004 and the GI tag ownership was suspended in the year 2012 owing to the reason that several people claimed ownership to it. Chowatta Valappil Dayanandan and his brothers who has the trademark for the ring said that they inherited the tradition from their father Kunhambu who was a freedom fighter and an expert in making the holy ring. He claimed that 175 years ago his grandfather was taught the technique of making this ring by a priest who came for an occasion in the Payyannur Subramanya Temple and is believed that the tantra who taught this was none other than Lord Subramanya. The GI registration was suspended because some vested interests made false claim over the ring two of them being a person running a jewellery in Payyannur and a trust formed by the members of Dayanandan’s family excluding him. Now the ring still enjoys the GI status but the ownership of the ring is not given to any individual, groups, trust or society.¹

Geographical Indications (GIs) serve as crucial instruments for the preservation and advancement of cultural interests. They play a vital role in safeguarding the cultural identity of localities and regions, thereby protecting the unique cultures of the communities residing in these areas. GIs, by preserving local culture and identities, become effective tools for promoting cultural diversity at both the national and international levels. Notably, scholars have drawn parallels between the cultural-protection argument and the market-diversity argument concerning GI protection. This parallel suggests that granting exclusive rights as a reward for local production is necessary to ensure a diverse array of cultural products is produced and made available in the market, preventing them from being overshadowed by unscrupulous competitors from outside the region. Additionally, products identified by GIs embody a cultural component linked to the local and traditional knowledge of the region where they are crafted. Protecting GI-designated products can thus contribute to the preservation of

¹ Payyannur Pavithra Motiram in a Geographical Indication tag ownership tussle, P Sudhakaran, The times of India, 21st August 2014

traditional manufacturing techniques, which might otherwise be overshadowed by mass production methods. Furthermore, by encapsulating the uniqueness derived from the collaboration between producers and the specific geographic location where products are cultivated or made, GI protection creates a system that incentivizes communities to serve as guardians of traditional culture.

GEOGRAPHICAL INDICATIONS AND INTANGIBLE

CULTURAL HERITAGE

Geographical Indications (GIs) and Intangible Cultural Heritage (ICH) are two distinct yet interrelated concepts that play crucial roles in safeguarding and promoting cultural diversity. This essay explores the symbiotic relationship between GIs and ICH, examining how these mechanisms collaboratively contribute to the preservation of traditions, knowledge, and identities associated with specific geographical locations and also helps to improve the socio-economic conditions of the community because they create market differentiation and contribute to the economic sustainability of local communities. Intangible cultural heritage here refers to living expressions inherited from ancestors, including traditions, rituals, performing arts, and knowledge systems. It represents the dynamic and evolving aspects of cultural identity, reflecting the practices and customs of communities over time.

Dev Gangjee reports in his paper *Geographical Indications and Cultural Rights: The Intangible Cultural Heritage Connection?* Gangjee then tells us that ‘Brazilian researchers have identified the strategic potential for GI protection for the clay pots of Goiabeiras, from the Brazilian state of Espírito Santo’. Subsequently, not only did Brazil formally recognize these pots under their intangible cultural heritage (ICH) laws, but also registered it as a geographical indication (GI). The idea behind this double recognition was to boost the marketing of this ICH and, if necessary, provide ‘protection in the international markets’. This example shows that GIs are not restricted to certain products and the scope of GI is vast. Geographical Indications are often considered as the backbone of every nation, because every nation will have their own stories way of telling is by showing the cultural heritage of the nation because, there are a lot of differential factors and apart from fundamental ways of life, each nation is steeped in centuries-old traditions that give uniqueness to its distinctive expertise, an aspect frequently recognized as deserving preservation. In the journey of cross-cultural advancement, global

integration, and even economic and socio- political development, history and heritage consistently walk hand in hand, serving as catalysts for thriving. Nations worldwide have underscored the importance of safeguarding their cultural legacy.²

The position of European Union in this aspect is, While Geographical Indications (GIs), a facet of intellectual property protection, have effectively shielded regional products in various industries, the domain of handicrafts remained unprotected within the European Union. The EU has consistently prioritized the safeguarding of agricultural products, foodstuffs, as well as wines and spirits like Champagne or Parma ham through GIs. However, handicrafts, despite their cultural and economic significance, were not included in this protective framework. For instance, the renowned Murano glass from Italy was unable to qualify for GI protection under the previous regulations limited to agriculture and foodstuffs. Artisans in the Venetian archipelago have honed the craft of glassblowing for centuries, producing exquisite pieces that adorn homes and galleries globally, including the culturally significant Venetian glass beads. These beads, once used as a form of currency, hold profound cultural value and are recognized as part of UNESCO's intangible cultural heritage. Nevertheless, without Geographical Indication, their legal protection has not been fully optimized. The proliferation of mass-produced imitations has adversely impacted their reputation, posing a threat to the livelihoods of artisans and the cultural heritage they represent.

Historically, the European Union did not extend Geographical Indication (GI) protection to handicrafts. However, certain individual member countries, including France, took proactive measures to safeguard their rich heritage of handicrafts. In 2014, France broadened the scope of GI protection to include both industrial and handicraft products. Before this expansion, GI protection in France was confined to agricultural products and wines. The inclusion of handicrafts was a notable development. As a result, renowned products like Limoges porcelain, celebrated for its quality and craftsmanship, have been protected under French law for several years now. This not only ensures the preservation of Limoges porcelain's esteemed reputation but also sustains the livelihoods of artisans in the region.

² Van Uytsel, S. (2017). When Geographical Indications Meet Intangible Cultural Heritage: The New Japanese Act on Geographical Indications. In I. Calboli & W. Ng-Loy (Eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (pp. 508-529). Cambridge: Cambridge University Press. doi:10.1017/9781316711002.022

In the European Union, the consideration to extend Geographical Indication (GI) protection to handicrafts had been ongoing for many years. However, it was only recently, specifically on September 12th, 2023, that regulations were enacted to enable the safeguarding of GIs for both craft and industrial products. The newly implemented rules aim to protect locally renowned products such as lace, glass, natural stones, jewelry, and porcelain, mirroring the protection afforded to agricultural GIs. This protection is contingent upon the product originating in a specific place, region, or country, with its quality and reputation intricately tied to its geographic origin and at least one production step occurring within the defined geographical area. This policy change recognizes the cultural importance and economic contributions of artisans who have preserved traditions across generations.

The European Union's decision aligns with the experiences of nations like India, boasting a rich history of handicrafts. As a member of the WTO since September 15, 2003, India enacted the Geographical Indications of Goods Registration & Protection Act, 1999. Currently, India has a total of 484 registered Geographical Indications, with at least 259 dedicated to handicrafts, dating back to the earliest registration period of April 2004-March 2005. These include renowned items like Pochampalli Ikat from Telangana, Chanderi sarees from Madhya Pradesh, Mysore traditional paintings from Karnataka, and the intricate Banaras Zardozi. Granting Geographical Indication status to these handicrafts acknowledges and protects the economic value associated with their craftsmanship, benefiting both artisans and local communities. For example, the GI protection for Banarasi silk has elevated its price and authenticity, attracting more buyers and tourists, thereby improving the income and standard of living for weavers. The Indian government actively promotes the export of GI-tagged handicrafts, contributing to increased income for artisans and regional economies. The establishment of Geographical Indication stores in cities like Bengaluru and Goa has further emphasized the significance of GIs in promoting and authenticating products for sale.³

³ Fashion law journal, Increasing focus on Heritage: Geographical indications and beyond, Radha Khera, 28th September, 2023

TRADE- RELATED ASPECTS OF INTELLECTUAL PROPERTY

RIGHTS (TRIPS)

The incorporation of the International Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994 set a baseline standard for safeguarding Geographical Indications (GIs) across all member nations of the World Trade Organization (WTO). Additionally, it mandates the establishment of a national system to enhance the protection of GIs associated with wines and spirits. While WTO member countries have committed to participating in ongoing negotiations to extend this heightened protection to GIs related to wines and spirits, as well as GIs in general, these negotiations have thus far yielded no tangible outcomes. Nevertheless, discussions surrounding GIs have persisted and gained momentum, particularly during negotiations for free trade agreements (FTAs), especially in recent years.⁴

The protection of Geographical Indications (GIs) has the potential to play a crucial role in the preservation of cultural heritage and existing traditions, facilitating recognition both on a national and international scale. In the last decade, discussions regarding the acknowledgment of concerns related to culture led to the endorsement of the Convention for the Safeguarding of the Intangible Cultural Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2003. A few years later, in 2005, the UNESCO General Conference adopted another pertinent agreement, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Although neither the 2003 nor the 2005 UNESCO Conventions explicitly mention intellectual property or GIs, it appears that GIs are well-suited to safeguard culture-based interests within the framework outlined by these conventions.

Before the enactment of TRIPS, the protection of Geographical Indications (GIs) was fragmented across various international agreements and was limited to only a handful of nations. The primary sources for the global safeguarding of GIs were concentrated in three distinct international agreements. Specifically, the 1883 Paris Convention for the Protection of Industrial Property played a crucial role in providing protection against the unauthorized use of GIs as “false, fictitious, or

⁴ Irene Calboli, Geographical Indications of Origin, Economic Development, and Cultural Heritage: Good Match or Mismatch?, 11 Indian J. Intell. Prop. L. 11 (2020)

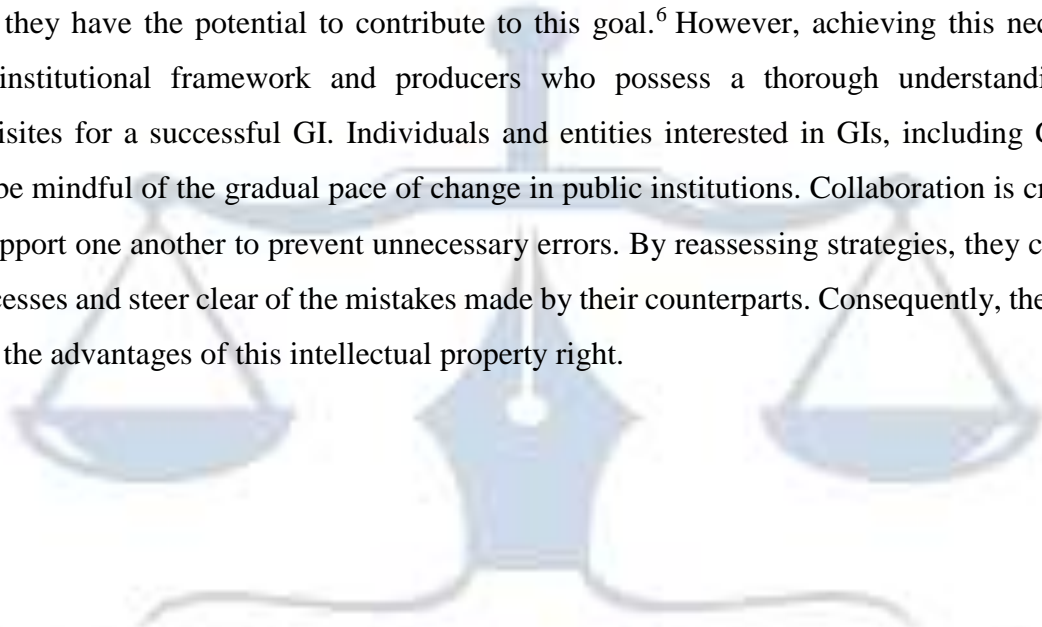
deceptive trade names” and when the use of it was “liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.” Nevertheless, this safeguarding was confined to addressing unfair competition rather than being explicitly tailored for Geographical Indications (GIs). Instead, more comprehensive and specific protection for geographical indicators was provided by the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement) and the subsequently adopted 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement). The Lisbon Agreement even introduced the establishment of an international registration system for indications of origin. Consequently, due to the heightened level of protection, both the Madrid Agreement and the Lisbon Agreement had limited international impact as they garnered only a few signatories.⁵

Sometimes use of GIs “misleads the public as to the geographical origin of the goods,” or that “constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention” so, in order to prevent it the members have to provide “legal means” for it even though the agreement did not specify any mandate objective but Article 22 requires that members “refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated” when the use of GI “is of such a nature as to mislead the public as to the true place of origin.” Article 23 gives higher protection by restricting the use of identical or similar terms to GI related products when those product did not originate from the true origin indicated by Geographical Indication. Article 24 of TRIPS preserves the pre-existing rights for trademarks that were either in active use or had been registered in good faith before the implementation of TRIPS in the member country where the mark was registered. This provision also applies to trademarks established before the Geographical Indication (GI) was protected in its country of origin. Article 24 grants Member countries an exemption from the obligation to "prohibit the ongoing and similar utilisation of a specific [Geographical Indication] from another Member that identifies wines or spirits in association with goods and services.”

⁵ *ibid*

CONCLUSION

Geographical Indicators (GIs) emerge as a valuable means to safeguard cultural heritage. These indicators not only signify the geographical origin of products but also encapsulate the unique qualities and cultural significance associated with a specific region. The protection offered by GIs extends beyond mere economic considerations; it becomes a powerful tool for preserving traditions, promoting local identity, and maintaining the authenticity of products deeply rooted in cultural heritage. Geographical indications (GIs) are also frequently seen as a route to development, and indeed, they have the potential to contribute to this goal.⁶ However, achieving this necessitates a robust institutional framework and producers who possess a thorough understanding of the prerequisites for a successful GI. Individuals and entities interested in GIs, including GI holders, should be mindful of the gradual pace of change in public institutions. Collaboration is crucial; they must support one another to prevent unnecessary errors. By reassessing strategies, they can emulate the successes and steer clear of the mistakes made by their counterparts. Consequently, they can fully harness the advantages of this intellectual property right.



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⁶ Thinking outside the box: The legal and non-legal objectives of Geographical Indications, Suelen Carls, world trade organisation, 2017