

DEMYSTIFYING THE INDIAN GI TAGS

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Abstract

The purpose of this paper is to understand the concept of Geographical Indications in the Indian context in terms of the procedural formalities to be followed for attaining the tag and to what extent it has been able to promote and protect the economic, social, personal and intellectual interest of the traditional knowledge bearers of the craft. The materials for the purpose of this study have been collected from primary sources for the case study in the form of personal interviews and discussions over phone and from published secondary data sources. The concept of GI aims to reward the producers in the form of protection for their product, traditional knowledge and geographical name and consumers alike by ensuring product traceability. However, a broad examination of the case study revealed a gradual decline of enthusiasm (on the part of the producers/exporters of the geographical area under study) in the tagging exercise on account of their inability to reap any benefits as postulated by the GI theory. Policy/Practical implications of GI at the local, state and national level are many in the form of increase in production, economies of scale, creation of employment opportunities, increase in income of producers, boost in tourism and real estate values etc. Social implications of GI include appreciation for local culture and traditional knowledge, improved quality of life, improved quality of social capital.

Keywords: Intellectual property, Geographical Indications, Indication of Sources, Appellation of Origin

1. Introduction

India is known for her vastness, variety and venerability. Being a rich country not only means having unique and diverse resources, it also necessitates safeguarding these assets from extravagant wastefulness and unscrupulous duplication. In the globalized cum knowledge era, characterized by unhindered movement of people, goods, money and ideas, backed by the massive development and usage of internet, the use or rather the misuse of other countries' natural resources by MNCs and exploitation of foreign environments could have serious implications for the host nation. It is in this scenario that the need for protection of producers' rights and means of preventing duplication of intellectual property gains importance.

Intellectual Property

According to World Intellectual Property Organization (WIPO), Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

- **Industrial Property:** includes patents for inventions, trademarks, industrial designs and geographical indications.
- **Copyright:** covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. The rights of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs are all covered¹.

Thus like any other property, the IPR protects the moral and material interests of the owner of the patent, copyright or trademark, the creator of the literary or artistic work, or the author of a scientific/academic paper. And just as there are laws in place to protect the material and moral wellbeing of various individuals of the society, there are Intellectual Property Laws that take care of the interest and exclusive rights of these knowledge creators. In a civilized society, these laws are put in place with an intent to encourage creative and productive thinking not only for the benefit and advancement of the society but also as a means of income/profit to the creator/owner without any fear of being infringed upon. Thus such protections serve as catalyst for a country's development, ensuring honest market practices and fair competition, making it possible for the society as a whole to move forward, by incentivizing new inventions, creating better employment opportunities, industrial and economic growth and improvement in overall quality of life. While a Patent/ License gives the owner/designer the right to exclusively use or sell his creation in the marketplace for a set period, usually upto 20 years, or to transfer this right to another party for a profit, a Trademark is a symbol or word(s) or a slogan or a combination of these created to help a product or service or brand distinguish itself and stand apart from its contemporaries in the marketplace.

An Industrial Design adds to the aesthetic value and appearance of a product making it more appealing and adding to its commercial value and marketability. Thus while a patent 'protects an invention that offers a new technical solution to a problem' ², industrial design only seeks to protect the owner from unauthorized product imitations and copying. Another important component of IP is Geographical Indication. A GI tag indicates a product's authenticity in terms of its place of origin, nature of production, characteristics and qualities. Thus a GI tag is the link between a product and its geographical place of production and the resultant features and attributes that are guaranteed to the end-users based on this linkage. This paper will attempt to understand the concept of GI, with a case study of the Kannur Home furnishing industry.

The origin of GI can be traced back to the 19th century Europe, but the concept has evolved greatly since its beginning. Its present international framework is laid out in Articles 22-24 of the Trade Related Aspects of Intellectual Property Rights (TRIPs) agreement that concluded at the Uruguay Round of GATT negotiations. In India, a member of WTO, the Geographical Indications of Goods (Registration & Protection) Act, 1999 came into force with effect from 15th September 2003.

GIs are defined under Article 22(1) of the TRIPS as “indications, which identify goods as originating in a 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”⁴

GIs could be iconic symbols or emblems like the Eiffel Tower to designate a French good, or the Taj Mahal to designate an Indian good or the Statue of Liberty to designate an American good. Moreover, denominations that are not ‘direct geographical names’ (such as Basmati) are also feasible. Often GIs are also associated with other social benefits, such as, the protection of traditional knowledge and community rights.⁶

Types of GI

WIPO distinguishes between 2 broader interrelated concepts of GI, viz.

- Indications of Source and
- Appellations of Origin

Indication of source means the geographical origin of a product in terms of the state or country of production and not the name of the manufacturing enterprise. For e.g. “made in ...” Appellation on the other hand is a special type of indication of source, that while indicating the geographical locality/ region or country of origin, also denotes distinguishing characteristics endowed on the product exclusive to this location. For e.g. Kanchipuram silk.

In India, a product obtaining the GI tag generally falls into one of the 5 categories- an agricultural produce, a handicraft, a manufactured product, a food item or textiles. For e.g. the Darjeeling tea of West Bengal is the first (agricultural) product to secure the GI tag in India in 2004 under the Tea Board of India’s license and authority. With a well-known reputation in the global market for its distinct flavor profile owing to the unique and complex agro-climatic conditions, this tea brand was at risk of being imitated and adulterated when tea producers from countries like Kenya, Sri Lanka and Nepal began passing off their tea as ‘Darjeeling Tea’. Thus the GI tag ensured not only a mechanism of differentiation, it also helped the growers to claim a premium price they deserved for their produce. Furthermore, by a practice of continuously monitoring the tea growers/dealers, the Tea Board was able to ensure compliance with quality standards at all times as well as being able to compile and calculate the total volume of production and sale for specific time periods⁸.

From the above example, the benefits of GI tagging can be summarized as below:

- It provides legal protection to the manufacturers against unauthorized replication and use.
- It guarantees the consumers of the product’s authenticity and integrity.
- It provides economic support to the manufacturers/ artisans/ agriculturist by promoting goods bearing GI tag in the export market.
- It helps conserve local knowledge and culture⁹.
- It boosts tourism and leads to overall sustained national development¹⁰.

More than 600 GI applications had been received by the GI Registry of India as on Jan 11th 2018, and 584 GI registrations had been granted till date¹¹. From this source data, we will understand that out of the registered GIs, 64% fall under handicrafts, 26% under agricultural products, 6.18% under manufactured goods and the remaining of less than 4% under textiles and foodstuffs.

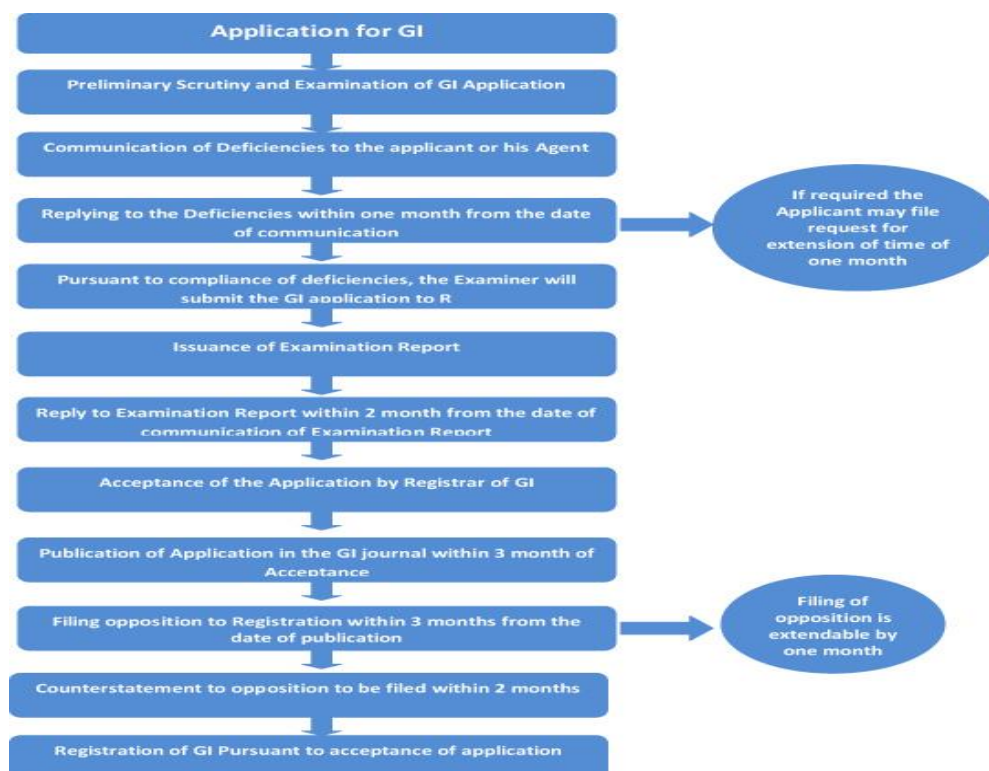
Steps in acquiring GI

In India, according to the Geographical Indications of Goods (Registration and Protection) Act, 1999, that came into force in 2003, only an organization or an association of persons or producers can apply to the Registrar of Geographical Indications, as it a community right and is bestowed on subjects of a certain region engaged in a common activity. They should file an affidavit to the effect that the application represents their interest. It also needs to be ensured that the indication applied for comes within the ambit of the definition of GI under section 2(1) (e). GI is awarded for a period of 10 years; after which it needs to be renewed.

The application for registration of GI requires the following¹²:

1. Making an application in triplicate, signed by applicant or his agent and containing a representation of the case.
2. Details of the special characteristics of the goods and how the same will be maintained, geographical linkage, production process, proof of origin and present scenario are to be mentioned in the statement of case¹³.
3. 3 copies of the geographical area to which the GI relates will be enclosed with the application.
4. Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates shall be enclosed
5. Give details of all the applicant together with address. If there are a large number of producers, a collective reference to all the producers of the goods may be made in the application and the GI, if registered will be indicated accordingly in the register.

The further steps involved in acquiring the GI are represented in a flow diagram in fig 1 featured below.



Keralan Geographical Indications:

Kerala with her rich stash of natural resources, traditional knowledge and diversified culture, has great potential for a large number of GI tags. At present, there are 29 tags to her credit, covering agricultural, handicraft and manufactured products; belonging to various classes of goods under the GI Act 1999.

Today, with growing wealth and prosperity in the industrial and developing economies, the demand for expensive, exquisite and one-of-a-kind consumables and artifacts have been seeing an increasing trend as people look for means to express their individuality and originality. With more people willing to spend, it is only natural that these authentic and genuine but slightly more expensive GI tagged goods would do well. It is in this scenario that the following GI relevant topics need to be touched upon-

- Understanding if the GI tagged goods fare well against their non-tagged and the trademarked counterparts.
- Checking the consumers' willingness to pay a GI premium for these products.
- Tracking if the traditional knowledge bearers of the craft benefitted in any real sense in terms of improved quality of living, increase in knowledge level etc.
- Getting an insight into whether the cooperative societies have derived any goodness out the tagging exercise, and in general, their standpoint on GI.

To elaborate, let us make a casestudy of Kannur and her famous Home Textiles.

2. Case Study

The Malabar town of Kannur (anglicized nomenclature being Cannanore) attained GI tagging for her world famous home furnishings back in 2009. The fabrics of Kannur are known for their unique texture and makeup, vibrant colors and skilled craftsmanship, and can even boast of its presence in the world's most powerful office- The White House; not to mention being available in wider widths of 90-120 inches. As mentioned in the Compendium of Indian Handicrafts and Handlooms, the fabric may be in stripes, checks, floral or geometrical designs, with woven borders, manufactured from cotton or art silk or in combinations¹⁴. The Cannanore handlooms are used to manufacture a wide array of home textile products such as bed, bath and kitchen linen, cushions, curtains etc. Kannur is also recognized as one of the 24 Textile Centers and one of the 11 Towns of Export Excellence in India.

In the words of Dr. Rajashekar, Associate Professor, NIFT, Calcutta, the GI expert who had spearheaded the GI initiative in Kannur, the erstwhile Kannur Handloom Exporters' Organization (KHEO) through its formal representative body called Cannanore Home Furnishing Products Consortium had approached him in 2008 to make a representation of its case for Cannanore Home Furnishings before the GI panel, after having suffered one earlier failed attempt in 2006. Accordingly, a fresh representation of case was made, after countless hours were put into preparatory work that included meeting up with artisans, exporters and other ancillary beneficiaries. The representation would contain details about the history of the geographical area and the historical relevance of the trade/craft/ agricultural produce in that area, the area map, the initiation procedures, the different stages and processes involved in the craft, historical data to support the case and the various quality controls and measures required in the craft. The panel also needed to be convinced about how the beneficiaries/ knowledge bearers (of the craft) of the geographical area would socially, economically and intellectually gain from this tagging exercise. Of course, the application was also endorsed by the then Kerala Government, which helped hasten the process to an extent.

He was of the opinion that in order to qualify for GI, the geographical area under consideration should be large, and should represent the interests of a sizable group of people belonging to the area in question whereas for individuals or smaller groups and/or with smaller area coverage and no trade/craft / knowledge exclusivity attributable to the geographic area to boast of, trademarking was the preferred option.

The certificate of GI registration vide application no. 144 was obtained by Cannanore Home Furnishing Products Consortium on 14/11/2008 under classes 22, 23, 24 and 27 of the Act¹⁵. 2018 saw the 10th GI anniversary of Kannur textile industry.

To look back and assess how the Kannur home-textile industry performed during this past decade, post the GI initiative would involve an in-depth analysis of many variables such as year on year export turnovers, jobs created, number of new client accounts accrued to the exporters, new additions to the exporters list and other social and sustainability benefits accrued to the geographical area.

A quick look at the member list of Kannur Textile Exporters' Organization/ KTEO (formerly KHEO) will reveal that between the period of 2012 and 2017, the membership had shrunken from 24 to 16. A member exporter and office bearer of KTEO opined that GI was a benefit in "nomenclature only" and held no real relevance in the normal functioning of the Kannur textile industry. According to him, even the product packaging could not ordinarily carry the GI tag, as the clients, especially the large corporate ones were opposed to this since it would adversely affect their own branding image and presence in the foreign market where the goods were imported. Thus the question of charging any GI premium as far as the exporters were concerned, was off limits. As to whether the local artisans and textile workers benefitted post GI, no special positives could be attributed to GI other than what they would ordinarily stand to enjoy.

It was also revealed during the preliminary studies that members of KTEO (even the prominent ones who had played an active role during the initial registration process) were neither aware of the fact that the GI tag with a 10 year tenure would have expired on 13/11/2018, nor whether any steps were taken by the Cannanore Home Furnishing Consortium for its renewal. In the words of one exporter, "If at all that is required, I don't believe any initiative was taken to renew the same. Everyone lost interest when we could not launch any commercial activities using GI". However a look at the GI Registry website¹⁶ and subsequent check with the Consortium officials revealed that a fee of Rs. 3000 was in fact paid toward the renewal.

A noteworthy point was the role of co-operatives. In a letter dated 26/03/09, just months prior to the GI registration, The Cannanore District Weavers' Cooperative Societies Association representing the region-wise handloom community, raised a dissent with the GI Registry against the move by the Consortium to get the Kannur Home furnishing line tagged. They expressed their intention to club Kannur Handloom Products with other traditional handloom products of Kerala such as the Balaramapuram Sarees, Chendamangalam Dhothies, Kuthampully and Kasargode Sarees. Their contention was that the Directorate of Handloom & Textiles, Govt of Kerala had in fact issued an order for registering Kannur Handloom Furnishing under the GI Act along with the above mentioned products. In their opinion, not having the cloth making craft of Kannur under the Handloom umbrella would critically affect the "centuries old traditional handloom character of the region"¹⁷. This objection however did not yield any results and so Consortium was eventually successful.

Also interesting at this juncture would be the case of a certain cooperative society, say “X weavers’ Industrial Cooperative Society” for anonymity sake, registered and functioning within the geographical limits of the Cannanore Home Furnishing Consortium, that sought to get its handloom baby wraps registered with the GI registry in 2017. The question as to whether similar or related products within the same geography can apply for separate GI tagging arises with scope for further in depth research. Enough said for now that application no. 576 for the baby wraps couldn’t proceed on account of various technical deficiencies such as inability to furnish adequate details on the uniqueness of the product; the relationship between/ the impact of geographical area on the GI product etc. In the end, in July 2018, the society itself applied for the withdrawal of its application for GI with a request for future application liberty upon furnishing adequate historical evidences and other relevant documents¹⁸.

3. Conclusion

Many observations arise in the course of the above discussion. The most important one being that there is a palpable loss of enthusiasm for the Kannur Home Textiles GI initiative that had spurred a great deal of action, support and concurrence of the KTEO members in 2008. The only reason for this could be that the Kannur exporters and their ancillary beneficiaries failed to realize any real benefits from the GI exercise, as postulated by the concept itself. Thus, a generalization that GI always satisfies all participants of the concerned geographical area cannot hold good.

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