

CAN GEOGRAPHICAL INDICATIONS SUPPORT THE INDIAN VILLAGE ECONOMY IMPACTED BY THE ONGOING ECONOMIC CRISIS CAUSED BY COVID-19?

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The post-COVID-19 economic crisis has resulted in widespread unemployment and the migration of workers in India, particularly in the informal sector, which accounts for more than 90 percent of total employment in the country. Migrant workers are returning to their homes and will soon be looking for alternative sources of income. Entrepreneurship centered on locally made traditional products can provide revenue to migrant workers in such conditions. These returning underprivileged workers can use their traditional knowledge and skills to support their families and create new employment opportunities in their communities. Laws relating to geographical indications will aid in the protection and promotion of such traditional product lines in domestic consumer markets. The protection and promotion of such traditional product lines in domestic consumer markets will be aided by laws relating to geographical indications. The same can be further complemented by the new Geneva Act of the Lisbon Agreement, which went into effect in February 2020 and allows for the registration system of Geographical Indications in multiple countries through a single procedure with the World Intellectual Property Organization. As a result, it is proposed that the government should promote geographical indications as a policy instrument to help the rural economy during these ongoing difficult times.

Keywords: geographical indication; Geneva Act; post-COVID-19; rural economy; migrant laborer.

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Introduction

Prior to 2020, the Indian economy was facing slow economic growth in the aftermath of demonetization and the nationwide implementation of the new goods and services tax system. The recent COVID-19 outbreak has aggravated the situation even further. In its recent report of 2020, the Asian Development Bank forecast a negative GDP growth of 9 percent. The current economic crisis caused by the pandemic is causing widespread unemployment, particularly in the informal sector, which accounts for more than 90 percent of total employment in India.¹ Migrant workers are returning to their homes and will need to find alternative sources of income. Entrepreneurship centered on locally made traditional products can provide revenue to migrant workers in such situations. States like Uttar Pradesh have already announced programs to promote traditional and local products.² This article focuses on traditional products that have been registered as geographical indications and the various challenges faced by their producers under the existing legal system.

¹ International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture (2018)* (Sep. 15, 2021), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf.

² See UP State Government website on One District One Product Program (Oct. 15, 2021), available at <http://odopup.in/en/page/district-wise-products>.

1. Geographical Indications – An Overview

Since the beginning of civilization itself, various geographical regions worldwide have been recognized for the quality of the products that they produce. Colombian coffee, Scotch whisky and basmati rice are just some of the products that have enjoyed a distinct reputation for centuries due to their geographical origin. On account of their reputation and distinctive quality from other similar products, geographical indication (GI) products command a premium price in the market over similar products. According to the seminal World Trade Organization (WTO) report,³ Jamaican Blue Mountain Coffee received a premium of \$14.50 per kilo in the consumer market above the benchmark price of Columbian milds. French cheese receives a similar premium over non-French GI cheese. According to the same report, 40 percent of consumers are willing to pay a 10 percent premium for GI products over other comparable products in the market.

Globalization and liberalization have opened international markets for GI producers.⁴ This increases opportunities for producers from undeveloped and remote geographical locations.⁵ In today's world, GI is increasingly becoming a form of intellectual property that is commercially indispensable because of the economic value and reputation accorded to such products in the market as well as the historical, reputational and traditional aspects of those products. GIs are highly effective at conveying information relating to product quality and origin, to consumers, and are thus extensively used for marketing registered products in international markets. The concept of GI is based upon the rationale that a product's place of origin can add value to it and turn it into a self-sufficient brand.⁶ Furthermore, increased globalization has opened new markets for such products.

However, globalization also comes with some costs. The protection of GIs has emerged as a significant concern. As per Article 22(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), every member country must recognize and provide legal protection to GIs in their territory. The minimum standard for such protection is set by Article 1.1 of TRIPS which states:

³ WTO, World Trade Report 2004 Exploring the Linkage between the Domestic Policy Environment and International Trade (2004) (Oct. 5, 2021), available at http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report04_e.pdf.

⁴ Elizabeth Barham, *Translating Terroir: The Global Challenge of French AOC Labeling*, 19(1) J. Rural Stud. 127 (2003).

⁵ Maria C. Mancini, *Geographical Indications in Latin America Value Chains: A "Branding from Below" Strategy or a Mechanism Excluding the Poorest?*, 10(32) J. Rural Stud. 295 (2013).

⁶ Bruce Babcock, *Geographical Indications, Property Rights, and Value Added Agriculture*, 9(4) Iowa Agric. Rev. 1 (2003).

Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

Since Article 1.1 leaves it to different member countries to decide the minimum standard for GI protection, we see diversity in the ways GI is protected globally. For instance, GI products are protected under the existing trademark laws in the United States, the United Kingdom and Australia, while India and the European Union (EU) have a specific body of law to protect GI (known as the *sui generis* legal system). Furthermore, India differs from the European Union in two aspects: protection of non-agricultural products and the level of involvement of state authorities in GI protection. To put it another way, it is the differences in understanding the nature of GI and their significance in various contexts that have led to this diversity in legal systems.

2. History and Origin of GI-Related Regulations in International Trade

GI products have enjoyed protection for centuries. In 1351, King John of France decreed that traders were not permitted to mix two different French wines in order to preserve their quality and taste. The process of making Roquefort cheese has enjoyed protection since the 15th century.⁷ Clearly, such measures were localized efforts to protect product quality.

In the 19th century, the rapidly increasing cross-border trade coincided with a new concern about counterfeit products in the consumer market. As a result, a movement arose towards the end of the 19th century to institutionalize intellectual property and protect business owners, dealers and producers engaged in cross-border trade. The Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention) was the first treaty among states to provide protection for intellectual property, including “indications of source,” in international trade.⁸ With the increase in international trade, the Paris convention was considered inadequate in dealing with newer issues of Intellectual Property Rights (IPR). The Uruguay Round negotiations (1986–1994) attempted to fill the void by concluding the most comprehensive international trade agreement on intellectual property – the Agreement on Trade-Related Aspects of

⁷ Delphine Marie-Vivien, *The Protection of Geographical Indications in India: A New Perspective on the French and European Experience* (2015).

⁸ See Paris Convention for the Protection of Industrial Property, 1883 (Jun. 12, 2021), available at <https://wipolex.wipo.int/en/text/287556>.

Intellectual Property Rights (TRIPS). In TRIPS, enforced from 1 January 1995, GI has been recognized as one of the six forms of intellectual property in Part II of the agreement. According to Article 22 of TRIPS, “Geographical Indications” are defined as

indications which identify a good as originating in the territory of a member, or a region or locality within that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Thus, a GI product must show a strong link between its reputation, quality or other characteristics and the place of its geographical origin. For instance, the well-known GI, “Darjeeling tea” is grown only on one of the eighty-seven tea estates in the Darjeeling and Kalimpong districts in India. It is only on these plantations that Darjeeling tea acquires its distinctive taste, texture and unique color.

A special mention is required for the World Intellectual Property Organization (WIPO) administered Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958) (Lisbon Agreement). It is an international agreement that ensures the protection and registration of an “appellation of origin” in the member countries. An appellation of origin requires a much stronger connection to the place of origin than GI. This narrow scope of “appellation of origin” is the reason behind its bleak success in attracting many supporters (as of January 2022, it has only thirty member countries). In contrast, GI is a watered-down version of the appellation of origin. The current definition of a geographical indication was negotiated and agreed upon during the Uruguay Round Negotiations and incorporated into TRIPS.

3. Legal Systems and Their Challenges in Registration, Protection and Enforcement of GIs

The rationale behind GI protection is not limited to preventing unfair trade competition in the consumer market. According to Article 4 of EU Regulation 1151/2012, the protection and regulation of GI provides three benefits: (a) ensuring fair market value to underprivileged workers; (b) uniform protection of the name and (c) providing information on the value-added qualities distinguishing it from similar products.⁹

Two situations need to be borne in mind. All intellectual property rights (IPR), including GI, are territorial in nature. Therefore, the registration process must be followed separately in each country where protection is sought. This leads to the

⁹ See Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (Jul. 1, 2021), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02012R1151-20191214&from=EN>.

apparent second situation, in which there is no harmonization of laws relating to GIs at the international level. The laws regulating GIs vary across countries. The United States leads a group of “new world countries” that oppose strong protection for GIs, as proposed by a group of “old world countries” led by the European Union. The TRIPS, a landmark international agreement on GI, offers little help in furthering the harmonization of laws. Moreover, Article 1.1 (TRIPS) allows countries to determine their own manner of implementing the requisite minimum protection (laid down in Articles 22 and 23) within the framework of their own domestic laws.

Currently, countries across the world regulate GI in one of the following three ways, according to the World Trade Organization:¹⁰

1. *Sui generis* system – Adopted by the “old-world countries,” under the *sui generis* system, a separate law exists for the protection and registration of GI. Since GI is a territorial right, a subsequent registration or certification is required under the local laws of every country where the right is sought to be established. For example, in addition to India, Darjeeling tea, as of 2008, is registered in more than twenty countries around the world.¹¹ Registration in a foreign country generally requires hiring a local lawyer who can file the requisite documents and is familiar with the country’s local laws. Thus, it comes with a heavy financial burden that only a select few right holders in India can afford to bear.

2. Certification or collective trademark – Promoted by new world countries, GI is protected under the trademark laws in this system of regulation. These countries regard GI as a species of trademark and are concerned that strong GI protection may be exploited by countries in international trade as non-tariff trade barriers disguised as protectionism. In such countries, a certification or a collective trademark for both “word” and “logo” is required to protect GI. In cases where they are not available, GIs are protected as figurative marks. In the registration procedure, standard trademark principles are applied.¹² In comparison with the *sui generis* system, the trademark system fails to capture the essence of GI. Firstly, as a trademark, there is no control over the quality standard of the product. Secondly, all the requisite powers of certification and protection are outsourced to private bodies instead of governmental authorities.

3. Unfair competition and consumer protection laws – Unfair competition in the consumer market is prohibited by both the Paris Convention (Art. 10 *bis*) and the TRIPS

¹⁰ WTO, Review Under Article 24.2 of the Application of the Provisions of the Section of the TRIPS Agreement on Geographical Indications, IP/C/W/253, 4 April 2001 (Sep. 23, 2021), available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=39789,12588&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

¹¹ Country Regulations, Tea Board India (Sep. 25, 2021), available at <http://www.teaboard.gov.in/TEABOARDCSM/Nzl>.

¹² Kasturi Das, *Prospects and Challenges in India*, 13(2) J. World Intell. Prop. 155, 159 (2010).

Agreement (Art. 22). Thus, all member countries are obligated to enforce laws against unfair competition in their territory, including countries falling under the two groups of countries mentioned earlier. Passing off cases are a typical example. However, passing off cases are unpredictable in terms of evidence, and in the absence of a specific statute, in such cases, success is not guaranteed even in clear cases of infringement.

This diversity in legal systems creates problems in international trade and acts as a roadblock for the underprivileged right holders of GIs.¹³ According to a recent report, weavers of the “Banarasi saree,” one of the most well-known GI’s in India, are forced to live in abject poverty.¹⁴ In stark contrast, India is the second-largest textile exporter globally (and the sector is the highest employer after agriculture).¹⁵ GI products, in addition, also need to comply with sector-specific rules in the foreign country. For example, Indian mangoes, including Alphonso mango (a product with GI status), faced an import ban in the United States for eighteen years due to poor agricultural practices.¹⁶ For similar reasons, a ban was imposed on Alphonso mangoes by the European Union in 2014.¹⁷

India’s constitution promotes the welfare of the people. In addition, many GIs, like the Banarasi saree and Madhubani paintings, are symbols of India’s glorious history and culture. As a result, the government takes measures to protect the interests of the poor right holders. For example, the majority of GI applications in India are filed only by government authorities.¹⁸ This is in contrast to European countries, where only producer groups can apply to state authorities for GI recognition. Additionally, government assistance in India at the application stage rarely extends beyond its borders to foreign countries. As a result, the registration of Indian GI in offshore jurisdictions, as well as their monitoring and enforcement has become complicated and costly. Due to prohibitive costs and a lack of knowledge, most Indian GIs never get registered in foreign countries, leaving them vulnerable to usurpation.

The lack of enforcement and monitoring allows for the proliferation of counterfeit products in the consumer market. This has two adverse results. Counterfeit products

¹³ Michael Blakeney, *Proposals for the International Regulation of Geographical Indications*, 4(5) J. World Intell. Prop. 629 (2001).

¹⁴ *Suicide & Malnutrition Among Weaver in Varanasi* (2008) (Oct. 13, 2021), also available at http://pvchr.asia/app/uploads/Suicide_&_Malnutrition_Report.pdf.

¹⁵ English rendering of the text of PM’s address at the Inauguration of Textile India 2017 (Jun. 24, 2021), available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1498083>.

¹⁶ Parija B. Kavilanz, *Indian Mangoes Arrive in the U.S. After Long Hiatus*, CNN Money, 1 May 2017 (Jan. 28, 2022), available at https://money.cnn.com/2007/05/01/news/international/indian_mangoes/.

¹⁷ Asit Ranjan Mishra, *EU Agrees to Lift Ban on Alphonso Mangoes*, Live Mint, 8 January 2015 (Feb. 2, 2022), available at <https://www.livemint.com/Politics/fMXWwNQZCL5ZjVAoGyhGI/EU-agrees-to-lift-import-ban-on-Alphonso-mangoes.html>.

¹⁸ Delphine Marie-Vivien, *The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India*, 13(2) J. World Intell. Prop. 121 (2010).

create confusion and many loyal customers of a specific producer of a GI product are lost to cheaper imitations. Secondly, customers will impute the same high quality of a GI good to the fake product. The second case is more detrimental as inferior goods get sold to gullible consumers, which adversely affects the reputation of the GI good in the long run.

The above demonstrates that the minimal protection system, followed by countries by virtue of Article 1.1 of TRIPS, is detrimental to the interests of the right holders in international trade. This minimum level of protection is also in stark contrast to the higher level of protection accorded to wines and spirits under Article 23 (where protection is available even without proof of consumer confusion). Many countries, including India, have vehemently opposed the dual-standard permissible under TRIPS in GI protection.

4. Laws Relating to Geographical Indications in India

Domestic laws in India. It is a myth that India enacted its *sui generis* law on GI to comply with the TRIPS obligations. Before the enforcement of the present GI Act, GIs were commonly protected as certification marks in India under the Trade and Merchandise Marks Act, 1958. This was sufficient to meet the TRIPS agreement's minimum standard requirement. Instead, two significant events in the 1990s pushed India into enacting a *sui generis* law for GI in 1999. The opening of the Indian market in the 1990s meant India's domestic products and rich traditional knowledge had to be protected. Secondly, in 1997, the United States Patent Office awarded the American agri-based company RiceTec a patent for a new variety of Basmati rice. This caught the attention of the international media because Basmati rice, a long grain and aromatic variety of rice, has been traditionally grown only in India and Pakistan for centuries. In order to provide better protection of similar products in the future, India enacted the "Geographical Indication of Goods (Registration and Protection) Act, 1999" (GI Act) and the "Geographical Indication of Goods (Registration and Protection) Rules, 2002" (GI Rules). Furthermore, India used the flexibility provided by TRIPS to enact a law based on domestic requirements. Thus, the GI Act and GI Rules were subsequently enforced from 15 September 2003.

Prior to 15 September 2003, there was no special law for GI protection in India. The misuse of GI was prevented in one of the following ways:¹⁹

- under consumer protection laws;
- through passing of action in court;
- through trademark certification.

¹⁹ Kasturi Das, *Socio-Economic Implications of Protecting Geographical Indications in India*, Centre for WTO Studies (August 2009) (Oct. 20, 2021), available at https://wtocentre.iift.ac.in/Papers/GI_Paper_CWS_August%2009_Revised.pdf.

The GI Act defines geographical indication and establishes its relationship with the deceptively similar concept of Trademark,²⁰ allows for registration of “only goods” as a GI,²¹ provides for a GI Registry in India²² and finally provides for both civil and criminal remedies in cases of infringement.²³ Registration of GI is renewable every ten years and, interestingly, is optional under the law. According to section 23, GI registration is only prima facie evidence, which means that, the validity of a GI registration can be challenged in a court of law. The objective is to protect the gullible, poor and often illiterate producers of GI products from unscrupulous traders and intermediaries.

Darjeeling tea was the first GI registered in India in 2004–2005. According to the Geographical Indications Registry of India, 370 GIs have been successfully registered under the GI Act as of May 2020.²⁴ However, the GI Act is one of the least contested laws in India. Only six cases have been heard by the various High Courts or the Supreme Court in the nearly seventeen years since it was enacted (as of October 2020).²⁵

The protection of GI in India has its loopholes. As we shall see in the following paragraphs, enforcement mechanisms and protection of the brand value of GI are intricately intertwined.

International agreements. India has also signed two multilateral agreements for the easier registration of GIs in foreign states. These are the Paris Convention for the Protection of Industrial Property (1883) and the Madrid System, comprising the Madrid Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to the Madrid Agreement (1989). The Madrid System, administered by WIPO, is primarily a system for protecting and registering trademarks in multiple countries. However, it can also be used for international registration and protection of GI in member countries, such as the United States, which treats GI as a species of trademark. In February 2020, another multilateral agreement for GI protection in foreign countries, the Lisbon System, entered into force. It differs from the Madrid

²⁰ Sections 2, 25 and 26 of the Geographical Indications of Goods (Registration and Protection) Act No. 48 of 1999.

²¹ Chapter III (secs. 11–19) of the Geographical Indications of Goods (Registration and Protection) Act No. 48 of 1999.

²² Section 5 of the Geographical Indications of Goods (Registration and Protection) Act No. 48 of 1999.

²³ Chapter VII (secs. 31–36) and Chapter VIII (secs. 37–54) of the Geographical Indications of Goods (Registration and Protection) Act No. 48 of 1999.

²⁴ Registered Geographical Indications in India till April 2020 (Jun. 1, 2021), available at www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf.

²⁵ *State of MP v. IPAB*, MANU/TN/2311/2020 (HC), *Tea Board v. ITC Ltd.*, MANU/WB/0277/2019 (HC), *The Scotch Whisky Association v. Golden Bottling Ltd.*, MANU/DE/1495/2006 (HC), *Khoday Distilleries Ltd. v. The Scotch Whisky Association*, MANU/SC/2361/2008 (SC), *Mount Everest Mineral Water Ltd. v. Bisleri International Pvt. Ltd.*, MANU/DE/0410/2010 (HC), *Comité Interprofessionnel Du Vin De Champagne v. Chinar Agro Fruit Products*, MANU/DE/2940/2017 (HC).

System in that it focuses solely on the automatic registration of GIs and appellations of origin in signatory states. The Lisbon System attempts to fill a void left by the Madrid System.

As an alternative to the lack of harmonization of laws and problems with registration issues, countries can protect their GI through bilateral agreements with other nations. This is a common feature of almost all free trade agreements entered into by the European Union. India has used this route in the Comprehensive Economic Partnership Agreement (CEPA) with Japan (Art. 107) and Korea (Arts. 12.1–12.6) to protect its intellectual property in a foreign country.²⁶ For instance, Article 107 of the India-Japan CEPA states:

Each Party shall ensure protection of geographical indications in accordance with its laws and regulations and in conformity with the TRIPS Agreement.

Although such unified systems are helpful for GI protection, India has yet to realize its full potential. In stark contrast to the European Union, the majority of the bilateral investment agreements negotiated by India do not contain an IPR or GI protection clause (of all the bilateral agreements till date, specific IPR/GI clauses were found only with Japan and South Korea). As a result, direct application for registration in a foreign country is the most common method used by Indian right holders to protect their GI rights. Interestingly, GI is the only form of IPR that is explicitly negotiated between states because of its public policy nature. For the same reason, similar protection is never afforded to trademarks or patents.

Lessons from China's experience in cross-border GI protection. The EU–China bilateral agreement entered into force on 1 March 2021. It seeks to boost protection for 200 GI products (100 GI products from each country) against infringement. This will increase bilateral trade and market penetration of iconic Chinese GI products such as Pixian Dou Ban (Pixian Bean Paste) and Anqiu Da Jiang (Anqiu Ginger).^{27,28} To reiterate, India has only focused on the broader areas of goods and services in trade agreements until now. Issues like IPR (which includes GI) have largely been ignored. This is especially surprising for a country like India, which has a rich history and culture to showcase. The Indian government should learn from the EU and Chinese

²⁶ See CEPA with Japan, 13 February 2011 (Jun. 23, 2021), available at https://commerce.gov.in/writereaddata/pdf_download/IJCEPA_Basic_Agreement.pdf. See also CEPA with South Korea, 7 August 2009 (Jun. 23, 2021), available at <https://commerce.gov.in/writereaddata/trade/INDIA%20KOREA%20CEPA%202009.pdf>.

²⁷ Michele Ferrante, *Food for Thought: The EU–China Agreement on GIs*, 0(0) J. Intell. Prop. L. & Prac. 3 (2021).

²⁸ EU–China Agreement Protecting Geographical Indications Enters into Force, European Commission (Jan. 20, 2022), available at https://ec.europa.eu/info/news/eu-china-agreement-protecting-geographical-indications-enters-force-2021-mar-01_en.

experiences and incorporate GI products into trade agreements in order to provide for better protection in foreign markets.

5. Challenges Faced by Indian Producers under the GI Act in Domestic and International Trade

For many decades after gaining independence in 1947, India remained a closed economy. Indian governments were wary of foreign powers and emphasized self-sufficiency. Finally, liberalization began after 1991. This opening of borders and access to new markets led to the revival of many traditional Indian products. Thus, economic policies have played an essential role in the development of traditional products.

GI is a type of industrial property, similar to a trademark or patent. Such products can ensure a sustainable and better income for poor producers, particularly in developing nations like India. However, in practice, producers are unable to get fair market value for their products. This is as a result of the many challenges producers face.

A recent study conducted with the producers of GI products revealed a number of other challenges that the producers/manufacturers of the products face.²⁹ The same can be categorized as shown below.

No protection for technology or know-how. GI products attain fame and reputation through the collective efforts of people over generations. This leads to collective ownership of the unique method and processes. However, GI laws do not protect the technology, method or know-how used in the making of the product. Protection is limited to only the name-place. Consequently, markets get flooded with cheaper machine-made imitations. For instance, one can make and sell the famous Banarasi saree anywhere in the world under a different name, despite being a registered GI in India. As a result, most weavers of the Banarasi saree are being forced out of work because identical sarees from Surat and China are available on the market at a much lower price. Thus, any price-conscious consumer will be attracted to buying the cheaper alternative available in the market. This takes away the level playing field from artisans.

This results in a twisted tale. Artisans cannot adopt new methods or technologies for reasons of cost efficiency. As per GI laws, only the traditional method can be used to make the GI product. In contrast, traders can replicate and manufacture similar GI products using cheaper technology if they do not use the GI registered name. This rigidity in product specifications in a cost-conscious consumer market is the primary reason behind many artisans and producers living in abject poverty.

²⁹ Nitya Nanda et al., *The Protection of Geographical Indications in India: Issues and Challenges*, TERI briefing paper (2013) (Jul. 20, 2021), available at <https://silo.tips/download/the-protection-of-geographical-indications-in-india-issues-and-challenges>.

Ambiguous laws for GI protection. Under Article 1.1 of TRIPS, each member country is free to determine the appropriate method to protect GI in their legal systems. This leads to different levels and types of protection among countries and may result in a subject matter mismatch in international trade. For instance, the European Union does not recognize non-agricultural products such as handicrafts for GI protection under Regulation 1151/2012. However, some EU countries, such as France, do have domestic laws to protect non-agricultural GI products.

The recognition of non-agricultural GIs is a significant issue for India. Approximately three-fourths of GIs registered in India (231 out of 417 as of January 2022) are from the non-agricultural handicraft industry, such as Madhubani paintings and Banarasi sarees.³⁰ Moreover, the multiplicity of legal systems can create hurdles even for experienced traders. For instance, in Europe, Darjeeling tea is registered as a PGI, despite meeting the more stringent requirements of a PDO. Again, it is registered as a certification mark in the United Kingdom and United States since there is no *sui generis* law. Thus, harmonization of GI-related regulations is required to fully exploit the benefits of the artisans' and producers' unique skills and traditional knowledge.

Confusing definitions of producers/authorized user/proprietor. Interestingly, a for-profit company, Karnataka Silk Industries Corporation Limited, is the sole applicant and proprietor of the GI for Mysore silk.³¹ This raises the question: Can a for-profit company represent the interests of all weavers of the famous Mysore silk (even though it is a government enterprise)? Can it result in a single corporate entity establishing a monopoly in the market? In reality, the confusion is embedded in the GI Act. Unlike EU regulations, the GI Act creates a distinction between the producers and proprietors of GI. Section 11(1) states who can apply for registration as

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 interests of the producers of the concerned goods.

Consequently, any third party claiming to represent producers' interests can apply for registration as the proprietor of GI goods.

In India, we see heavy state intervention when it comes to registering GI goods as a "proprietor." Under section 17, producers and artisans are required to register themselves as the "authorized users" of GI goods. This distinction between "proprietor" and "authorized user" prevents registration by unauthorized persons and ensures that benefits flow only to the genuine producers. The dual system of the proprietor

³⁰ Registered Geographical Indications in India, *supra* note 24.

³¹ See Geographical Indications Registry (Jul. 1, 2021), available at <http://ipindiaservices.gov.in/GIRPublic/Application/Details/11>.

and authorized user is used by other countries as well, for example, Pakistan. In the European Union, however, only producers can collectively file for registration.

Section 2(k) contains a broad and ambiguous definition of “producer.” As per section 2(k), in the case of handicrafts or industrial goods, a producer “includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods.” No attempt has been made in the GI Act to differentiate between dealers, retailers and producers. The benefit that should have gone to the vulnerable producers and artisans is diverted in the supply chain to the middlemen, namely dealers and traders. Producers are generally underprivileged individuals who struggle to comprehend the concept of GI and fight for their rights. It should also be emphasized that producer protection should be an integral part of any law on GI, given that without producers there will be no GI products, and consequently, no need for GI laws.

Assistance by government. From the world famous Basmati Rice to Kolhapuri Slippers, the vast majority of GI products in India has been registered by the central/state governments or their agencies. For instance, the Government of Karnataka (Department of Horticulture) is the proprietor of several GIs, including Coorg Orange and Mysore Betel Leaf. Similarly, in the union government, the Development Commissioner for Handicrafts (Union Ministry of Textiles) is the proprietor of GIs such as Blue Pottery of Jaipur and Kathputli (Rajasthan).

This raises three issues. Firstly, section 11 has twin requirements. Firstly, the applicant should be:

- any association of persons or producers or;
- any organization or;
- an authority established by or under any law that is in effect at the time and capable of representing the interests of the producers of the concerned goods.

State and central governments do not fit into any of the above three categories. As a result, they do not fulfill the requirements of section 11(1) as applicants.

Secondly, this creates a conflict of interest because various government agencies serve as the applicant, examiner and authority granting registration. This strikes at the very heart of the non-arbitrary nature of state action that is enshrined in Article 14 of the Constitution.³² In France, the registration is done by INAO (*Institut national de l'origine et de la qualité*), a public institution. The INAO consists of representatives from among the producers and traders and officers from the management. The representatives determine the geographical area and offer a collective opinion on each application for GI registration. The majority of France's INAO members are producers. This brings trust and transparency to the system. In India, in most cases, public authorities are responsible for GI application, scrutiny, opposition procedures and ultimately, awarding the GI recognition. This highlights the need for an overhaul

³² *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

of the system along the lines of the French system to establish greater trust and integrity in the GI process.

Post-registration follow-up. The government seldom extends its assistance post-registration of products. Simply registering GIs is not enough for the producers. In a globalized world, the government needs to assist in a variety of ways to protect GI, including capacity-building programs; assistance and reimbursement upon registration of GI in a foreign country; and protection of GI in a foreign market by hiring the services of an international watchdog.

Sustained measures are required to maintain a presence in the market. Such measures vary according to the product and the dynamics of the consumer market, whether domestic or international. There is a need to maintain the quality and standard of goods produced by all of its manufacturers, as well as a marketing strategy to build the brand value of the goods and reduce information asymmetry between the producers and the consumers by informing the consumers about the distinguishing features and qualities of the GI product. In addition, there is a need to continue to develop and enhance the skills and knowledge of the stakeholders, such as producers, dealers, traders and retailers.

Defining the geographical boundary. A GI shares a strong qualitative connection with its geographical origin. It is always critical to carefully delimit the exact geographical boundaries when registering a GI product. Since the government or its agencies file the maximum number of applications in India, the geographical boundary is arbitrarily defined to encompass the entire district or the state. This practice may frequently exclude actual artisans who reside in a particular geographical area which falls outside the area demarcated in the GI application.

No protection of traditional knowledge. It is believed that GI is the most appropriate IPR for the protection of traditional knowledge. The GI Act only protects the name-place of the product and the right to use it. The know-how behind the product is not protected. Nonetheless, the registration of GIs does create a repository of traditional knowledge and products. Knowledge can remain proprietary so long as it remains a secret within the community of producers, as in the case of the GI, the Aranmula mirror. At present, India lacks a law capable of protecting traditional knowledge from usurpation by third parties.

State control. In many cases, the specification and process of GI are defined by state authorities acting as applicants. This excludes any other artisan who produces the same product using a different process or method. For instance, in the case of the Mysore Sandal Soap, the district of Bengaluru is included along with Mysore in the delimited area. The inclusion of Bengaluru is perplexing because the product name itself suggests that it originates specifically from the district of Mysore. One plausible explanation is that the factory of the applicant company, Karnataka Soaps & Detergents Ltd., is located in the Bengaluru district. However, this disregards the traditional and historical importance of Mysore, the region from which the GI

derives its popular name.³³ Secondly, certain instances indicate a lack of coordination between state agencies. As seen in the case of tea, the Tea Board of India holds the GI for Darjeeling tea, whereas another state government entity, the Himachal Pradesh Patent Information Centre, is the proprietor of another tea variety, Kangra tea.³⁴

Term. Unlike in the European Union, where GIs are granted permanent protection, in India, a GI is granted registration for only ten years, after which it may be renewed for another ten years. This procedure, which is inspired by the trademark system, is inappropriate for products like Darjeeling tea, which has enjoyed a stellar reputation for centuries.

Information technology. At present, very few GI products have the desired online presence. The majority of the products that are available online are sold by third-party traders.

Information technology and e-commerce can provide visibility and market penetration at a fraction of the cost today. Right holders can use various government schemes to enhance their online presence. For instance, the Pradhan Mantri Mudra Yojana offers low-interest loans of up to Rs 10 lakhs to help micro and small businesses upgrade their technology.

6. Enforcement of Geographical Indication Laws in India

The *sui generis* law of India was drafted and enforced following the TRIPS Agreement. The GI Act allows both civil and criminal remedies for infringement. Civil remedies under the GI Act include:

- temporary and permanent injunctions against further infringement;
- damages;
- delivering up of the infringing material.

Despite the fact that criminal remedies include the imposition of fines and imprisonment or both, and regardless of how effective this remedy may appear, in practice, protecting GI in India remains a difficult task. Firstly, the right holders need to monitor the consumer market continuously to prevent any infringement. Secondly, a system for prosecuting such infringers needs to be established. Furthermore, as we shall see in the next sections, success in such cases is not always guaranteed.

Clearly, the majority of right holders in India lack the financial strength and willingness to fulfill either of the two conditions mentioned above. For instance, Indian markets are flooded with cheap imitations of Banarasi sarees from China or power looms from Surat that cost a tenth of the price. Famous Banarasi saree weavers, who once served only the royal families in India, have no choice but to look for other

³³ Marie-Vivien 2015, at 183–84.

³⁴ See Geographical Indications Registry (Jul. 20, 2021), available at <http://ipindiaservices.gov.in/GIRPublic/Application/Details/25>.

means of livelihood due to a decline in their market share.³⁵ In such a scenario, it would be unreasonable to expect them to monitor the domestic consumer markets for signs of infringement.

Additionally, the GI brand frequently comes into conflict with similar trademarks. In the event of such a conflict, courts in India have favored the coexistence of the two parties involved unless a clear case of misappropriation of brand value or deception can be established.³⁶

6.1. Protection of Indian GI Products in Offshore Consumer Markets

The two conditions applied above in the context of the Indian market, namely, proper monitoring of the consumer market and filing cases to deter and stop infringers, are equally applicable to the international market too. Maintaining vigilance in the international market is only possible by hiring the expensive services of an international watchdog and contesting court cases against infringement, including hiring the services of high-priced law firms. In the absence of any financial strength, such right holders as Banarasi saree weavers will find it extremely difficult to enforce their rights.

As the only exception, the Tea Board of India, the right holder of the GI for “Darjeeling tea,” has made a concerted effort to protect it in the international market. Since 1998, the Tea Board has used the services of CompuMark to monitor its trademark on the international market.³⁷ In addition, under a customs notification dated 25 June 2001, no consignment of “Darjeeling tea” may leave India unless a certificate of origin for the consignment of the tea is produced, thus ensuring that all consignments of Darjeeling tea are authentic when they leave the country. However, according to the statistics, 40 million kg of Darjeeling tea are sold globally each year, whereas the actual production is only 9 million kg.

Furthermore, the Tea Board has opposed, with varying degrees of success, efforts against the improper use of the word “Darjeeling.” In Europe, it has opposed the use of the name “Darjeeling” by companies in France for perfumes, apparel and telecommunication devices with a misleading logo.³⁸ Indeed, weak enforcement along with globalization and liberalization has increased the chances of GI misappropriation for undue gain.³⁹

³⁵ Babcock 2003.

³⁶ *Comité Interprofessionnel Du Vin De Champagne v. Chinar Agro Fruit Products*, MANU/DE/2940/2017 (HC).

³⁷ WTO, *Protecting the Geographical Indication for Darjeeling Tea* (2005) (Nov. 20, 2021), available at https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm#:~:text=In%20order%20to%20prevent%20the,unauthorized%20use%20and%20attempted%20registration.

³⁸ *Id.* at 162.

³⁹ Massimo Vittori, *The International Debate on Geographical Indications (GIs): The Point of View of the Global Coalition of GI Producers-Origin*, 13(2) *J. World Intell. Prop.* 304 (2010).

7. GI is a Weak Marketing Brand for Products

It can take several generations to establish a GI's stellar reputation. "Champagne" is believed to have built a reputation among its consumers after more than 150 years. Producers have to maintain a minimum standard of quality, employ innovative marketing strategies, reduce information asymmetry about products, and make continuous efforts to keep infringing goods off the market. Despite the effort, reputation is not a guarantee of strong sales because there may be cheaper machine-made products claiming identical quality and standards. The question arises as to whether a GI label adds to the image of a GI product in the consumer market.

GI as "pseudo brands." It is argued that GIs are "pseudo brands" because two proprietors operating under the same GI may compete, thus, diluting the GI's actual economic and market value in the eyes of the end consumer. Currently, there are approximately four categories of Darjeeling tea, each of which has its own sub-categories, and each brand that sells it uses the GI "Darjeeling Tea" as a marketing tool. As a result, the consumer market is flooded with brands selling the famous Darjeeling tea, which lowers the brand value of the GI as a marketing tool.

Interestingly, brand-building exercises for GI become more significant and irrefutable if they are publicly unknown, such as "Kangra tea" of India, which draws its name from the Kangra district of Himachal Pradesh where it is grown. Such GIs have little to no reputation in domestic markets, let alone in overseas countries. This indicates that the right holders need to spend additional resources on first building the brand value. When the brand value has been established, only then will the right holders be able to reap the benefits of their GI ownership.

Trademark and GI. At its core, the term "brand" refers to a "name, term, sign, symbol or design, or a combination of them" that informs the consumers and distinguishes a seller's products from those of other competitors. The same goal was the objective behind the development of trademarks and GI as intellectual property rights. As a result, there will inevitably be conflicts from time to time. Some of the differences between the two are discussed below:⁴⁰

1. Objective – The objective of a GI is to inform the consumer about the geographical origin of the product and the consequent reputation it enjoys, whereas the objective of a trademark is to differentiate one seller's product from another.

2. Right holder – Trademark is the exclusive property of a single entity, whereas GI is a community-driven mark. The community of GI producers is dynamic since new members can be included while existing members can be driven out.

3. Dual identity – Products can use the GI symbol along with the company or manufacturer's trademark, providing dual identity to the same product. For example, Indian markets are flooded with different brands of Basmati rice.

⁴⁰ Rashmi Aggarwal et al., *Branding of Geographical Indications in India: A Paradigm to Sustain its Premium Value*, 56(6) *Int'l J.L. & Mgmt.* 431 (2014).

4. Consumer confusion – Unlike trademarks, GI as an intellectual property right does not enjoy a standardized visual, phonetic, aesthetic or functional element that helps in easy recognition. Thus, GI lacks a vital element of identity in the product.

5. Protection is forever – In many countries (excluding India), a GI is protected for an indefinite time period in order to protect the collective cultural heritage of the inhabitants of a specific territorial area.⁴¹ Therefore, the GI will never be considered generic. The protection afforded to a trademark typically lasts for ten years and can be renewed.

6. Weak GI protection in the trademark system – In trademark regimes such as in the United States and Australia, it is possible to register trademarks that are identical or similar to a GI product but do not have any connection to its geographic origin. This is known as the free-riding problem. The cause of this problem lies in the subject matter that is sought to be protected. Unlike in GI, trademark registration authorities are not required to examine product specifications or links to their origin. The status of Kona coffee, which is grown in the Kona district of Hawaii in the United States, is one such case where multiple companies hold similar trademarks. This adversely affects the hard-earned reputation and thus market penetration of a GI product.

8. Are GI and Trademark Conflicting Rights?

GI and trademark are the intellectual property rights that are most closely related. Both use words and symbols to distinguish themselves from one another as well as to differentiate their respective products in the market. Occasionally, a trademark may come into conflict with a GI. GI and trademark conflict results in the following problems that are listed below:⁴²

1. Weak identification mark – A conflict between a trademark and GI diminishes the value of the GI as an indicator of product quality and its origin. As a result, companies end up spending a significant amount of money to build the brand value of their trademark in the consumer market, which ultimately results in the company incurring wasteful and additional expenses.

2. Wasteful competition – Several companies sell the same GI product under their own different brand names. These companies compete amongst themselves, often discrediting each other in the market in an effort to attract customers, thereby reducing the very brand value of the GI tag to naught.

3. Consumer confusion – The existence of various companies selling the GI product and claiming to provide superior quality products on the consumer market leads to customer confusion regarding the quality and reputation of GI.

⁴¹ Felix Addor & Alexandra Grazioli, *Geographical Indications Beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5(6) J. World Intell. Prop. 865 (2002).

⁴² Kevin L. Keller et al., *Strategic Brand Management* (2011).

4. Lack of enforcement – The presence of multiple companies selling GI products allows enough room for imitation products to enter the consumer market and claim GI distinction without much fear of repercussions. The absence of a third party to monitor imitation products further exacerbates the problem. For instance, Indian consumer markets are flooded with fake brands selling imitation basmati rice.

Two conflicting approaches. The Budweiser trademark dispute is a well-known example of a series of legal disputes spanning decades and three continents in which either party claims exclusive rights to the name “Budweiser” based on trademark or geographical indication right.⁴³ The deadlock continues because there is no established international principle that could be used as the basis on which such a conflict could be resolved. However, there are two dominant approaches in the international arena. The first approach favors the GI as a community right over that of a trademark owned by a single entity or individual. This argument can be summarized as:

Geographical indications are the common patrimony of all producers in a certain area and, ultimately, of the entire population of the area which may potentially qualify for the right to use the geographical indication. It would be unfair to deprive the population of the use of the geographical designation for the exclusive benefit of an individual trademark owner simply because he happened to register the name first as a trademark.

The second approach contends that GI protection inhibits human creativity and innovation, as seen in other forms of intellectual property such as trademarks and patents. This can be best expressed as follows:

At least in economic terms and perhaps also from the human point of view, trademarks are no less important and no less deserving of protection than any other form of intellectual property. They are nothing more or less than the fundament of most market-place competition. Without trademark protection, there would be little incentive for manufacturers to develop new products or maintain the quality of existing ones.

It is a matter of scholarly debate as to which right should give way in the case of a conflict.⁴⁴ It can, however, be argued that the two principles shall be followed in cases of conflict, namely, who has better market recognition and whether the coexistence of the goods may lead to consumer confusion. In India, section 25 of the Indian Patent

⁴³ *Anheuser-Busch Inc. v. Office for Harmonisation in the Internal Market*, Case T-366/05 (CJEU) and *Budejovicky Budvar Narodni Podnick v. Anheuser-Busch Inc.*, [2012] E.W.C.A. Civ. 880.

⁴⁴ Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPs: “Old” Debate or “New” Opportunity?*, 10(2) *Marquette Intell. Prop. L. Rev.* 182, 197 (2006).

and Trademark Act prohibits the registration of a trademark that is similar to another. In the event of a prior trademark registration, section 26 allows both to co-exist.

India's take on the GI vs. trademark conflict – Tea Board, India v. ITC Limited. There is yet to be an agreement on a formula for the harmonization of geographical indication and trademark laws at the international level. Recently, in the case of *Tea Board, India v. ITC Limited*, the High Court of Calcutta was called upon to decide a case involving a conflict between the use of the word “Darjeeling” as a GI and trademark.⁴⁵ This case was filed by the Tea Board of India, a statutory body established under the Tea Act, 1953 and proprietor of the famous GI, Darjeeling tea. The defendant was a multinational company that owned a 7-star hotel in Kolkata (West Bengal, India) and named their lounge the “Darjeeling Lounge.” The lounge was specifically intended for serving high-end guests with food and beverages. The Tea Board of India approached the High Court for an injunction against the defendant company. The following aspects were debated and raised during the course of the proceedings:

1. Does the use of the word “Darjeeling Lounge” by the defendant company amount to an infringement of the plaintiff’s GI and certification mark? On this issue, the court held that infringement of GI, as defined under section 2(1)(e), can only be protected against another good and not against a service. Since the defendant was using the word mark “Darjeeling” for service, there was no infringement of the plaintiff’s rights under the GI Act.

2. Does the defendant company’s use of the term “Darjeeling Lounge” amount to passing off? The court, in its judgment, emphasized that the aspect of confusion among consumers is the yardstick of any such legal action. The court observed that the defendant was not using the term as a trademark for a similar product or business. Furthermore, the “Darjeeling Lounge” serves only high-end customers who can easily distinguish between a tea variety and a refreshment lounge. Therefore, no consumer confusion could be established, and as a result, the court refused to accept the contention of passing off.

3. Whether the defendant company’s use of the name Darjeeling leads to dilution of the “Darjeeling” label? The High Court held that the descriptive word “Darjeeling,” which is also the geographical name of a popular tourist destination widely known for its exquisite tea, had been in use for a long time before the GI Act was enacted and, therefore, denied the plaintiff an exclusive right to use the word “Darjeeling” by virtue of its registration as a GI or a certification mark. The court noted that the word ‘Darjeeling’ is so widely used that no confusion can be said to have occurred by its use by the defendant. As a result, the Honorable High Court dismissed this case with costs after rejecting it on all three grounds.

Selected foreign judgments. In a separate infringement case involving the term “Darjeeling,” the Israel Supreme Court ruled in favor of the defendant company that

⁴⁵ *Tea Board v. ITC Ltd.*, MANU/WB/0277/2019 (HC).

sold Darjeeling lingerie for the exact same reasons.⁴⁶ However, in France, the Court of Appeals ruled that the word “Darjeeling” even if used as a trademark for a different product, can lead to dilution of the famous GI.⁴⁷ There have been other cases as well in which the European Court of Justice has sought to protect GI even against trademarks that were not identical.⁴⁸

9. Steps Towards International Harmonization of the GI Framework

In many ways, GI is a weak form of intellectual property rights. As a result, countries are adopting innovative measures to strengthen the framework for the protection of GI. These measures can be classified as below:

1. Forming regional organizations – The African Intellectual Property Organization (OAPI) is a regional organization. It is responsible for the recognition and protection of IPR in seventeen French-speaking African countries. The OAPI also acts as the sole representative of member countries while negotiating trade agreements. The European Union is also a regional organization that negotiates trade agreements on behalf of its twenty-seven member countries. Regional organizations have a collective strength, which is especially beneficial when negotiating trade deals with more resourceful countries.

2. Trade agreements – While negotiating bilateral or multilateral trade agreements, countries sometimes include a list of GI products to be automatically protected in contracting states. This strategy allows the European Union to protect its GI in a proactive manner.⁴⁹

3. Domestic state intervention – The right to GI is a right that is driven by the community. As a result, governments play an active role in GI protection. The scope of intervention is not limited simply to the enactment and enforcement of laws, but also includes intervention as a stakeholder in practice. For example, in India, government agencies not only grant but also act as applicants for the majority of GIs. This is necessary since GI is more than just a quality standard. It is a policy instrument for the government that serves many socio-economic purposes for underprivileged communities.⁵⁰ It promotes social and economic vibrancy, improves environmental

⁴⁶ *Tea Board of India v. Delta Lingerie SA of Cachan*, Case 10639/06, 13 April 2008 (SC).

⁴⁷ Justin Hughes & Diane Artal, *Translation of the Tea Board v. Mr. Jean-Luc Dusong, Court of Appeals of Paris, 05/20050, Decision of November 22, 2006*, 28 Cardozo Arts & Ent. L.J. 431, 435 (2010).

⁴⁸ *Consorzio per la tutela del formaggio Gorgonzola v. Käserei Champignon Hofmeister GmbH & Co. KG and Eduard Bracharz GmbH*, Case C-87/97 (CJEU).

⁴⁹ Patricia Covarrubia, *The EU and Colombia/Peru Free Trade Agreement on GIs: Adjusting Colombian and Peruvian National Laws?*, 6(5) J. Intell. Prop. L. & Prac. 330 (2011).

⁵⁰ Alaeldin Alkhasawneh, *The Legal System for the Protection of Geographical Indications: A Study in Jordanian and Comparative Law*, 21 J. Intell. Prop. Rts. 304, 309 (2016).

sustainability and addresses the need for healthier food.⁵¹ It reflects a growing concern about preserving common heritage and preventing the unfair exclusion of authorized producers from reaping full benefits in the consumer market.

The Geneva Act of the Lisbon Agreement (Geneva Act). The Geneva Act entered into force on 15 February 2020 following ratification by the United Kingdom. The Geneva Act is a much-awaited revision of the Lisbon Agreement, and the two combined form the Lisbon System. The Geneva Act expands the scope of the Lisbon Agreement by incorporating the definition of GIs in addition to the appellation of origin. The most significant benefit of the Geneva Act is the single registration procedure for GIs through the World Intellectual Property Organization. It will be highly relevant for Indian producers seeking protection of their products in offshore markets. Thus, India should consider ratifying the Geneva Act at the earliest opportunity.

Conclusion

The Indian economy contracted by 23.9 percent in the first quarter of 2020–2021, the highest rate of decline in the preceding four decades.⁵² According to the World Bank, this has happened at a time when India needs to create approximately 8 million jobs annually to keep the employment rate constant.⁵³ In such a scenario, GI has the potential to emerge as a powerhouse for economic development, particularly for the rural economy.

In India, GI is at the intersection of three significant fields – intellectual property, trade and socio-economic policy. Indeed, in addition to their various advantages, including quality, GIs are an easy way of helping the underprivileged producers and artisans in India. As a result, it has significant socio-economic and public policy implications.

GI products can be a source of income for the returning migrant laborers in the wake of the COVID-19 pandemic. GI can provide local employment, protect the heritage and traditions of the local community and ultimately play a significant role in rural development and self-sufficiency.

Without a doubt, the benefits of GI can only be realized when the products are effectively marketed and protected from imitations in the market. In this regard, government support will be critical, and it must be extended beyond the mere registration of GI products. In third world countries like India, where approximately

⁵¹ Delphine Marie-Vivien & Estelle Biénabe, *The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review*, 98 *World Dev.* 1, 4 (2017).

⁵² Ministry of Statistics and Programme Implementation Report on Annual and Quarterly Estimates of GDP at constant prices, 2011–12 series (2020) (Oct. 19, 2021), available at http://mospi.nic.in/sites/default/files/press_releases_statements/Statement_13_1sept2020.xls.

⁵³ World Bank, *Jobless Growth?*, South Asia Economic Focus (2018) (Sep. 30, 2021), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/29650/9781464812842.pdf?sequence=4&isAllowed=y>.

22 percent of the population is living below the poverty line and 27.1 percent of the population is illiterate, the federal and state governments need to take a more proactive stand to promote GIs.⁵⁴ The government measures should include four essential features:

1. The Ministry of Commerce, in collaboration with the Ministry of Culture, can run capacity-building programs for the authorized users. Such programs can also be integrated with existing government schemes like Swarnjayanti Gram Swarozgar Yojana. In addition, existing programs such as One District One Product should be strengthened and streamlined to identify and support stakeholders in remote areas.

2. Capacity building will be incomplete until stakeholders' knowledge and interface with the internet are prioritized. This will help GI producers in overcoming information asymmetry in the market and adapting to the ever-evolving taste of consumers.

3. In order to navigate foreign legal systems, assistance should be provided for direct registration and hiring of legal services. This is especially true given that Indian GI producers lack the education and resources to achieve this without external support. Priority should be given to India's top three trading partners, namely China, the United States and the United Arab Emirates.⁵⁵

4. Assistance in hiring the services of an international watchdog to regularly monitor the market and keep an eye on infringers of valuable Indian GIs post-registration in foreign countries. For instance, Darjeeling tea has retained the services of an international monitoring agency, Compumark, to report any unauthorized use of the Darjeeling logo.⁵⁶

India should also explore the option of intellectual property protection being secured through collaborative efforts among the BRICS countries. This could be a significant step towards harmonizing GI laws because the BRICS as an association is made up of some of the world's largest and most influential economies.

In addition, India should ratify the Geneva Act at the earliest. It provides for the much-needed single-window GI registration system for all the member countries. This may go a long way towards helping the GI producers in India, who are otherwise facing a grim future and possible extinction due to market erosion.

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⁵⁴ As per the latest Census Data of India, 2011 (Jun. 10, 2021), available at <https://censusindia.gov.in/2011census/censusinfodashboard/index.html>.

⁵⁵ World Bank, India Monthly Trade Data (2019) (Jan. 16, 2022), available at <https://wits.worldbank.org/CountrySnapshot/en/IND>.

⁵⁶ WTO, *supra* note 37.

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